

Thursday, July 31st, 1924.

10:30 o'clock A.M.

Court convened at 10:30 o'clock A.M. Thursday, July 31st, 1924, pursuant to adjournment heretofore taken.

Present: Same as before.

THE COURT: Before you proceed, Mr. Marshall. Yesterday while you were reading decisions from Pennsylvania, I asked about the statutes, and I had Mr. Crowe send for the Pennsylvania statutes, because the cases which you were reading were cases in which a plea of not guilty was entered and trial by a jury. Now, this is what the statute of Pennsylvania is on murder and manslaughter:

Whereupon the Court here read in the words and figures as follows, to-wit:

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THE COURT: Now the Supreme Court of Pennsylvania have held that when a man pleads guilty, by confession, he stands convicted of second degree murder and the State has a right to put on witnesses to elevate it to murder in the first degree, and the Court can then fix the punishment, at execution if he sees fit. But when he pleads guilty he stands as a murderer convicted of second degree murder, and the State has a right to put on witnesses to elevate it to murder of the first degree. The burden is upon the State to furnish the evidence -- in this instance the Commonwealth as they call it there -- to furnish evidence to put it in the class of first degree murder.

I am through with it, Mr. Crowe, and I assume you are responsible for its return?

MR. CROWE: Yes.

THE COURT: Was it from your office?

MR. CROWE: No.

THE COURT: From the law Library?

MR. CROWE: Yes, and I gave you another one, if your Honor please.

THE COURT: Oh yes. Get me the other one, Mr. Bailiff.

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MR. MARSHALL: Those authorities are very complete to the proposition that insanity, legal insanity has no degrees.

THE COURT: Oh yes.

MR. MARSHALL: It being merely a condition.

THE COURT: But what I was there trying to show was, that where a man pleads guilty, as soon as he pleads guilty he stands convicted of murder in the second degree, the State having a right to elevate it, and the burden is upon them to show that it is murder in the first degree, and if they cannot show that it is murder in the first degree, then it is murder in the second degree.

MR. WALTER BACHRACH: And all those cases in Pennsylvania, if your Honor please, discuss the question of the defense of insanity for the purpose of reducing or mitigating the crime, or reducing the crime from murder in the first degree to murder in the second degree, and they say that cannot be done, that insanity is a defense, if it is proved to either charge, and if it is not proved there is no defense at all, it wont excuse either one. But we are not seeking to show here --

MR. MARSHALL: I suggest you wait until your turn comes, and make your point.

MR. WALTER BACHRACH; We are not seeking to show here --

MR. MARSHALL: I would rather not be interrupted, if your Honor please.

THE COURT: very well, proceed.

MR. DARROW: How much longer do you expect to take?

MR. MARSHALL: I haven't any idea, Mr. Darrow.

MR. DARROW: Then I suggest that the Court limit the argument. There hasn't been one case read by you that is in point here, and you can read cases from now until dooms day on insanity, and when you pass that you can read other cases until dooms day that have nothing to do with this case, and I think it is only fair that there should be some limit somewhere.

THE COURT: Well, the Court doesn't care to limit either side in this case. I will give you gentlemen all the leaway you want. The more the Court is enlightened the better the Court will be informed, and the more satisfied the Court will be.

MR. MARSHALL: I want to make one position clear at the outset, if your Honor please, that perhaps has not been stated in so many words, and that is, that the State doesn't object to the testimony of alienists if the proceeding is correct for the reception of alienists' testimony. In other words, this Court, in aggravation and mitigation proceedings only may not go into that, and I will go into that at some length a little later on; but all of it is admissible before a jury where they are making their defense of insanity, insanity being, under the law, a defense.

I want to make it clear that such testimony, in that proceeding, might be admissible, but not here.

To continue then the argument in chief --

THE COURT: Pardon me. You reporters will have to step back and take your seats where you belong. Don't crowd up here.

MR. MARSHALL: Assuming then the alienists' testimony goes to the weakness of mind, over against a plea of guilty that admits sanity, we have the defense contradicting the plea that they have solemnly filed,

the plea being a conviction, in courts of common law, of the highest order.

THE COURT: Wait just a moment, if you will pardon me, Mr. Marshall; get this court reporter a chair so he can sit down while he is writing. All right now, Mr. Marshall.

MR. MARSHALL: What have we here? A confession upon the records of the courts. A confession meaning the highest order of conviction, a plea of guilty.

Now it is provided by statute, section 736, in this volume Smith & Hurd's, that is section 8 of Division 13 of the Code, page 730:

"All trials for criminal law offenses shall be conducted according to the course of the common law, except when this Act points out a different code, and the rules of evidence of the common law shall also be binding on all courts and juries in criminal cases, ~~xx~~ except as otherwise provided by law."

Consider here now the position of the State, sanity being one of the ingredients --

THE COURT: We will suspend while the Grand Jury

reports.

MR. MARSHALL: Yes, your Honor.

THE COURT: Proceed.

MR. MARSHALL: "All trials for criminal offenses shall be conducted according to the course of the common law, except when this Act points out a different mode."

Now by separate enactment, Chapter 28, an Act to revise the law in relation to the common law, this is page 461:

(Whereupon Mr. Marshall here read from said authority in the words and figures as follows:

MR. MARSHALL: (Continuing) Now consider the position of the State here, sanity being one of the necessary elements of the crime, then the defense come in with a plea of guilty, and the rule being that the presumption of sanity inheres at every stage of the trial until insanity is made to appear by the evidence, and then under the common law, there being evidence here before the Court under the common law, Blackstone lays down the rule, "but if there be any doubt whether the party be compos or not, this shall be tried by a jury".

Now there may be this testimony in a trial by a jury, and the query here and upon which your Honor, if you act, must of course accept all the responsibility, the query is, whether such testimony may be heard by the Court in a mere proceeding in mitigation, because the presumption as to sanity is running through this proceeding now; and when they introduce evidence to overcome it, then they destroy that presumption. It is the duty of the State to make its case then by evidence, and the State presents its evidence then, when the common law says that that issue must be tried by a jury.

So you see, 'if your Honor please, this proposition is vital and goes to the roots of the case.

The defense, it seems to me -- and with all solemnity I say it, tell the Court, by their plea, they are sane, and they offer evidence in mitigation, they call it of a mental disease.

Now, mental disease has the basic element, the foundation, the basic element of legal insanity.

Legal insanity decides the responsibility, and they have told the Court they are responsible; but they offer evidence that would destroy their responsibility, and under the law, because of the peculiar nature of insanity, and it is proved in the first instance by a presumption that may be overcome, and then, because of the nature of insanity, it becomes incumbent upon the State that the proceeding here, if the Court please, be correct.

In other words, there can be no reception of evidence of ~~xxxxx~~ insanity here if it be admitted that it is legal insanity, because insanity, legally speaking, is a defense'

Then as a matter of mitigation, can they create the same defense, calling it mitigation, rather

than a defense, and overcome the State's presumption of sanity upon which it is resting at the moment?

Now our Supreme Court has said in the Dacey case, the case of Dacey vs. People, 116 Ill. 572P

Whereupon Mr. Marshall here read
from said authority in the
words and figures as follows:

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MR. MARSHALL (Continuing) Now there is some criticism, and correctly taken, too, I think, as to that phrase, the burden shifts, because I think, in a criminal case, the burden never shifts from the State, but what happens is this: That the presumption of sanity proves the proposition for the State in the first instance, the defense meets it with something in the nature of evidence, and then the State must offer evidence.

In other words, when they put in evidence as to insanity, they called for proof of sanity by the State. But the law requires when the question of sanity is raised, a decision by a jury; and while I would prefer to determine the matter before the Court because of the simplicity involved, still there is the law.

Now even in cases where the matter of sanity and weakness of mind is submitted before a jury, evidence such as counsel has stated is this to be in his offer, would not be admissible.

Under the offer -- now, I am not assuming what the questions and answers will be at all, but under the offer as made by counsel, unless he wants to go

so far, under his offer, as to say that it is complete legal insanity that he means; but if he, accepting his limitation for the moment at its face value, and it is less than legal insanity and responsibility that he is talking about, and witnesses are offered in that regard, what do the courts say?

Studstill vs. State, 7 Georgia, page 3, I am reading from page 12:

Whereupon Mr. Marshall here
read from the above authority
in the words and figures as follows:

MR. WALTER BACHRACH: That is the law in Illinois, isn't it, Mr. Marshall?

MR. MARSHALL: Don't you think it is?

MR. WALTER BACHRACH: Why certainly it is, on the trial of an issue before a jury, that anything less than legal insanity is no defense. How about the question of mitigation of the punishment?

MR. MARSHALL: you will have a chance to argue, Mr. Bachrach.

(Whereupon Mr. Marshall here continued to read from the last above mentioned authority).

Now that is what I have been trying to make plain to your Honor all the way through, and fortunately last evening I found the language that I was searching for in the books. They formulate it better than I can state it.

In Patterson vs. People, 46 Barbour's New York Superior Court reports, 635, the charge was murder --

MR. B. C. BACHRACH Will you give us that citation?

MR. MARSHALL: 46 Barbour, N.Y. Superior Court Reports,

635. The charge was murder and it was held that

in order to show the mental grade and capacity of the prisoner, which offer was not made for the purpose of proving him to be non compos mentis, but to show the measure of his intellectual capacity, was rightly rejected.

In its opinion at page 633, the Court states:

Whereupon Mr. Marshall here read from said authority in the words and figures as follows:

MR. MARSHALL: Coming back then as it does to that word responsible and irresponsible, the only test of insanity in the criminal law, the court knowing nothing of all the grades and shades and classifications and made by alienists, that being merely descriptive matter and classification for their own convenience.

Parsons vs The State, 81 Alabama, 577, the Court said:

Whereupon Mr. Marshall here read from said authority in the words and figures as follows:

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MR. MARSHALL: And so in Boswell vs. State, 63 Alabama,
307 --

MR. B. C. BACHRACH: Will you give me that citation
again?

MR. MARSHALL: Boswell vs. State, 63 Alabama,
307.

Whereupon Mr. Marshall here read from said
authority in the words and figures as
follows:

MR. MARSHALL: And it is upon these cases that I have read that I make the statement to your honor that this kind of testimony is not in this case? I have read you authority after authority on this type of testimony, that it has no place in psychology or law.

Calley vs. State, 133 Alabama, the Court said:

MR. WALTER BACHRACH: Will you give that citation, the page please?

MR. MARSHALL: Didn't I give it, it is Calley Vs. THE State, 133 Alabama, page 129.

Whereupon Mr. Marshall here read from said authority in the words and figures as follows:

MR. MARSHALL: Walker, vs. State, 91 Alabama, 76.

Whereupon Mr. Marshall here read from
said authority in the words and figures
as follows:

MR. MARSHALL: Now our neighboring state, Indiana,
Goodwin vs. State, 96 Indiana, 550.

THE COURT: Pardon me?

MR. MARSHALL: Goodwin vs State, 96 Indiana, 550.

Whereupon Mr. Marshall here read from said

authority in the words and figures as follows:

MR. DARROW: That wouldn't be good in Illinois, would it?

MR. MARSHALL: I will show you. You challenge me on Illinois.

MR. WALTER BACHRACH: Is irresistable impulse a good defense in an insanity case?

MR. MARSHALL: You challenge me on Illinois. Then I have the 296 and the 264 --

MR. DARROW: Oh, don't let us interrupt you.

MR. MARSHALL: Our supreme court says something about depravity.

MR. WALTER BACHRACH: What do they say about irresistable impulse.

MR. MARSHALL: I will read it to you. May I have the 296 and the 264?

MR. DARROW: I think we all know the case, Mr. Marshall.

MR. MARSHALL: How?

MR. DARROW: I think we all know that case.

MR. MARSHALL: Well, I have it here, but I want to read it from the book. People vs. Loehon, 296 Illinois 391.

Whereupon Mr. Marshall hereread from

said authority in words and figures
as follows:

MR. MARSHALL: But if you go further upon the theory that is invoked here and give this depravity and these abandoned habits a scientific name that, unfortunately for the administration of justice incorporates the word insanity in it, and bring it into court upon an offer in mitigation, you create the opposite result intended by the Supreme Court when they laid down the rule that depraved character and abandoned habits are not in themselves evidence of insanity, neither is the commission of an unnatural and atrocious crime.

THE COURT: May I have that just a moment? That is one of the cases I referred to yesterday.

MR. MARSHALL: Yes.

THE COURT: The very wording of this opinion is the reason that I called your attention to this opinion yesterday.

"Depravity of character and abandoned habits are not in themselves evidence of insanity." Now then, if the men, the doctors who are called to the stand, were asked questioned along that line, which the Supreme Court says are not in themselves evidence of insanity, isn't it proper for the Court to hear that in mitigation?

That is why I called your attention to this case yesterday, the very wording of this Supreme Court decision. Our Supreme Court says that such evidence is not evidence of insanity. Now wouldn't it be proper, under the wording of our statute, which says the Court has a right to listen to evidence of aggravation on behalf of the State and in mitigation on behalf of the defense, for the court to hear such evidence?

MR. CROWE: If the Court please, if that evidence was offered by these witnesses -- in other words, they attempted to show that these men on trial were depraved and had an abandoned and malignant heart, that would not be in mitigation, that would be in aggravation.

MR. DARROW: Wouldn't it be competent?

MR. CROWE: For the State to introduce it.

MR. WALTER BACHRACH: Couldn't the defense introduce it and claim the opposite inference?

MR. CROWE: Not as mitigation.

THE COURT: I don't care what they call it, wouldn't they be permitted to introduce it, that is what I am getting at.

MR. CROWE: Their offer is that they are going to mitigate the punishment and not to aggravate it, and this evidence would not tend to mitigate but would tend to aggravate the crime and the punishment.

MR. DARROW: The State's Attorney ought to tell us what we could offer in mitigation. What kind of evidence would be in mitigation?

MR. MARSHALL: I have read it to you?

MR. CROWE: I don't think you have any evidence here.

MR. DARROW: Well, is there any such evidence in any case in the world?

MR. CROWE: yes.

MR. DARROW: What?

MR. CROWE: Evidence that grows out of the transaction itself. In other words, as I explained yesterday, after a murder has been proved, it is competent, in order to mitigate the punishment, to show, for instance, that the man who was killed had seduced the daughter or the wife, that is mitigating evidence.

MR. DARROW: Why would that be competent?

MR. CROWE: Because it is in mitigation.

MR. DARROW: Why?

MR. CROWE: Because the law would not hold a man who had a reason in morals --

MR. DARROW: Oh, that is nonsense.

MR. CROWE: -- for killing, for the same strict accountability that the law would hold a man who had absolutely no justification in morals.

MR. DARROW: That is all nonsense. They talk about the unwritten law.

MR. MARSHALL: Well, this statute throws some light on it, if the Court please.

MR. DARROW: It is only competent because that would affect the mind of the defendant, that is all.

THE COURT: Well, we wont get into an argument now. We will let the State proceed to read those cases. I was simply asking the State, if the defendants are allowed, under the statute there, to put in evidence in this case that doesnot tend to show insanity -- now, we are eliminating anything that tends to show insanity, and our Supreme Court in this late case, the latest case, the last expression of the Supreme Court on this subject is: "Depravity of character and abandoned habits are not in themselves evidenece of insanity."

Now the Court stated yesterday that it thought under the wording of our statute, that he has a right to permit the State to put in any evidence in mitigation of punishment that doesnot tend to show insanity --

MR. B. C. BACHRACH: You mean the defense.

THE COURT: Pardon me?

MR. B. C. BACHRACH: You mean the defense. You said the State, your Honor.

THE COURT: I mean the defense. Now here, in the last expression of our Supreme Court, the latest, 296 -- the last volume I think is 311 -- in the 296 they say that depravity of character and abandoned habits are not in themselves evidence of insanity. Now, it was my contention yesterday that whatever those men would testify to, if it was not evidence of insanity, if it was evidence in mitigation of punishment, that the Court had a right to hear it, and that it would be reversible error for the Court not to hear it.

MR. CROWE: If your Honor please, if the purpose of the defense was to show that these men on trial were guilty of depraved acts, how are you going to prove that?

THE COURT: I don't --

MR. CROWE: By an expert's opinion as to something that he has been told about the mental condition? Are you going to put a witness on the stand who will say "I saw this man commit this or that or the other act which constitutes depravity"?

Now it is apparent that they are not calling alienists and qualifying them as alienists to prove depravity.

They are going to call alienists and ask them have they an opinion, from certain statements made to them by the defendants -- which are hearsay and which would not be competent, or which are self-serving, have you an opinion as to his mental condition and his responsibility under the law.

MR. WALTER BACHRACH: Why have you read, Mr. Crowe, cases relating to depravity to the Court as being in point, if you now claim we are not going to show depravity?

MR. CROWE: This case was read at your request when you stated that depravity in Illinois constituted--

MR. WALTER BACHRACH: Never.

MR. DARROW: We never said any such a thing.

MR. B. C. BACHRACH: We never had anything of the

kind in mind.

MR. CROWE: And you asked Mr. Marshall to read it.

MR. B. C. BACHRACH: No we didn't. On the contrary, we told him not to read it.

MR. DARROW: We told him that case wasn't in point.

MR. WALTER BACHRACH: Hewas reading cases in Illinois that irresistable impulse was not a defense, and we told him that was not the rule in Illinois, and then he referred to these cases.

MR. B. C. BACHRACH: May I ask you a question here, Mr. Crowe?

MR. CROWE: Yes.

MR. B. C. BACHRACH: Mr. Crowe, when you were a Judge on the bench, didyou not in a similar proceeding, in the Fitzgerald case, hear evidence of insanity on a plea of guilty?

MR. CROWE: I did not.

MR. BACHRACH: You did not?

MR. DARROW: In the Fitzgerald case?

MR. CROWE: I did not.

MR. DARROW: Why, you consulted all the attorneys that were in it as to the mental condition of Fitzgerald?

MR. CROWE: I heard no evidence of insanity whatever.

MR. DARROW: There was an alienist testified as to the mental condition of Fitzgerald?

MR. CROWE: There was an alienist who testified that he was a pervert.

MR. DARROW: You heard that?

MR. CROWE: Yes.

MR. DARROW: And that he was irresponsible?

MR. CROWE: No, nothing as to his mental condition whatever.

MR. DARROW: It has been done by pretty near every court in this state.

MR. CROWE: And Fitzgerald was sentenced to be hanged, and he was hanged.

MR. DARROW: Well, you sentenced him.

MR. B. C. BACHRACH: Did the alienist testify of his own knowledge of the perversion, or did he learn it from an examination of the defendant?

MR. CROWE: I submit that Mr. Marshall be permitted to continue.

THE COURT: Well I just interrupted Mr. Marshall

because he was reading these cases, and it was one of

the cases that I relied on yesterday, that depravity of character and abandoned habits are not in themselves evidence of insanity, and the Court was led to believe, by the latest expression of the Supreme Court here, that it was its duty to listen to evidence. And as I stated at the outset, the Court will not hear this evidence for the purpose of showing insanity.

MR. MARSHALL: It is offered under a showing of mental diseased functional disorder in its nature. It means nothing but insanity.

MR. B. C. BACHRACH: We deny that.

MR. MARSHALL: I have been advised by leading alienists that seventy percent of all the admissions to State Institutions are mental diseases functionally in their nature, the very language of counsel, and that is insanity, that is legal insanity, complete, perfect in all its parts, legal insanity, and so that is what I say. They are inconsistent. We are sane on the plea, we are insane on the mitigation.

THE COURT: The Court has said repeatedly that he will not hear any evidence on insanity, and if questions are brought out, if witnesses are permitted to testify

and if questions are brought out tending to show they are insane, object to the testimony of the witness and at the conclusion of his testimony the court will take it under consideration, and if the court does not think it is competent, he will strike out the testimony of the witness, and he may strike out the testimony of all the witnesses that the defense puts on, and he may not strike out the testimony of any of the witnesses, I cannot tell until I hear the question and the answer given.

MR. MARSHALL: That is true.

THE COURT: This Court is not in the position of a jury. If it were a jury, it would be a different matter altogether, because once the jury hears it the Supreme Court says you are done for; but the Court has a right to hear it, and the Court can strike all of the testimony entirely out of the record. It won't have any influence with me, if I hear something that is not competent.

MR. MARSHALL: But the record is being made, if your Honor please.

THE COURT: Yes.

MR. MARSHALL: The record is there and it remains,

though the rest of us pass. And that record shows a tendency in the evidence towards insanity. The offer itself is almost enough to put us upon notice that they have a defense.

THE COURT: Well now supposing they put on a witness here who testified --

MR. MARSHALL: To prove sanity as one of the necessary elements of the crime.

THE COURT: These defendants now are in the position of being perfectly sane.

MR. MARSHALL: yes.

THE COURT: Responsible for their acts.

MR. MARSHALL: Yes.

THE COURT: They have confessed to it.

MR. MARSHALL: Yes.

THE COURT: Now what is our position under the common law rule? You are through now for the time being, unless the defense goes on with something. You have a right to object and ask to strike out the testimony, and the court may do it, or may not do it; and if there is some evidence here that the court permits

to go in, you have a right to put on evidence and rebut it, if you see fit.

MR. MARSHALL: But this question of insanity is peculiar. If the record shows something tending to make out insanity, at that point it is the duty of the State to produce its proof, and where will it be produced -- before the Court?

THE COURT: Everything will be heard before the Court in this case.

MR. MARSHALL: It is the duty of the Court, when any element of insanity enters into the case under the common law, and this is a common law state -- and Blackstone is the highest exponent of the common law, we have none better or other, and he says if there be any doubt, that is to be tried by a jury.

MR. DARROW: Do you say that is the law in Illinois?

MR. MARSHALL: I say it is the law.

MR. DARROW: All right. When you get through --

THE COURT: Well, suppose you go ahead with your argument, Mr. Marshall please?

MR. MARSHALL: Kerrigan, 73 California, 322 --

THE COURT: Have you got the 364 there?

MR. MARSHALL: Yes, but it is a repetition of this language.

THE COURT: All right.

MR. MARSHALL: People vs. Kerrigan, 73 California, 222.

Whereupon Mr. Marshall here read from said authority in the words and figures as follows:

MR. DARROW: Have you got the law here?

MR. MARSHALL: I have read it to you, depravity.

MR. DARROW: I mean on emotional insanity?

MR. MARSHALL: Oh you know I am citing this because of its tendency.

MR. DARROW: I don't know why you are doing it, except to take time.

THE COURT: We will take a recess now. A recess for five minutes, gentlemen, and only five minutes.

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

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Harvey
reals
Snyder
11:00
A M
7-31-24

(Whereupon pursuant to a short recess heretofore

taken the following proceedings were had:)

THE COURT: You were reading from that authority?

MR. MARSHALL: I thought I had finished my quotation
from that. Yes, I finished that.

THE COURT: You have finished that?

MR. MARSHALL: Yes.

THE COURT: All right.

MR. MARSHALL: Now, McCarty v. Commonwealth, 114 Ky.
620.

THE COURT: 114?

MR. MARSHALL: Kentucky, 620. Reading from page
626.

(Whereupon Mr. Marshall read from the
above authority referred to in the words and
figures as follows:)

2

MR. MARSHALL: And their offer here is to produce evidence of a mental disease, functional in its nature.

People v. Durfee, 62 Mich. 487,

MR. W. BACHRACH: What?

MR. MARSHALL: People v. Durfee, 62 Mich. 497.

(Whereupon Mr. Marshall read from the above authority referred to in the words and figures as follows:)

3 MR. MARSHALL: State v. Brandon, 53 North Carolina,
463.

(Whereupon Mr. Marshall read from the above
authority referred to, in the words and figures
as follows:)

MR. MARSHALL: In Leache v. State, 22 Texas Court of Appeals Reports, 279, they quote Mr. Taylor. They say Mr. Taylor in his celebrated work on medical jurisprudence, speaking of moral insanity, says: "The law does not recognize moral insanity as an independent state, hence however perverted the affections, moral feelings or sentiments may be, our medical jurists must always look for some indication of disturbed reason. Moral insanity is not admitted as a bar to responsibility for civil or criminal acts, except in so far as it may be accompanied by intellectual disturbances."

THE COURT: Read that last again.

MR. MARSHALL: The law does not recognize moral insanity as an independent state, hence however perverted the affections, moral feelings or sentiments may be, our medical jurists must always look for some indication of disturbed reason. Moral insanity is not admitted as a bar to responsibility for civil or criminal acts, except in so far as it may be accompanied by intellectual disturbances.

And then counsel makes his offer here.

5 under the phrase, mental disease, functional in its nature,

Commonwealth v. Van Horn, 188 Pa.
State Reports 143.

(Whereupon Mr. Marshall read from the
above authority referred to in the words
and figures as follows:)

6

MR. MARSHALL: I will pass to the case of People v. Finley, 38 Mich. 482. Every one who is *compus mentis* or a free agent is legally responsible. Everyone who is non *compus mentis*, or has no control of his mind, is irresponsible. This is Michigan, a neighboring state.

(Whereupon Mr. Marshall read from the above authority referred to in the words and figures as follows:)

7

MR. MARSHALL: Choise v. State, 31 Ga. 424.

(Whereupon Mr. Marshall read from the
above authority referred to in the words and
figures as follows:)

8 MR. MARSHALL: Now, again in California. People
v? McCarthy, 115 Cal. 255.

(Whereupon Mr. Marshall read from the
above authority referred to in the words and
figures as follows:)

9

MR. MARSHALL: And so in the case of Banks v. Commonwealth, 145 Ky. 800.

(Whereupon Mr. Marshall read from the above authority referred to in the words and figures as follows:)

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MP. W. BACHRACH: What case is that?

MR. MARSHALL: This is Banks v. Commonwealth, 145
Ky. 800.

(Whereupon Mr. Marshall continued reading
from the above authority referred to in the
words and figures as follows:)

11

MR. MARSHALL: Regina v. Burton, 3 Foster & Finalson, Nisi Prius Reports, page 242. This is English Law.

(Whereupon Mr. Marshall read from the above authority referred to in the words and figures as follows, to-wit:)

MR. DARROW: Do you know the date of that case?

MR. MARSHALL: Yes, I have it here, Mr. Darrow.

Oh, I thought I had it. Yes, 1863.

MR. DARROW: That does not modify the law of this state, does it?

MR. MARSHALL: Well, it lays down the rule I am urging.

Now, I will cite one from 1921 in England, quite recent. Rex v. Quarumby, 15 Criminal Appeal Reports, 163.

MR. W. BACHRACH: What is that?

MR. MARSHALL: 15 Criminal Appeal Reports, 163.

(Whereupon Mr. Marshall read from the above authority referred to in the words and figures as follows:)

13

MR. MARSHALL: Dougherty v. State of Vermont,
73 Vermont 382. Insanity is either a complete defense
or not at all.

(Whereupon Mr. Marshall read from the
above authority referred to in the words and
figures as follows:)

14

MR. MARSHALL: Johnson v. Maine, 83 Maine, 186.

This is a civil case, and it is valuable for my purpose in this record. It is the only civil case I have cited.

(Whereupon Mr. Marshall read from the above authority referred to, in the words and figures following:)

15

MR. MARSHALL: Now in our own State, Pacey v. The People, 116 Ill. 556. I am reading from page 585.

(Whereupon Mr. Marshall read from the above authority referred to in the words and figures as follows:)

16

MR. FARROW: That is a case on appeal?

MR. MARSHALL: Yes. Citing Dunn v. People, 109 Ill.
p. 636.

THE COURT: What citation is that?

MR. MARSHALL: Dunn v. People, 109 Ill. p. 636.

(Whereupon Mr. Marshall read from the above
authority referred to, in the words and figures
as follows:)

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MR. MARSHALL: I will read no more authorities, if your Honor please, but I will submit authorities in the form of a brief, if I may, if that becomes a proper order. But, I would continue when we reconvene and give a short summary of what I have covered.

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

(Whereupon an adjournment was taken to Thursday, July 31st, A. D. 1934, at the hour of 2:00 o'clock P.M.)

Thursday, July 31, 1924,

2:00 o'clock P.M.

Court convened at two o'clock P.M. Thursday, July 31st, 1924, pursuant to adjournment heretofore taken.

Present: Same as before.

THE COURT: Proceed, Mr. Marshall.

MR. MARSHALL: In conclusion then, if your Honor please, in conclusion and to make our position as plain as I possibly can, may I say that the defense has a complete and perfect right to offer the evidence of alienists and others in a proper proceeding, but only, in the state of the law, before a jury on a plea of not guilty. I think that has been clearly shown.

If the Court had any doubt before the plea of guilty was taken and entered under the language of the statute, it, I believe, should have made its inquiry then, at the time when the taking of the plea was under consideration, and not now at the conclusion of the State's case, and undertake to make the matter of the correctness of the taking

of the plea a collateral matter upon the supposition that it may be within the lines of aggravation or mitigation.

The offer of counsel for the defense here is to show a mental disease functional in character, and disguise it as you will, characterise it as you may, read it in view of the authorities from anywhere, that amounts to nothing less than legal insanity, and that is a defense.

I submit that I have shown to your honor by a mountain of authorities that moral insanity has no place whatsoever in the law. It is a very proper, indeed, characterization for one division of insanity, the division that the doctors use, but it is not proper here, in a court of justice.

This plea of sending this case only one kind of insanity for inquiry under the offer they make, and this leaves them only legal insanity for the inquiry; and as I have said, legal insanity is a defense, and has been admitted here by the plea. A presumption of sanity prevails, and so, on the record as it stands, these men are sane.

Will they be heard now after conviction,

and the plea is conviction and they are here on this plea as if it were the verdict of a jury, save only that the statute provides that you shall hear evidence in aggravation and mitigation, will they be heard here after conviction, that plea being a conviction, to go into matters that should, in fairness, have been presented before?

They have had their opportunity to make their defense. They came in here with still counsel and were warned of the consequences of their plea and persisted in it, and then they were sane and now they are sane.

If, however, they insist upon taking advantage of an insanity defense, and there being no moral insanity, no mental insanity, to be considered, because it does not exist in the law, if they want to take advantage of a legal insanity defense, it is not now too late for them, but the court can, and as we see it, under the state of the law, call a jury, because the rule laid down in Blackstone is the law in Illinois today, and where there is any doubt, that issue must be tried by a jury.

Depravity and atrocity in and of themselves are not a defense. But they have said these men have a mental disease, functional in its nature, and that that puts the court upon notice that that is the defense.

And now what is the Court faced with this dilemma doing to do?

Upon the one side you may dismiss the alienists and disregard the statement, and on the other, call a jury to try the question of sanity.

But this, if your Honor please, is certain, as we see it, under the law, that if we proceed here now and without a jury to take evidence that discloses this state of insanity that they suggest in their offer, that all the proceedings, from that point forward, become a nullity and the judgment entered is void and of no effect.

I have endeavored to put before your Honor plainly the position of the State. We have here a plea of guilty; we have that on hearing, and that means sanity, on the hearing in aggravation and in mitigation, and we have shown by a mountain of evidence an overwhelming guilty case, and upon the

Defendants' offer in the case they assert insanity, nothing else, their own language being a mental disease, that being the basis laid down in the Hobbs case for legal insanity. A mental disease, functional in its nature. And what does that mean? That upon mitigation you have insanity ingected into the case. And suppose then it is followed by a judgment? The third result, the third step, is a reversal of that judgment.

Why put the record in that condition, when all that is necessary to be sure of the result, when finally the judgment is secured, is to take them at their word?

It is a mental disease, let us assume. They have, on their statement, a mental disease, functional in nature. Let them produce the evidence before that tribunal that the law says is the tribunal to pass upon it, a jury of the country, so that the judgment, when it is obtained, may have a foundation under it and be a judgment that will stand.

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REPLY ARGUMENT BY MR. DARROW.

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MR. DARROW: If the Court please, I shall not take much time to review this argument, if it was one, and after I get through my associates will probably have something to add.

Now I understand that when everything has been said in this case from the beginning to the end, the position of the State's Attorney is that the universe will crumble unless these two boys are hanged.

I must say that I have never before seen the same passion and enthusiasm for a death penalty as I have in this case, and there have been thousands of killings before this, much more horrible in details, where there was some motive for it. There have been thousands before and there will probably be thousands again, whether these boys are hanged or go to ~~XX~~ prison.

If I thought that hanging them would prevent any future murders I would probably be in favor of doing it. In fact I would consent to have anybody hanged,

excepting myself, if I thought it would prevent all future murders. But I have no such feeling. I know the world will go on about the same in the future as it has in the past, at least I think so. My clients are not so important to the economy of things, either in their life or their death, and if this case is like all other cases, it ought to be tried calmly and dispassionately upon the facts in this case.

I think the Court knows, and everyone else who cares to know, that the defense in this case has met these issues perfectly squarely. It has been a distressing case from the beginning, and, as a matter of policy if nothing else, it is our duty to be open handed and state what we expect and what we claim, and we have done it at every stage of these proceedings. We have not invoked any harsh and strained rules of law to save the lives of these defendants, and we protest against any such rules of law being invoked to kill them. Any technicality, any foolish or strained argument is enough that they might accomplish their ends, and their ends are death, that is all.

talk and for piling authorities mountain high. My old friend might just as well have taken, beginning at the earliest times when courts reported their proceedings, and read from cases down to the present, so far as it had any bearing on this case. He has not cited one which has the remotest bearing upon the issue that is before this court now, not one.

This question has never gotten to the Supreme Court but once or twice, once in Nebraska and once in Colorado. In Nebraska they held directly that this kind of evidence was competent, and in Colorado they held that any evidence such as they contemplated in mitigation was competent, and I defy them to find anywhere any authority upon it; there isn't any.

The cases that have been read here are absolutely irrelevant. They might have taken any book, sacred or profane, and read as long a time and it would have had as much to do with this case as all these volumes had to do with it.

Now let us take the proposition as to what we claim here first. We have stated it often enough, and yet they seem not to understand it. Many author-

ities have been read to this Court stating what constitutes insanity in law. They have read them a hundred years old; they have read them from England, hoary with time and they have nothing but time to commend them; they have read them from Pennsylvania, delivered years ago; and one case from New York, seventy-five years old, before anybody knew even what the mind was, or, what is still more important, what it was not; utterly irrelevant. They have read a case from Alabama which said if you had one atom of consciousness you were good enough to hang. I thought I was dreaming. To put it in the exact language of the court, if you have a glimmer of reason, you may be hanged for having a glimmer of reason.

Well, they couldn't hang everybody under that. I don't know when the Alabama ^{case} was decided, but any case from Alabama is old; that involves a scientific question. That is not the law in Illinois.

Many of these cases, read over and over and over again, without purpose except to consume time and pile up law books mountain high, that is easy, anybody can do that; all you need is to send for

a dray and bring them in. So you have plenty of books, whether they have anything to do with the case or not; that is easy.

But now, just how does this case stand? And I want to call the attention of the Court directly to what is claimed once more. Of course it will be forgotten when they come to reply, but anyway, I want to make it plain, if it is not already plain.

There is no question, in the State of Illinois, but what legal insanity, which is the only insanity known in this branch of jurisprudence-- there is other insanity known in the Probate Court, in Civil Courts and in some phases of this Court, but not in this kind of case.

Legal insanity means such mental disease as makes one unable to understand the difference between right and wrong. Or destroys his power of will so that he ^{cannot resist} ~~cannot resist~~ the wrong and choose the right, that is all there is of it.

A man may be wholly, or nearly wholly, defective, and still it doesn't come under the definition of legal insanity, in the State of Illinois.

If these defendants were unable to distinguish

between right and wrong, or if their Will, whatever that is, was so obliterated that they had not the power to choose the right and reject the wrong, then it could be no defense in this case before a jury and it would not constitute legal insanity. Now that is perfectly plain.

There is no claim before your Honor that these defendants are legally insane, so that it could have been used as a defense to this homicide.

What has the Court got to show here in this case that they are legally insane? We haven't said so.

Mr. Crowe informed the court that it was piffle, that they were perfectly sane. He even put it stronger than that. He said my clients were as sane as he is. So I don't see anything on the record at this time to show there is any legal insanity, or any other kind of insanity.

Now let us see. I might, in passing, say this. I am at a loss to know, except for the purpose of consuming time, why all these old cases have been dug up from the graveyards of the past and presented to this Court.

Our own court has defined insanity; our own courts have defined it. We have had cases from England, a hundred years old, at a time when they could hang a boy of seven. We have progressed; we cannot hang them until they are ten. They could do it at seven.

They have given us the decisions of courts which are absolutely ~~barbarous~~ ^{barbarous} and come from the middle ages, and which are not the law in the State of Illinois and nothing like it.

A great change has come over the law in reference to insanity within the last twenty-five years; in fact there is a very great change within the last ten years, and even later than that.

My brother used the strongest word he could think of for piling up, and he uses the word mountain. I suppose he means Himalaya. A great mountain of authorities are accumulated, and it makes it hard for courts to keep progress with science. But in this state and in most of the western states we have done something in that direction, we have done a great deal in that direction.

The policy of the law in this state is not

the policy of the law in England a hundred years ago, it isn't what the policy was in Pennsylvania fifty years ago or perhaps even today, it isn't what it is in the south, it isn't what it is in many states in the East, especially years ago.

We have learned something from positions and something from imagination. There are very few men nowadays who cannot remember, among his friends or inside of his family or his acquaintances, insane people. There is almost nobody that doesn't know something about mental diseases also. It reaches everywhere, and men of science and learning have been investigating it, and they have been investigating toward humanity.

In the olden days when a man was insane they loaded him with chains and locked him in a dungeon. We have abandoned all that, and we consider that a person who is insane is a human being, entitled to particular treatment.

And we also know that there are many mental conditions and diseases that come far short of a legal defense of insanity; and it would not avail us, for a minute, as a defense in this case.

We know that men and women may be and are very seriously ill mentally; their minds are very seriously affected, and still they may know the difference between right and wrong; they generally do. And still they may, in some instances at least, be able to resist the wrong and do the right, and they are still mentally affected, and courts today take account of that.

Now we have in this State a statute which says that the Court may inquire into any facts mitigating punishment, or aggravating it. My friend puts the aggravation first, and then brings the mitigation; but my remembrance of the statute is that mitigation comes first, and it should, anyhow. With a common feeling of humanity it ought to.

A court before he passes sentence on a human being may inquire as to whether there are any mitigating circumstances.

Now what does that mean? Is there any catalogue of those mitigating circumstances? Is the State's Attorney to tell you what mitigating circumstances are?

There is only one person that can say whether

circumstances are mitigating or not, and that is the Court himself, who is charged with the life and the responsibility and the fate of the defendants who are before him. He can tell. Even though he is not sure he must tell, and if a circumstance is mitigating it is for him to say and for no one else.

What is a mitigating circumstance?

Is youth?

If so, why?

Simply because the child has not the judgment of life that a grown person has. A mental condition, nothing else.

Is youth a mitigating circumstance?

Well we have all been young, and we know that phantasies and vagaries haunt the daily life of a child; we know the dream world we live in; we know that nothing is real; we know the lack of appreciation; we ~~know~~ know the condition of the mind of a child. And has the Court a right to consider age a mitigating circumstance, and if so, why?

Here are two boys who are minors. The law would forbid them making contracts, forbid them marrying without the consent of their parents, wouldn't

permit them to vote. Why? Because they haven't that judgment which only comes with years; because they are not fully responsible.

I am not proposing now to argue to this court whether that would be enough. The court must settle that. I am still saying that it would be a mitigating circumstance which any court would consider for what it is worth. Sometime I may say more upon that subject to this court.

The reason that youth would be a mitigating circumstance is on account of the mind, nothing else, the lack of judgment, the lack of discrimination, nothing else. And with the young that is so strong that they are all wards of the court until they become of age when there is any proceeding necessary to bring them into the court, no matter what it is.

I don't know, I cannot understand the glib, light-hearted, carelessness of lawyers who talk of hanging two young boys as if they were talking of a holiday or visiting the races. It seems to me that if I could ever bring my mind to ask for it, I would do it not boastfully or exultingly, or in anger and hate, but do it with the deepest regret that

it must be done and with sympathy, even for the ones whose lives they wish to take. That has not been done in this case.

I have never seen a more deliberate effort to turn the human beings of a community into ravening wolves as has been made in this case, and to take advantage of anything that they might get every mind that has to do with it into a state of hatred against these boys.

Now if it be a mitigating circumstance that a boy was young because of his mind, we may say at ten or eleven, or because of his lack of judgment, would it be a mitigating circumstance if, because of mental disease, he had not the full capacity to act, the full judgment that is needed in the manifold situations of life, or who was ~~ixxy~~ only partly responsible, but not fully responsible? The Court would have to say that.

And I don't know what there is in Alabama or Pennsylvania or any other state, but I know there is not any court in Illinois that doesnot consider it, and I know that under our statute they are bound to consider it for what it is worth.

Now let me go a little further with that.

Do they?

Let us see about the Chicago we live in.

We are rough, of course. There are people who love hangings, but still we have some sort of fair play and some idea of progress. In the last few years we have established a Juvenile Court in the City of Chicago, and they are spreading out all over, all over the West and the East. We are taking boys who once would have gone to prison or been hanged, and we are giving them a chance and saving their lives. We are sending defendants, over and over again, to the Psychopathic Hospital to find out the condition of their minds.

This case has been talked of here before your Honor as if we had done something unusual, as if never before did any human being ever call upon a Court to exercise mercy and judgment on account of an inferior mind.

I want to say this, your Honor. You have been a Judge here for a long time. You were a Judge in the Municipal Court before you came here. I undertake to say that there is scarcely a case where any court

thinks that this ought to be considered that it has not been considered.

Is it new here?

Why, some years ago, about seven or eight years ago, a poor boy named Pettit, whom I was asked by some charitable organization to defend, was charged with murder in this court. He was running a delivery wagon; he delivered some goods at a house where there was a baby and a mother, and he found a Bread knife on a table and he carved up the baby and the mother, he killed them both, and I was asked to defend him, and I did; and I did there what I did here; I entered a plea of guilty, trusting myself to the mercy of a court who could see and determine and weigh and understand, and the Judge in that case was Judge Barrett, who was once a partner of Mr. Crowe, and I called in that case his teacher to show his mental condition on a plea of guilty, and I brought in his marks at school to show that he was backward, and I called alienists who, for the sake of mercy, gave me their time as I did mine, to prove the condition of that poor boy's mind, and Judge Barrett said

he wouldn't hang him, he said he was sorry to send him to the penitentiary, but there was no other place to send him; that was eight or nine years ago. We had a full hearing in court where the boy's mind was looked into. And yet Mr. Marshall would have this court to believe that that was no business of the Court, and not even a mitigating circumstance that he was a half-wit, that he had lived in darkness, surrounded by visions and dreams and knew nothing of life, the court couldn't consider it, but we would have a holiday for the benefit of the State's Attorney and hang him. He should have made his argument in Central Africa somewhere, and not in Chicago.

Now that is not the only case. There was the case of Lloyd who killed a nurse named Clark, and he entered a plea of guilty before Judge Cavanagh. I am not absolutely certain of the Judge, but I am quite certain of it, and both sides called alienists, both sides called them. He was a full-grown man. Julius Grinkle testified for the State, a full hearing, as to his mental capacity, and the Court saved his life, as he should. Isn't it a mitigating circumstance?

Why, your Honor, I am surprised that counsel would tell this Court that in this case, if your Honor should listen to this evidence, that the judgment would be a nullity.

Where do they get it?

Not even out of Blackstone, which is 200 years old and still good in spots, but only in spots. It is too bad that we have moved in 200 years, and every step we have taken has been at the protest of lawyers and sometimes the courts.

This man, a full-grown man, killed this nurse and pled guilty to it and was sent to the penitentiary. Wouldn't your Honor listen to it? A Judge would have a heart of stone who would not listen to it. And yet they tell us it would vitiate this judgment.

Well now, I never liked that kind of an argument. I don't like to make it, either. I have too much respect for your Honor.

To my mind, if the Court should refuse it and vitiate a judgment, I fancy, if I were a Judge, I would do what I think your Honor will do, I would take the responsibility which we reluctantly placed upon you, and I would carry it, and I would decide it

as I thought I should, and I know your Honor will, and if any other court thinks differently, let them take their responsibility when it comes to them. I am ashamed even to refer to it, but it has been said so many times here, for what purpose I don't know, but it has been said repeatedly, and it is absolutely futile.

Why, my friend, Judge Crowe, said that he would, if we appealed it, he said he would go in and confess error. Well now, that wouldn't settle it.

I remember a case where he went in and confessed error in the Appellate Court where some members of the School Board were sentenced by the Court, and the Appellate Court wouldn't take his confession. I suppose they thought it was given under duress, anyway, and they threw it out of the window and they held them, anyhow.

So his confessing error does not bother me any. It will be up to the Court whether it will take the confession after it is made. He will never have a chance to make it, I don't think.

I won't call your Honor's attention to all the cases, I haven't had a chance to look them up; but I

know there are many of them.

I think your Honor has had cases, of that I am not quite sure, but I think you have had cases where you have looked into the mental condition of men who have plead guilty before sentencing them; and what I say is, your Honor, I know most of the Judges in this County, in a general way they have been my friends, and I have been theirs, I know I have not sought to mislead them, but I don't believe there is a Judge in Cook County that would not take into consideration the mental status of any man before they sentence him to death. If there is one anywhere in the world they ought to get rid of him.

Now I am not speaking of this as a matter of law. I am speaking ^{of} this as a matter of humanity, as a matter of common justice.

I know of no Judge in this County who would be responsible for the death of a fellow man; it is hard enough to sentence a man to die; and every humane judge seeks to find a reason by which he can save life, instead of a reason for taking it; they look for them; they should look for them, as a doctor would look for them and as a lawyer would look for

them, because after all life is the greatest and the highest concern, even though that life must be spent behind stone walls.

If they are reasons that commend themselves to the Court, I ~~can~~ fancy any Judge in this State and generation would listen to those reasons. And if this isn't a reason, then what is?

Now I want to call your attention to one more case, one of three cases in thirty years. I am not exactly positive, but practically positive, in my statement, one of three cases in thirty years, where a man was hanged, in the City of Chicago, upon a plea of guilty, and that was the case of a man named Fitzgerald that was brought before Judge Crowe before he was promoted from being a Judge to State's Attorney; and he listened to evidence concerning the mental condition of the man before he sentenced him to death.

Your Honor may do in this case what he did in that, if you listen to it. And you may still find that these boys shall be hanged by the neck until dead, I don't know; but I fancy that no humane Judge, no man who is fit to be a Judge, would send a boy out

to be killed, until he listened to it.

Over and over in this court and in the Juvenile Court, as your Honor knows better than I because you were one of the Committee who chose, as I recall it, the first alienist for the Juvenile Court, a psychiatrist, and he is still in that position, and he has helped thousands of boys who should be helped and hundreds of men who should be helped.

And over and over again all the Courts send people for examination and observation there to find out, and I suggest to your Honor that I am sure that this Court, and no other Court in Cook County, would ever sentence a man to death by any technicality of the law, until he knew, when they are sent by the Courts of Cook County to the Psychopathic Hospital they are sent there for one thing, and that is that they may be examined closely as to the workings of the mind so that the Court may mete out justice, and justice with mercy.

I have heard counsel say a good deal about justice in this court. I wonder if he knows what it is. I wonder if anybody knows.

Our legislature has done something to help us.

It is easy for the person who doesn't think to say that one who commits murder must hang. But that is not the law of this State. It is just as legal that he have fourteen years in the penitentiary that it is that he hang. It is just as easy that he be given a life sentence as it is that he hang.

And upon what principle, tell me, is the Court to base his opinion, excepting upon the boy himself and upon the circumstances that surround the case.

I asked my friend, Mr. Crowe, what we were to base it on. He says, "oh well, something connected with the case."

Well, I have known them to base it on the fact that a boy had served in France; I have known them to base it on the fact that he had been good to his mother; I have known them to base it on the fact that he had a good reputation; and I have known them to base it on the fact that he was young and immature. In fact, it is almost enough if they base it on that alone, if there was nothing else.

But, your Honor, Judge Crowe says, after I asked him to give me an illustration, a man who shoots

another because he had invaded his home.

Well now, that wont do. The laws of Illinois give no man a license to kill a person under those circumstances, not in the least. It is just as much murder as anything else. But they do give a jury, and they give the court, the right to consider whether, under those circumstances, his mind was functioning as a normal man's mind, and that is in relation to the facts in the case, nothing else.

Do you suppose any man could get away with a plea as a defense that he had killed somebody on account of some relation with his wife? Oh no. Nobody would try it. They would say that that condition affected his mind so that he was not responsible, and on a plea of guilty the Court would consider it. On a trial the Jury would doubtless consider it, as they should.

It is idle to talk about all the things that one should consider. If I were a court I might consider something that you wouldn't; you might consider some things that I wouldn't; both of us might consider some things that the prosecutor would throw

in the waste basket. We can't tell. It is for the Judge, who in a case like this, has the most responsible position that it is given to man to hold, who has in his hands human lives and the lives of those who are so young that they are wards of the Court, it is for him to say what a mitigating circumstance is, and he cannot say it until he hears it.

Now let us go a step further with that. I cannot understand what these gentlemen are thinking of. Tell me, or tell you, that this is a new procedure in this court? Any other procedure would be revolutionary, and done simply because, somewhere, someone was ~~anxious~~ anxious to get blood. It would be revolutionary, against all the modern tendencies of this court and all the modern tendencies of most of the courts in the west and many of them in the east. We haven't the only statute. Colorado has the same. The decisions of the Supreme Court cited here show how they exercised it, by holding the Court had a right to consider everything that they did consider, which was all they could hold.

Now, let me see how this would lead in this case. There are some things that do not need law.

Human emotions, human sympathy, common human kindness, ought to count for something in a court of justice. I know that Courts are supposed to be blind, in a sense, and they are supposed to have no hearts. When one goes on the bench he must forget all of his human experience. He must forget that he was a boy even and how he thought as a boy and how he acted as a boy, and how the world and its responsibilities appealed to him as a boy, and how he fell down in a thousand cases that were thrust upon him to meet the needs of life day by day. He must forget all that, and with his eyes bandaged tight and his heart taken out of him he must decide upon the dead letter of the statute; and it is a game which the State has the same right to play that we have, to appeal to anything to win their point. Few of our Judges do that, and I am confident this Court is not one of those.

Now, let us see how this case stands.

Here is a case where, at this time, it is presented to your Honor, and will be presented through this hearing, that these young men are not insane within the meaning of the law. That is the only

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way you can define insanity, is what the law says it is in court. Decisions may define it much better than lawyers, and I think they do. But when a case is submitted to the court it must be governed by the rules of the Court, of course.

For the purpose of this proceeding, if these boys, under some circumstances, knew the difference between right and wrong, as applied to the facts, and had the power of resisting the wrong and choosing the right, then in the meaning of the law they were sane, and they were sane even though they had, in the language of the Alabama Supreme Court, only a glimmer of intelligence, they were sane.

Now, your Honor, we couldn't possibly avail ourselves of the fact that they had only a glimmer of intelligence, or that they were haunted with phantasies and dreams, or that they lived in an unreal world. We couldn't use that unless it went to the extent that they didn't know the difference between right and wrong or had no power to control their actions. We couldn't use that in defense, because as my ~~fixed~~ friend, Marshall, fairly well demonstrated by a thousand ancient cases, it cannot be a defense. So

there you are.

And yet because they say so, without a line in the world to sustain it, they say that it must be submitted to a jury because insanity is a defense. And therefore we couldn't submit it anywhere, could we? We couldn't prove it to a jury, and we couldn't prove it to a court. But your Honor would be asked to pronounce sentence of death on a boy of eighteen and a boy of nineteen, although they might have only a "glimmer of responsibility", although they might be on the border of idiocy, although they might be like this poor boy that I spoke of, Pettit. You cannot use it in defense to a jury, and you cannot hear it in mitigation, because it suggests insanity.

Well, if that is the law, I trust that courts would ignore, as they have constantly in Cook County, but it isn't the law. We are not that blood-thirsty in Illinois yet.

Now your Honor, it seems to me we have nothing to argue about here. Your Honor cannot ignore the plain statute of this State, that you are bound -- and of course I don't need to bind your Honor, I know you would do it anyhow -- that you are bound to hear

anything in mitigation of punishment in this case. Isn't that statute as sacred as Blackstone or the Supreme Court of Alabama?

You are bound to hear anything in mitigation, and has mental condition anything to do with mitigation?

Why, there isn't any human being but what knows it.

What is the theory of punishment, anyhow?

Well, I could talk about that a long while; but the punishments that Courts mete out to human beings take account of several things, the character of the act, the age of the defendant, the degree of responsibility. There cannot be any question about that. One degree of responsibility means a certain punishment, and another degree means some other punishment. If not, there is no justice in courts. If men are to be lumped together, the wise and the foolish, the hot blooded and the cold blooded, those who are seriously provoked and those who are not, those who act from motives and those who act without motive, are thrown into one indiscriminate mass, and say the law is equal because it treats all

people alike, whatever their capacity, then there is no justice in the administration of the law.

The first thing considered in punishment is the degree of responsibility of the defendant, or one of the first things at least, and there can be no justice without that, your Honor, and that is why human judgments are so fallible.

Your Honor is the Judge. You have to take the responsibility. You can kill these boys or imprison them. You have to take it the best way you can and find out. But are you able to say that your judgments are as correct as an infinite being who might see into their minds and hearts and read their lives? No, you are not.

Human judgments are uncertain at best. Every human being carries with him any amount of accumulated emotions, lack of emotions and feelings, and all of these things enter into a correct judgment of anybody. Then he needs mercy.

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Harvey
reels.
Snyder
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MR. DARROW: On top of all that, but no human judge can tell exactly. The least the Court can do with that terrible responsibility on his hands is to find out the best he can, and then he should incline to mercy as he finds it out, because justice without mercy is not justice.

Your Honor, there is no fact in this case and no fact that could be imagined that arises under that statute that could appeal to a court as much as the mental condition of the one you are about to pronounce sentence upon. Your Honor knows it, and I know your Honor will take that responsibility.

We claim here your Honor, that these boys are mentally disordered or diseased, use whatever term you wish. It makes no difference, at least mental disorder. But, they are not legally insane. That is the position of this record and it is the position in this record before this Court and will be.

Counsel on the other side claims they are absolutely rational. It is not every mental disorder that constitutes insanity under the law. Large numbers of these numerous cases which were read

by Mr. Marshall have no purposes -- were cases where the judges conceded that they were mentally disordered, but still they knew the difference between right and wrong and therefore fit subjects for a hanging.

Of course, they are all degrees between one who is so far diseased that he can not tell the difference between right and wrong, or is unable to exercise any power of the will, all the way from that to the brightest and most responsible man who ever lived; all degrees. It is an infinite number of steps, from one to the other, short steps, small steps, all bearing upon responsibility, all appealing to the judgment and the mercy of the Judge who must decide.

All this we could raise in no other way than the way we have raised it. No other way. All this comes directly under that statute, and how often have the state repeated over and over again, ~~perrot~~ like, that if there is a suggestion of insanity the judge must call a jury. There is no law for it, and no reason for it. If it was it would always be easy to get a jury by the one side or the other, whether a plea was entered or not.

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We believe that in this case there will be no evidence offered to prove that these two boys are insane in the meaning of the law, and doubtless the evidence will be overwhelming that they are sane within the meaning of the law. One of their alienists has given out prolific interviews to that effect, and Judge Crowe has taken great pains since they started to say it, so where is the basis for anything else at this time, and where will it ever be?

Mental disease does not constitute insanity. Under the law of Illinois it must arise to that dignity or to that degree that the courts have so often stated in this state.

THE COURT: Do you want to take a recess now

MR. DARROW: Yes.

THE COURT: Five minutes recess, Gentlemen.

(Whereupon a short recess was taken)

(Whereupon, pursuant to recess, the following proceedings were had.)

MR. DARROW: Just one or two matters I want to speak about, not over five minutes. There has been a good deal said that mental disease is not an extenuating circumstance. That, as I say, is a question the Court

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-the Court will have to decide when he listens to extenuating circumstances. We hope it will appeal to the Court. It may not. All we can do is the best we can to put our clients case in as good a light as possible, as we see it, and of course the Court must render a final decision.

What is an extenuating circumstance? I hold in my hand a bill called the 'segregation' bill which was passed by the last legislature by unanimous vote, excepting one, and was vetoed by the Governor for lack of money. This bill provides for taking care of in institutions, keeping away from society, these persons; (a) A defective intelligence; (b) a defective affectivity or emotion; (c) a defective will. All these people before committing any crime are to be isolated. Why? Because of lack of control or imperfect responses in the nervous system or from any other reason in an emergency they are not safe.

And this bill was passed by every vote but one in the last legislature, calling for the expenditure of seven hundred and fifty thousand dollars to take care of people before a crime was committed;

people who are not legally insane and are not claimed

to be insane, but people who are so unfitted to life from any of these three reasons that they might be a menace to society,

The interesting part of that is this, that the chairman of that committee is Mr. Robert Crowe, the State's Attorney of Cook County. And it is printed as the Crowe Conference on Crime Prevention. I understand it is doing good work in his campaign, which it ought to do, and I notice another name on here that is illuminating as another member of this committee, Mr. Samuel A. Ettelson.

If this had been a law and my clients had been examined, although not insane, before this homicide had taken place, they would have been residents of this institution. Of course -- First, by the State's Attorney of this County, by the alienists of this county, by judges of this county, by State Senator Ettelson, why? because they know that the mental and emotional condition of certain people, although not insane is such as to contribute to crime. Yet, they say it can not even be considered by this court. As well hold a man irresponsible for the same strength if he has one hand tied as if

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he had both. It won't be long in the State of Illinois until this kind of an institution will be an established fact and that people who are suffering from mental diseases of such a nature that they cannot under certain circumstances control themselves, are haunted by certain ideas, that they will not be subject to such temptation, and society will be protected from them and they will be protected from themselves.

Now, your Honor, just a word in closing. We lawyers had put up to us a very serious responsibility. This matter had been heralded in the newspapers as nothing in my experience has been heralded in the City of Chicago, as a weird, uncanny and most deplorable homicide. The condition of these boys was such that we did not wish to go before a Jury with the full defense of insanity which is required by the law of this State, but it was such as we believed would appeal to any court as a ground for clemency and mercy in the case of these two unfortunate lads. We had no alternative. We chose what we thought was best, and as much as we

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regretted we had to leave it where it is today, and we believe under the consideration of the law and humanity and under the trend of things in this city and this state it belongs here, for this court to take this responsibility, for him to mete out justice, and we believe justice with mercy in this case.

There is one thing which has made it embarrassing too and which has caused most of the comment of the newspapers. Unfortunately, the family of my clients are reputed to be people of great wealth and of social position. This has added to the notoriety that this case has received. It has appealed to many people with special glamor, that people in this rank and station should be hanged. It has made it embarrassing for State's Attorneys and for courts; it has been heralded in court and it has been heralded in the newspapers, and it has been a terrible handicap in this case, and would have been a handicap before any jury. For all these reasons we submitted it to your Honor, believing that your Honor will carefully,

patiently and humanely listen to the evidence in this case, and trusting on account of our case, on account of the youth, on account of the mental condition, that we may save their lives, and we have never asked for more.

MR. W. BACHRACH: If your Honor please, this case is now pending before your Honor on the objection of the State's Attorney to the admission in evidence on behalf of the defendants of certain evidence through the testimony of Dr. William A White. As the record now stands, but three or four questions have been asked, which merely identify the witness. Other than that the State's Attorney has only one further source of information as to what the defendants expect to prove by the testimony of Dr. White, and that is the statement made by the attorneys for the defense here in court.

By these statements the attorneys for the defense have informed the court that they desire to offer as a mitigating circumstance in fixing of the punishment to be imposed by the court, the mental condition of the two defendants, and in connection

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with that statement we have said to the Court that we expect to show that the defendants are mentally disordered or mentally diseased.

Taking that statement which is all that the State's Attorney has now to act upon, or to discuss, and which is the only thing which your Honor has before him, in order to pass upon the objection of the State's Attorney, the State's Attorney has interpreted such statement as indicating that we propose to establish in mitigation of the punishment, the insanity of the two defendants.

Now, I wish at this time to emphasize the difference between a mental disorder or a mental disease, and insanity. Now, there are certain forms of mental disorder; there are certain forms of mental diseases, which do not constitute insanity which would have been available to the defense to the charge of murder.

Mr. Marshall this morning read a case from Kentucky, a case where the defendant sought to offer as a defense to a charge of murder the fact that he was suffering from paranoia, which is a delusional

form of insanity or a delusional form of mental disorder. The Supreme Court of the State of Kentucky held that that form of paranoia was not a good defense, because the delusion which existed in the defendant in that case was of such a character as not in any wise to impair the intellectual concept of the defendant as to the difference between right and wrong, though it was a mental disease, it did not constitute insanity within the meaning of the law.

Now, we don't have to go to Kentucky to find cases along the same line. We have them in Illinois. I think even the Loehone case discusses delusional insanity and points out that even in the case of delusional insanity, where the delusion does not ~~really~~ relate to the particular crime committed, it does not constitute a legal defense but it is merely a mental disease, less than legal insanity. Now, there is a form of mental disorder which is commonly called a manic depressive, mental disease or manic depressive make-up as the psychiatrists call it. A manic-depressive merely who happens to have

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and the fact that he has a mental disease does not
constitute a legal defense to the charge. Epilepsy
is a form of mental disease which does not
constitute a defense to a charge of murder or any
other crime. Hysteria is a mental disease, intoxication
itself is a mental disease which has repeatedly been
held by the Supreme Court of Illinois not to constitute
a defense to the charge of murder, and so we have
other forms of mental diseases such as deliria,
melancholia and mental defects of various kinds,
all of which constitute mental disorder and mental
disease which fall far short of constituting insanity.

Now, we stated at the outset that we don't
propose to prove that these defendants are insane.
We do not propose to offer evidence by alienists
tending to show insanity, but we propose to offer
evidence by these alienists tending to show a mental
disorder or a mental disease, which falls short of
the legal definition of insanity, and which would
not have availed us had we set it up in defense
to the indictment against these defendants for

murder.

Suppose, your Honor, the situation were a little different. Suppose we had gone to trial on this indictment on behalf of these two defendants, and had attempted to set up a mental disease, a psychopathic personality. We would immediately have been confronted by the testimony of the State's alienists, Messrs. Singer and Krohn and possibly others, with testimony to the effect that such mental disease did not constitute insanity, and did not prevent these defendants from knowing the difference between right and wrong, and they would have argued to the jury that these defendants are not insane; they may be mentally diseased, they may be abnormal, they may be everything you say but they know the difference between right and wrong and therefore they should be found guilty. And it would have been a sound argument, it would have been a logical argument to make, and yet when we come in, having recognized the fact that this mental disease was not a proper factor which would constitute an adequate defense to the charge of murder, and have pleaded guilty to the charge, and

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ask your Honor to take into consideration that factor which fell short of a legal defense, in mitigation of the punishment, they then come before your Honor and distort our statement of what we expect to prove in it, claiming that it amounts to a charge of insanity or a claim of insanity.

Now, your Honor has seen, I feel sure, by the statements your Honor has made during the course of the argument by the State's Attorney, that he was not meeting the issue, that we were not claiming insanity, and yet in spite of that fact the State's Attorney persisted in blinding himself to the real question which your Honor has before him. Now, the only question that the If the Court please, which is now pending before you is whether or not mental disorder or a mental disease not amounting to legal insanity may be offered in mitigation of punishment, and the authorities cited by the State's Attorney were in no wise addressed to that question.

Now, if your Honor please, I propose to

address myself to that question, and to take up just a few of the authorities cited by the State's Attorney and demonstrate to your Honor that they have absolutely no bearing in the determination of the ruling to be made on the question which is pending before your Honor.

Now, your Honor is familiar with the statute under which you are given discretion as to the extent of the punishment. And your Honor remembers that it provides that it shall be the duty of the Court to examine witnesses as to the aggravation and mitigation of the offense. When Mr. Crowe was asked to what he thought could be shown in mitigation of the offense, he said the facts of the crime, and that is all. Well, why did the legislature give your Honor the power to hear witnesses in mitigation so far as the defense was concerned? Why did the legislature provide that you could hear evidence in mitigation of punishment? Because the legislature wanted to give your Honor the opportunity to exercise a broad discretion between 14 years and the death penalty,

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opportunity to consider any factor which in your judgment as an individual sitting on that bench you thought should be considered in mitigation of the crime pleaded guilty to.

Now, we have a most unique situation presented here in court. We have a case where the State's Attorney has come in under the particular statute invoked by the defense and has taken the time of this court and at the expense of the county, to introduce 81 witnesses to prove the crime which we pleaded guilty to, after we had asked the State's Attorney to make an opening statement giving all the horrible details in ~~an~~ the most minute way, and we would admit the facts. But no, the State's Attorney said that he had a right to show all these facts in aggravation of the murder; to show ~~an~~ a most atrocious crime, and therefore he proposed to show it in all its most lurid details. Now, what does that mean, if your Honor please? He says he was trying to show that it was a cold blooded murder. Upon what does a cold blooded murder depend if it does not depend upon the mental condition of the man who is committing the murder? How are you

going to tell whether it was a cold blooded murder if you don't know what the mental condition of the person was who committed it? Doesn't the mental reactions of the person to his environment affect the question whether it was cold blooded or not? Would not the fact the person was under the influence of a drug affect the question as to whether it was cold blooded or not? Why, by the very act of the State's Attorney, if your Honor please, in ~~introducing~~ introducing evidence in aggravation to show the cold blooded character of the crime, if for no other reason he has made it possible to meet the charge of cold bloodedness, by showing it was not a cold blooded murder, because the persons who committed the murder by reason of their mental condition were not cold blooded.

Now, if we bear in mind the question that is now before your Honor, that the question here is what facts may the defense show in mitigation of punishment, not in mitigation of the offense, not to change a charge of murder to a charge of manslaughter, but to mitigate the punishment, I think if we keep that in mind and understanding of the cases

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cited by the State's Attorney will show or will instantly indicate that none of them is in point.

Let me illustrate that a little more:

Suppose there is a charge -- there were a charge here in this indictment charging the defendants with manslaughter and with murder, and suppose we had not pleaded guilty and we were going to trial, and we offered evidence which was less or which amounted to less than insanity as a matter of law for the purpose of showing that the charge should be mitigated from a charge of manslaughter to a charge of murder, that is a mitigation of the crime, and under the authorities which were cited by the State's Attorney the crime could not be mitigated, because if the defense of mental disease did not arise to the point where it constituted legal insanity, it constituted no defense to either charge, it did not mitigate the crime, it did not constitute a defense the defendant was fully responsible. But, if the defendant pleaded guilty to either crime the question

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would still remain open.. Could that mental disease which did not amount to legal insanity be taken into consideration in mitigation of punishment? ~~It is~~ It is punishment that we are seeking to reduce, it is punishment we are seeking to mitigate. It is not the crime. The crime remains the same, the crime is murder. The defendants by their plea admitted they are legally responsible for the murder and they are not seeking to excuse, if your Honor please, their action so far as their guilt or innocence is concerned of the crime of murder. They are seeking merely through their counsel here to offer a diseased ^{disordered} or mental condition in mitigation of the punishment and not in mitigation of the crime.

Now, the first case I refer to is the case of Green v. Commonwealth, 94Mass. 155, which has been cited by the State's Attorney. In this case on a plea of guilty to an indictment for murder, the defendant was sentenced to death. There are degrees of murder under the Massachusetts statutes, but the court held that the ordinary indictment for

the crime of murder in the first degree, and under such an indictment a plea of guilty of murder in the first degree will authorize a sentence of death, although the plea does not set out the particular facts which show that the crime was murder in the first degree.

There is no issue in the case of mitigation of punishment, nor in the discussion thereof in the opinion of the court.

The case of *Flanaghan v. People*, 52 N. Y. 467, was an indictment for murder in the first degree. The Judge charged that to establish a defense of insanity it must be proven that at the time of the committing of the crime the party accused was laboring under such a defect of reason or disease of mind as not to know the nature and quality of the act he was doing, and if he did know it that he did not know he was doing wrong.

The defendant excepted, and argued in the Supreme Court that the inability to choose to do the right, even though the defendant knew the act he was doing to be wrong, should be a defense on a plea of insanity to the indictment.

The New York Court overruled that contention. That is expressly contrary to the ruling of the Illinois Supreme Court in *People v. Lowhorne*, 292 Ill. 32.

Moreover, the question there arose on a plea of insanity to the indictment, and not on a question of mitigating circumstances and plea of guilty.

In *Commonwealth v. Barner*, 199 Pa. St. 335, there was an indictment for murder and a plea of insanity. The Supreme Court of Pennsylvania held that insanity, to be a defense to a homicide, must be so great as entirely to destroy the accused's perception of right and wrong, an amount of delusion controlling his will, and make the commission of the act a duty of overwhelming necessity.

It had nothing to do with a question of mitigation after a plea of guilty.

In the case of *State v. Maioni*, 78 N. J. Law on page 379, cited by the State's Attorney, there was an indictment for murder and a plea of guilty, and conviction of murder in the first degree. Defense, insanity. There was no question here of mental disease as a mitigating circumstance. The Court

merely held that insanity, being an affirmative defense, the failure of the defendant to prove that he did not know what he was doing and did not know that the act was wrong, removes the insanity defense from the case, and that a degree of irresponsibility short of legal insanity could not be used to reduce his crime to murder in the second degree. If responsible at all, he was responsible in the same degree as a sane man, and if not, he was entitled to acquittal in both degrees.

But there was no question in that case of mitigation of punishment after the question of acquittal was foreclosed by a plea of guilty, which is what we have before the Court now.

In the case of *Feree v. Commonwealth*, in the 193 Kentucky, 347, there was a prosecution for wilful murder, and a plea of insanity followed by conviction.

On a plea of insanity the court held the test is whether, at the time the accused struck the blow or fired the shot, he realized the consequences

of his act, and he would be guilty if he did realize them even though he was possessed of insane delusions upon one or more subjects.

There, again, there was no question of mitigating circumstances, but of acquittal or conviction of the crime charged in the indictment.

In the case of Commonwealth v. Wireback, 190 Pa. St. 138, there was a conviction of murder in the first degree in face of a plea of insanity to the indictment.

The Court held that a murder which is otherwise in the first degree is not reduced to murder in the second degree by doubt as to the sanity of the murdered, as insanity is either a complete defense or none at all. There was no question in that case of mental disease as a mitigating circumstance affecting the punishment on a plea of guilty, or even after conviction.

The case of Commonwealth v. Hollinger, 190 Pa. St. 155, there was a conviction of murder in the first degree where there had been a plea of insanity. The court held that insanity cannot reduce the degree of the murder, since proof of insanity sufficient to

cause irresponsibility requires acquittal, and any proof short of that is ineffectual to reduce the degree of the crime.

There was no question of mitigating circumstances present.

In the case of Rex v. Offard, 5 Carryington & Payne, 168, in that case the defendant was indicted for murder, and the defense was insanity. The court charged that to justify an acquittal for insanity, the jury must be satisfied he was incapable of judging between right and wrong.

It had nothing to do with mental disease as a mitigating circumstance, but you might point out to the Court, anyway, that the jury in that case acquitted the prisoner.

In the matter of Foreman's Will, in the 54 Barbour (N Y 274), there was a will case which has nothing whatever to do with the criminal law, but the court does in that case on page 291 distinguish moral insanity, "a disorder of the intellect", and states that moral insanity, not proceeding from or accompanied with insane delusion, the legal test of insanity, is insufficient to set aside a will.

In *Bothwell v. State*, 71 Neb. 747, there was an indictment for rape. There was a plea of not guilty. The defense of insanity was relied upon by the defendant to escape legal responsibility for the act charged.

The Court held that moral insanity, as a criminal defense, is not recognized in Nebraska. One who knows abstractly what is right and does wrong must at his peril choose the right and shun the wrong. He cannot yield to a vicious impulse and allege mere weakness of the will as an excuse.

There was no question in that case of mental disease as a mitigating circumstance.

In the case of *Anderson v. State*, in the 43 Conn. 514, there was a conviction of murder in the first degree. The Supreme Court granted a new trial. This is, if anything, a case in our favor.

In that case, where the defense was insanity and where the statute divided murder into two degrees, the court said that courts have been slow to recognize moral insanity as an excuse for crime, but that it exists and is well understood and in some cases

clearly defined by medical and scientific men cannot be denied; and the court points out that a jury, where satisfied of its existence, in a particular case, ought to consider it in determining the degree of crime, and to give it such weight as it is fairly entitled to under the circumstances.

The court further says: "It is not our purpose either to ignore or recognize this (moral) form of insanity as an excuse for crime. The question is not whether an act committed under its influence is criminal; whether the actor should be punished or be exempt from punishment; but whether he is a proper subject of capital punishment. If it be conceded that one afflicted with it never loses the power to distinguish between right and wrong, and is at all times master of himself and may control his actions, still his mind may be enfeebled and the power of his will weakened, so that he will readily yield to the influence of temptation or provocation, without that wilful, deliberate and premeditated malice which is essential to constitute

murder in the first degree, the jury therefore ought to consider moral mania, if satisfied of its existence, in determining the degree of crime, and give it such weight as it is fairly entitled to under the circumstances."

Now, I wish to emphasize the fact we are not coming here and claiming any moral insanity or moral depravity or anything like that at all. Our claim is a mental disorder which is functional in character and which does not amount to insanity, which is -- would be sufficient in law to amount to a defense of the charge of murder.

In *Sayres v. Commonwealth*, in the 88 Pa. 291, there was an indictment for murder, a plea of not guilty and the defense was insanity.

The court upheld a charge of the Judge that although the prisoner labored under partial insanity, hallucination or delusion, if he understood the nature of his acts and had knowledge that they were wrong and criminal, and sufficient mental power to apply that knowledge to his own acts, he would be responsible and amenable to punishment.

But there was no question of mental disease in that case as a mitigating circumstance.

Your Honor will observe in all of these cases the defense was attempting to set up a charge of, a claim of insanity as a defense to the charge of murder or as a means of reducing a charge of murder to a -- murder in the first degree to a charge of murder in the second degree, and the court was always measuring the defense that was being set up for the purpose of determining whether or not it was adequate to enable the defendant to escape the full responsibility for the crime, or, as I will put it a little better, to escape entirely all consequences for the crime, and in each one of those instances the Court held that the mental affliction whether it was moral insanity or anything else which fell short of legal insanity, under the right and wrong itself, did not constitute a defense or was insufficient to reduce the charge of murder in the first degree to a charge of murder in the second degree.

In the case of People v. Scott, 59 Cal. 341, there was a charge of incest and a plea of guilty.

Before sentence it was suggested to the court that the defendant was insane, and the court ordered the question of insanity tried by a jury, which pronounced him insane. He was sent to an asylum and subsequently discharged as sane, whereupon he was sentenced to imprisonment.

Before judgment was pronounced the defendant made a motion for leave to withdraw his plea of guilty, because he was insane, and the court held the denial of that motion was error and that the defendant should have been permitted to withdraw the plea, if he saw fit.

There was no question there of mitigating circumstances, nor any insistence that the defendant withdraw the plea of guilty if he did not see fit to move to do so on his own behalf. The court held when he did move to do so he was entitled, after he had been adjudicated insane and sent to an asylum, to withdraw the plea if he saw fit.

In *Roberts v. State*, 3 Ga. 310, there was an indictment for assault with intent to murder. There was a conviction and sentence to four years at hard

labor, and a plea of insanity to the indictment.

The court held that for the plea of insanity to be good, there must have been an inability upon the part of the prisoner to distinguish between right and wrong, or an impotence to do right by reason of the overmastering of the will in consequence of an illusion, and irresistible impulse.

There was no question of mitigating circumstance as to punishment discussed in that case.

I don't know how long your Honor expects to run this evening, I presume your time is four o'clock.

THE COURT: Will you take much longer?

MR. W. BACHRACH: I will probably take quite a while.

THE COURT: All right. I was going to let you run along because it is nice and cool. We will suspend until tomorrow morning at ten thirty.

(Whereupon an adjournment was taken until Friday, August 1st, A. D. 1924, at the hour of 10:30 o'clock A.M.)

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Friday, August 1st, 1924.

10:30 o'clock A.M.

Court convened at 10:30 o'clock A.M. Friday, August 1st, 1924, pursuant to adjournment heretofore taken.

Present: Same as before.

MR. WALTER BÄCHRACH: If your Honor please, at the adjournment of Court on yesterday afternoon I was addressing myself to the various authorities which had been cited by the State's Attorney and distinguishing them as being inapplicable to the question which the Court has before it now under consideration on the objections made by the State's Attorney to the admissibility of the evidence of Dr. White.

We have made an analysis of the cases cited by the State's Attorney and without exception, with the possibility of one or two of no consequence, they are all reducible to cases where the defense of insanity on an issue before a jury was held to be inadequate because of the absence on the part of the defendant of the lack of knowledge as to what constituted right

and what constituted wrong.

In other words the defense was being measured as a defense of responsibility, and in all of those cases where the words "excuse" and "responsibility" were used, as to whether moral depravity or mental disease or mental disorder or something of that kind were used, it was always in connection with the determination of the question as to whether such mental conditions rose to the grade of insanity which would have constituted a defense of that character.

Now in none of those cases was there presented the question as to whether a diseased or disordered mental condition falling short of legal insanity would be a factor which might be considered in mitigation of punishment.

I do not propose to take up any more of the court's time in reading case after case. The distinctions that were made to the other cases cited apply equally to all of the cases which have been cited, and I believe that upon merely hearing them read in open court it was apparent to the court that they were inapplicable to the present situation.

Now there is only one other thing to which I care to address myself this morning.

As I have listened to the argument of the State's Attorney and pictured the situation presented here before your Honor, with the State's Attorney arguing, on one side, against the admissibility of this evidence, and the defendants' counsel arguing in favor of its admissibility on the other, and your Honor sitting up there on the bench, in the present situation, I find myself wondering, what was the function of each of us in this argument?

I found myself wondering what there was in the office of State's Attorney which made it his duty to determine the punishment in a case like this?

I found myself wondering what there was that gave him a right, as an officer of the law, as a representative of society, to stand before your Honor and demand a certain kind of punishment .

And I found myself also wondering what is the proper function of a judge in a situation like that?

In considering each of the things, I finally

concluded, to my own satisfaction, that it was none of the State's Attorney's business, in this proceeding, as to what punishment was to be meted out; that he was an officer of the law whose business it was to see that justice was done, and what form that justice took was none of his business; that having prosecuted the case, having laid the evidence before the Court or before the Jury as the case might be, his job was done when the verdict of the jury came in, whether a verdict of acquittal or a verdict of conviction, and in a case where there was a verdict of conviction or a plea of guilty, the State's Attorney had one function to serve, and that was to enlighten the court, to enable the court by all the resources at the State's Attorney's command, to come to an enlightened decision and to do justice. Not any particular form of punishment, not to single out and say the State demands hanging, but to lay the evidence before your Honor, before the Judge who is asked to pass upon the punishment and say, here are the facts, your Honor; if I can help you by the citation of authorities, if I can help you by

the bringing in of any additional evidence, whether it be against the accused or whether it be in his favor, I shall be glad to respond ; that it is as much the duty of the State's Attorney to bring before this court any evidence relating to the mental condition of the defendants as it is of the defendants' counsel, and that a State's Attorney, in the performance of his real duties, would insist that your Honor should hear this evidence and not try to keep it from your Honor. But by resorting to what might be called the "scales of the apothecary" he is asking your Honor to weigh the rights of these defendants and find out, by the use of such a measuring rod, or such an instrument, as to whether or not evidence in mitigation, of a certain kind, which has always been received in this community, shall be received here by your Honor in determining what punishment shall be meted out.

After all, if your Honor please, each one of us, in trying to work out a solution, attempts to identify himself with your Honor. And thus I picture myself sitting in your Honor's place on that

bench and trying to solve this question which is now before you, and the first thought which would come to my mind, if I were in a position of that kind, is, I have a tremendous responsibility, I have the question of the punishment of two human beings under my control, and that punishment varies anywhere from fourteen years to death, and I, a human being, am asked to dispose of the lives or liberty of two other human beings, and I have that responsibility on my shoulders, I must uphold that responsibility, I must perform my duty, but how shall I proceed in the performance of that duty so that my conscience will ever remain undisturbed, my conscience must be my guide.

Now with that thought in mind my attitude as a Judge in a situation like this, would be that I would want to know every possible fact that might have a bearing on the question in this case, every possible fact from the point of view of the State's Attorney as well as from the point of view of the defense, so that I might know, weigh, weigh the

imponderables as well as the ponderables, so that I might get a feel of the situation, so that I might get an understanding of things, besides the mere things that appear upon the surface, and that I would carry to such an extent that I would lay aside the rules of evidence, they do not matter in a situation like this, and as a matter of fact they do not matter as a matter of law. This is not a trial, this is an investigation which is now being conducted by your Honor to find out every possible fact which will enable your Honor to determine what shall be the punishment which is within your discretion to mete out here, and the rule of law which is applicable. And I do not propose to read many cases to show it. It is announced by Bishop in his 9th Edition, Volume 1, in discussing the question of evidence which should be heard by the court in a case of this ~~ga~~ kind and it reads as follows, reading from Section 950 of the first volume where the court says:

Whereupon Mr. Bachrach here read from said authority in the words and figures as follows:

MR. WALTER BACHRACH: And the author goes on to cite numerous cases in support of his text.

Now your Honor could take the statements of doctors, you could get reports of the families, you could get a letter from the school teacher, if the situation were one where the school records were in question, and your Honor has followed that course exactly in permitting the State's Attorney to introduce the evidence here. There were no rules of evidence laid down, the defense sought to impose no rules of evidence. Hearsay went in, leading questions were permitted, everything went in as the State's Attorney desired it, and properly so, there is not any criticism on our part, it was proper that you should do it. But when it comes to the question of the evidence of the defense, there ought to be no effort made to shut out any kind of evidence which could possibly affect the question of the punishment that you are going to mete out here, and it requires a distortion of the mind to say that evidence as to the mental condition of these boys is not a proper subject of consideration for the court to have in mind

in fixing the punishment.

Why, take some of the cases that are down at Lincoln, if your Honor please; you have cases -- and when I say you, I mean society has cases down at Lincoln -- the People of Illinois have cases down at Lincoln of many half-witted boys or so-called idiots, imbeciles. Suppose one of them commits a crime, as they are doing right along, would the fact that that boy was half-witted, or an idiot, prevent him from being punished, if he knew what he was doing was wrong? Of course not.

But would your Honor take into consideration the fact that he was an idiot. Would your Honor take into consideration the fact that he was an imbecile? Of course you would.

And it seems almost a useless thing for us to have to stand here and argue the proposition that mental condition, like age, is one of the very essentials which the court should take into consideration in arriving at what shall be the proper punishment to be meted out in this case.

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MR. CROWE: Are you through, Mr. Bachrach?

MR. BACHERACH: Yes.

MR. CROWE: May it please your Honor, I appreciate that your Honor has been very patient in listening to this argument; I appreciate that we have taken up a great deal of time. I am not unmindful of the fact, when I say I appreciate what your Honor has done in that regard, I am not unmindful of the fact that this is a tremendously important case to the People of the State of Illinois.

The issue that is now before your Honor is one of the most important, if not the most vital, issues that will be raised in this case, and for that reason I assume that your Honor has indulged us as long as you have in this argument. I am not going to take up very much of your Honor's time. I think your Honor knows what the situation is, and you have heard it now from both sides.

I would like to, however, before your Honor passes on this important question, reply to one or two of the statements made by Mr. Darrow in his closing argument. As I listened to it I was in doubt as to whether he was before the legislature making a

speech advocating them to repeal the death penalty or not. And then, some time, I thought he was making a closing argument to a jury in a guilty case, hoping to save his clients from their just deserts.

I was somewhat surprised at the statements advanced by Mr. Bachrach before he finished, that the State's Attorney had no business in the courtroom after he presents the evidence.

Mr. Darrow told me, when I was presenting the evidence in this case, I had no business to do that, it was all immaterial, they have entered a plea of guilty.

When the jury returns a verdict, Mr. Bachrach says that the State's Attorney ought to leave the court, he ought not to see that judgment is rendered on that verdict and if the verdict is a corrupt verdict he has no business to use the power of his office and the machinery of the law to demonstrate that fact. This ought not to be tried as a lawsuit, according to Mr. Bachrach. We should burn the Criminal Code and destroy the rules of evidence, chase the State's Attorney from the courtroom, and decide it, as what? As an experiment.

Nobody has a right to suggest to your honor what the punishment should be in this case but the defense. The State's Attorney, the sworn officer representing the People of the State of Illinois, has no right to tell your Honor what the facts are, what the law is, and, in his judgment, what the punishment should be. This is not a lawsuit at all. Why, we are roaming around, as Mr. Darrow said yesterday, in Greenland. We are not trying these two defendants for a murder. The State's Attorney is entirely mistaken as to what is going on here. These two men are not men of intellect and men of education, they are not graduates of the universities here that should be held to strict accountability, they are mere infants wandering around in a "boyish dreamland". The State's Attorney ought not to be permitted to discuss the gruesome details of the horrible murder in their presence. A kindly old nurse ought to tell them a bedtime story. They did not commit a murder. They broke a jar of jam in the pantry. That is not blood on their hands, that is jam.

If your Honor please, they are not the cold-

blooded murderers, egotistical and secure in their conceit that they are above and beyond the law on account of their wealth and their influence. They have not sat here day after day and mocked the law, and as the details of this murder went in, sneered and smiled and laughed at the representatives of the law. No, they merely committed some little boyish prank, and they are sitting here sobbing for mercy, crying their very heart out.

The State is not asking for the noose here, Mr. Darrow says put away the judicial ~~making~~ slaughter and do not spank these naughty little boys, but let their nurse take them out to play. They are not the intellectualists who assume a superiority and say there is no God. No; they both believe in Santa Claus yet. Who could be so cruel and vicious, except the State's Attorney, to talk about death in a case of this sort.

Mr. Darrow has chided me because when I occupied the position your Honor now occupies in an attempt to protect the women and the children of this town when a criminal pleaded guilty to the

atrocious murder of a little girl I followed the law and sentenced him to death, and was not swayed by all this talk of mercy.

We have a duty to perform. Mr. Darrow would not hang anybody. I have heard him state in the courts of law that he would not convict anybody of any offense. But your Honor and I are not like Mr. Darrow, the paid advocate, who has no oath of office or no duty to the public to perform. We have sworn that we will execute the laws as we find them. The laws in this case demand the extreme penalty, if the facts as presented by the State and uncontradicted by the defense, are true.

Mr. Darrow referred, sneeringly, to a bill I introduced in the legislature three years ago which provided that when mental defectives of criminal tendencies were first discovered, in order to protect the children and the women of this town, that we would not have to wait until somebody laid cold in death in order to prosecute them. Just as soon as it appeared that the person was mentally deranged and had criminal tendencies we could lock them up

for the protection of society.

I ask your Honor and I ask Mr. Darrow, assume that I got these two defendants before the day the murder in this case was committed, and the law I introduced had been signed by the Governor instead of vetoed, and I brought them into court, and I said they were mental defectives with criminal tendencies, and unless they were confined they were liable to commit murder, Mr. Darrow would be here, and he would have his array of alienists, and he would say, "why, two intellectual giants of the Chicago University, coming from a cultured, sheltered home, never did a thing in their life that the State's Attorney can point to; if there is any insanity in this case, the insanity is in the State's Attorney."

There is only one issue in this. We have directed our argument to that issue. The purpose of the testimony now sought to be introduced fixes the responsibility of these defendants. I do not care by what name Mr. Darrow and his alienists call it, the legal effect, and the effect it has upon the mind of the layman, is that it is a defense of insanity. Under the law you have no right to hear that defense,

any more than you would have a right to hear an alibi. A judgment entered after evidence of insanity is presented to your court is a nullity. The State has no right to appeal from any of your Honor's judgment. That right remains in the defense alone. If the defense is satisfied with your judgment there will be no appeal. If they are not satisfied with your Honor's judgment, then everything that you have done from the point you admit this testimony is a nullity, and the Supreme Court will send it back for another trial.

I insist, under the authorities, under the rules of logic and reason, that this evidence at this time ought to be excluded.

THE COURT: Under that section of the statute which gives the court the right, and says it is his duty to hear evidence in mitigation, as well as evidence in aggravation, the Court is of the opinion that it is his duty to hear any evidence that the defense may present, and it is not for the court to determine in advance what it may be. The Court will hear it and give it such weight as he thinks it is entitled to.

The motion of the State -- what is your motion?

MR. CROWE: It is an objection.

THE COURT: The objection to the witness is overruled, and the witness may proceed.

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W I L L I A M A. W H I T E,
resumed the stand as a witness on behalf of the defense,
and being further examined in chief by Mr. Walter
Bachrach, testified as follows:

Q Will you please state your professional connections,
both present and past, and how long each has lasted?

A I graduated in medicine in 1891. I served intern-
ships in general hospitals for a year. I then went
into the New York State service, one of the State
Hospitals for the care of the insane. I was there for
approximately eleven years, going through all the
grades until I was first assistant Physician. In
1903 I was appointed Superintendent of what was known
then as the Government Hospital for the Insane in
Washington, it is known now as St. Elizabeth's
Hospital, and I have held that position continuously
ever since. I belong to numerous medical societies,
honorably member of some, represented the United States
Government at several foreign medical conventions.
I am of the Executive Committee of the American
Congress of Medicine to arrange for the next annual
meeting. I am on the advisory committee for the

arrangement of an international congress on mental hygiene. I am a member of the executive committee of the National Congress on mental hygiene. I am the alienist of the Public Health Service, I am the Secretary of the Federal Board of Hospitalization, which is an agency of the Co-ordinators Department of the Bureau of the Budget; I am one of the counsellors called upon by the Veterans Bureau to advise it in the conduct of its medical affairs. I am President of the American Psychiatric Association.

Q What is the nature of that association?

A That is the association that devotes itself to the care and the study and the treatment of mental diseases, which was originally the association of American Superintendents -- or Superintendents of American Institutions for the Insane. It has extended beyond that now and takes in all those who are actively interested in mental diseases on the American Continent. I am professor of nervous and mental diseases in Georgetown University; I am professor of nervous and mental diseases in the Washington University, lecturer on Insanity in the United States Naval Medical School

and the United States Army Medical School.

Q I don't recall that you have mentioned the college from which you graduated?

A I graduated in medicine at Long Island College in Brooklyn, New York.

Q Where did you take your academic career?

A Cornell University, New York.

Q Now will you describe for us the Government Hospital of which you are now the superintendent, the nature of the institution and its population?

A That is an institution that was founded originally, or at least created originally, by congress, practically as a military institution to care for the insane of the army and the navy. Incidentally of the District of Columbia. I say incidentally, because at the time the organic act was passed creating the institution the District of Columbia only consisted of a handful of people. The Hospital takes now all of the mentally diseased from the army and the navy and from the district of Columbia, and has been doing that ever since its foundation in 1855, except during the period of the Worlds War, when the number of

mentally diseased became so great that other facilities had to be created, and they were created through the Veterans Bureau, so that we now have the mentally diseased from the military force and from the District of Columbia, and also from the Federal Prisons and Federal Courts. We have a prison.

Q Do you have a Federal Prison in connection with your institution?

A We have a Federal Prison in the grounds, practically, for the mentally diseased that ~~from~~ come from Leavenworth and Atlanta.

Q Is that under your supervision?

A Yes sir.

Q About what is the insane population of St. Elizabeth?

A Well the day I left we had 4,206 patients I believe.

Q I assume that they include all the various kinds of mental disorders?

A Everythingg imaginable almost.

Q How long have you practiced as a psychiatrist?

A Since 1892, thirty-one years.

Q You have been in that profession ever since?

A Yes sir.

Q Have you practiced as a psychiatrist in any other place than at St. Elizabeth's?

A In the State of New York, in the State Hospital service in New York State.

Q What has been the general nature of your experience as a psychiatrist?

A Well I have had all of the experience that one can have in an institution for mental diseases in all the positions from the bottom, the lowest grade, up to the top, and all of the experience that comes in connection with association, and local, national and international organizations and activities, in practice, consultation work, and in a medical and legal way.

Q As a result of your experience have you acquired a knowledge of the operation of the human mind?

A I have.

Q What if any books have you written?

A I have written a number of books, I have written the outlines of psychiatry, which is in its 9th Edition and is used very largely as text books by medical colleges throughout the country. I have written a book called Mental Mechanisms, another book called

Mechanisms of Character Formation, another book called The Principles of Mental Hygiene, another one The Mental Hygiene of Childhood, another one Thoughts of a Psychiatrist on the War and After. I have written a book on Insanity in the Criminal Law, the last book was called An Introduction to the Study of the Mind. I have written a textbook of Diseases of the Nervous System, in conjunction with my friend Dr. Jeliffe. I have made several translations of books from other languages, from French and German, myself and also in conjunction with Dr. Jeliffe. Dr. Jeliffe and I have also edited a large 2000 page work on the treatment of Nervous and Mental Diseases, of which we only wrote a small part. Of course we together also edit quite a good many books. We are both of us editors of Medical Journals. I have written numerous articles throughout the years. I have several volumes of them.

Q Special articles published in magazines in general?

A In special medical journals, indexes to books, editorials and so forth.

Q Were all these writings in connection with the operation of the mind and the functioning of the mind?

A Practically all of them.

Q Now, Doctor, by whom were you employed in behalf of the defense here?

A Well, I was employed in person by you. You came to see me.

Q Where?

A In Atlantic City where the American Psychiatric Association was having its annual meeting.

Q What were the conditions of your employment on behalf of the defendants in this case?

A You merely asked me if I would come to Chicago and go over the situation, for the information of the attorneys for the defendants. You were anxious to know what the condition of these boys was, so that you could more intelligently undertake their defense. You made no other condition than that I should examine them and report to you. There was no agreement beyond that point, and that I should inform you of what I thought of them after I got through examining them.

Q Has there ever been any change in the conditions of that employment?

A No sir.

Q Dr. White, will you please give us an exposition of the usual method of determining the absence or presence of mental disease in a person under examination?

A Let me refer to a couple of memoranda here and I will try to do that. Now in the first place, in order to give an understanding -

MR. CROWE: Just a moment. I object on the ground that it is not direct examination, that it is a proper field for cross examination.

MR. BACHRACH: I submit it is highly proper to show the proper way of making an examination of a person in order to find out what his mental condition is, so that the court will know whether or not the means employed in this case to find out what the mental condition of these defendants was, on behalf of either of the parties, were a correct means. It is for the information of the court, and it is information which the court is entitled to have, and which

he must have.

MR. CROWE: If the Court please, the witness can state what he did, and then if it is not the proper thing to have done, that can be developed on cross examination. He first cannot tell what he thinks is the proper thing, and then state that he did it. It is a conclusion and proper cross examination, but not proper direct examination.

THE COURT: I think the state is right. The Doctor may tell what he found. If the State wants to find out how he arrived at that conclusion, they may ask on cross examination.

MR. BACHRACH: But if your Honor please, I am not asking this witness how he arrived at a conclusion with respect to these defendants. I am asking this witness what are the means employed to find out.

THE COURT: I don't care. He can tell me what he found out.

MR. BACHRACH: Q What value has the patient's inner mental life in the determination of a judgment of his mental condition?

MR. CROWE: Objection for the same reason, if your

Honor please.

THE COURT: What is the question?

MR. BACHRACH: The question is, what value has the patient's inner mental life in the determination of a judgment of his mental condition?

MR. CROWE: I object for the same reason. We are not here to receive a lecture on medicine. If this doctor knows anything about the two defendants let him tell what he knows, how he acquired that knowledge and then let us cross examine him.

THE COURT: Yes. If the doctor examined those boys he may tell what he found from his examination, how he arrived at it, and if the State wants to know it may find out on cross examination.

MR. BACHRACH: Q What place does the patient's past develop mental history have in determining his mental condition?

MR. CROWE: I object to that as immaterial, if your Honor please.

THE COURT: Sustained.

MR. BACHRACH: Q Of what importance is it, doctor, in reaching a conclusion with reference to a patient's mental condition, from a psychiatric point of view,

with that which one would ordinarily expect of him under the environmental conditions of life?

MR. CROWE: I object to that for the same reason, if your Honor please.

THE COURT: No, I will let him answer that. You may answer that, Doctor.

A It is of very considerable importance, varying of course in the different cases.

MR. CROWE: Just a moment. We object to that if your Honor please. It is apparent, from the Doctor's answer, that he is not confining himself to this case.

THE COURT: Oh yes, you must confine yourself to this case, Doctor. What did you find. This court is only interested in the evidence which the court hears in connection with this case, which the defendant introduces. Now, you may tell me what the condition of those boys is. The doctor can tell what is the condition of the boys. If the doctor can tell us that there is anything wrong with these boys, let him tell us.

MR. BACHRACH: Does your Honor sustain the objection of the State?

THE COURT: No, I say he may answer. I am permitting

him to answer the question, but the doctor started in to tell what would be the variations in different cases, and to that the State objected.

MR. BACHRACH: Shall I repeat the question again, Doctor?

A If you please.

Q Of what importance is it, in reaching a conclusion with reference to a patient's mental condition, from a psychiatric point of view, to ascertain whether his conduct is or is not in accord with that which one would ordinarily expect of him under the environmental conditions of life?

MR. CROWE: Just a moment. I suggest that that be limited to these two patients and not "a patient". There you get off into the realm of speculation and drag in 4200 cases now in your hospital. I think that is too immaterial to go into now.

THE COURT: No, he may answer.

MR. BACHRACH You may answer, the court says.

A Well, of course the question is, what is the importance of the past in examining a patient. Now do you want me --

Q That is the question I would like to have you answer?

A Well, I cannot answer that question if I have got to confine it to the boys, because if you ask what is the importance in these boys' lives --

Q The court hasn't said you must confine it to these boys. My question doesn't confine it to these boys, and I understand the Court says you may answer the question.

MR. CROWE: If your Honor please, that is proper cross examination, but it certainly is not proper direct examination.

THE COURT: Well, I will let him answer.

A Well, it is of enormous importance.

MR. BACHRACH: Q In what way?

THE COURT: There are some things here that I don't know whether or not the court will examine on, and on which the Court wants to be informed. In other words I am not certain that you are going to ask on cross examination something that I may want to know as to what the doctor arrived at and how he arrived at it.

MR. CROWE: Anything that is brought out --

THE COURT: This is for my information now.

MR. CROWE: Wait a minute please. Anything that is

not brought out by the State or by the defense your Honor certainly has a right to examine yourself, but I think we ought to conduct this examination according to the rules of evidence.

THE COURT: You may go on, doctor.

A It is of very great importance.

MR. BACHRACH: Q In what way?

A There are certain natural expectations that flow from the general social, cultural and educational surroundings and background of any individual as to what may be the natural expectations as to his behavior, and when he seriously departs from those natural expectations, it is of great importance of course to seek ~~the~~^{the} reason for that, and one has the right to assume that among the reasons one might find some mental abnormality.

Q 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?

MR. CROWE: Just a moment your Honor. I object to that.

THE COURT He may answer.

MR. CROWE: That is not cross examination and --

THE COURT: You may answer. You can cross examine him.

A The criteria is the inherent quality of the evidence 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 a right to question the veracity of the patient. If it is consistent with these well-known laws we have a right to assume, at least for the time being, that a patient is telling the truth. Now, with regard to a specific statement ones judgment might not be conclusive, but after hours and hours and hours of talking --

MR. CROWE: Just a moment, Doctor. I do not like to be interrupting, but it is apparent that this is an argument being addressed to the Court now by the Doctor, trying to demonstrate that after he has asked a question of one of these men he could tell whether the answer was a truthful answer or not, and I submit that is a matter of argument to be confined to the attorneys in this case at the conclusion of the hearing.

MR. BACHRACH: He has not so stated, if the Court please. That is a misconstruction by the State's Attorney.

MR. CROWE: Let the reporter read what he has said. He is telling the court how he knows whether these boys lied to him or not. That is a matter that you are going to determine in the proper analysis of the case, and the proper time to argue it is not by the doctor on the witness stand, but by the attorneys at the conclusion of the hearing.

THE COURT: This doctor is put on for some purpose, and it is only fair for me to know how he arrives at his conclusion, or how he arrives at the information he is going to impart.

MR. CROWE: We haven't any objection to that, but the thing that I am now objecting to is his argument as to how he knew whether or not these boys told the truth when he talked to them, and that certainly is not competent.

THE COURT: You can argue on that later. You may answer. Go ahead, doctor.

A 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, we know that that picture is substantially true.

MR. BACHRACH: Q What value, Doctor, do you ordinarily put on the patient's own denial that he is mentally sick.

MR. CROWE: Just a moment, objection.

MR. BACHRACH: Q By the psychiatrists?

MR. CROWE: Objection.

THE COURT: I sustain it.

MR. BACHRACH: Q Is it always possible, doctor, to make a specific diagnosis of a patient suffering from mental disease?

MR. CROWE: Objection.

THE COURT: He may answer.

A No, it is not always possible. We make preferred diagnoses continually in institutions for mental disease.

MR. BACHRACH: Q What do you mean by preferred diagnoses?

A We are not satisfied with the disorder that the patient presents, we are not satisfied as to which of

various categories that are generally accepted it falls into, and we are not satisfied, for lack of sufficient information, as a rule, and it takes time and continuous observation and repeated examinations to clear that up, and in some cases we never clear it up satisfactorily, because after all the classification of mental disease is a tentative affair, it is changing all the time, opinions differ and we sometimes are never satisfied that it fits into any of the groups, but at the same time the patient may be, obviously, very sick mentally.

MR. CROWE: Just a moment now. If your Honor please, it is apparent from the answer of this witness that he is talking about insanity and mental disease, and I object to any further testimony for the reasons heretofore stated.

THE COURT: Overruled.

MR. BACHRACH: Q Are there any means by which the examining psychiatrist is able to protect himself against ~~malinger~~ malingering?

A Yes, I have already described those means in a general way, and that is that the psychiatrist who understands the operation of the mind, and who has

made a sufficient study to know what their laws are, can tell, from an examination of the patient, whether that patient is malingering or not, purely from the internal evidence as a rule. Of course there are sometimes exceedingly difficult cases, and it is sometimes easier to get corroborative evidence outside than it is to pursue the matter; but theoretically I am of the opinion that one ought to be able to tell, in a last analysis, from the patient always.

MR. BACHRACH: Q Given adequate facilities for making an examination, under proper conditions, and a sufficient period of time in which to make the examination, would it be possible for the person being examined as to his mental condition, by malingering, to induce a competent psychiatrist to believe him to be mentally diseased, when he is not mentally diseased?

MR. CROWE: Wait a minute. That is objectionable if your Honor please.

THE COURT: Overruled.

A I don't think so.

MR. BACHRACH: Q In your large experience, doctor,

have you ever known of a single person who malingered, or attempted to mangle, mental disease, who turned out to be normal?

MR. CROWE: Just a moment. Objection, if your Honor please.

THE COURT: Yes, objection sustained.

MR. CROWE: Well just a moment. I will withdraw the objection.

THE COURT: Allright.

MR. CROWE: Go ahead.

A I don't recall any, sir.

MR. BACHRACH: Q The malingering itself is regarded by you as what?

A Malingering itself is presumptive evidence that there is something the matter with the person. That is generally conceded and accepted by people of large experience in that particular aspect of mental phenomena.

Q What is the probability, doctor, that the psychiatrist making the examination could be induced to believe him to be mentally diseased, when he was not?

MR. CROWE: I object.

THE COURT: He may answer.

A I think the probability is very small.

MR. BRACHRACH: Q Did you make an examination of the defendants, Leopold and Loeb, at the request of the attorneys for the defense, with a view to determining their mental condition?

A I did.

Q When did that examination begin and how long did it last?

A It began, I believe, on the first day of July and lasted until and including the 7th day of July. Those are the specific notes I have of having seen ~~expirixxx~~ and talked with the boys. Now I think I saw them two or three times since then, and I have seen them once this week.

Q Where was that examination made in each instance?

A It was made in the jail.

Q Will you describe the room in which the examination was made?

MR. CROWE: I object to that as immaterial, if your Honor please.

THE COURT: Oh what difference does it make?

Do you want to know whether it was in a cell room or in an open room?

MR. BACHRACH: We want to show that conditions were favorable for a proper --

THE WITNESS: It was one of the so-called emergency cells, which is a large, airy, light room, removed from the general confusion of the rest of the jail.

Q Was the room -- I will withdraw that. Did you have privacy and the opportunities in that room for conducting a proper and competent examination as to the ^{mental} ~~medi~~al condition of the defendant?

A We had very excellent opportunities.

Q Who was present during the examinations?

A You were present during all of the examinations. Some of the time Dr. Hamill was present, during a brief period Dr. Glueck and Dr. Healy, but for the most part I conducted my examination of the boys by myself in your presence.

Q State whether or not the conditions under which these examinations were made substantially resembled the conditions existing in the consultation room of the physician in the making of a diagnosis of the mental condition of

a patient?

MR. CROWE: I object to it as immaterial, if your Honor please.

MR. BACHRACH: I am laying a foundation for the conclusions which he arrived at, by showing that the conditions in this room --

THE COURT: I can't tell. Some physicians have a six by six room and some have a room sixteen by sixteen, and some have a room thirty by thirty.

MR. BACHRACH: Not the size, if the Court please, but the conditions as to opportunities.

THE COURT: What is your question?

MR. BACHRACH: Whether or not the conditions under which the examinations were made here in the emergency cell substantially resemble the conditions existing in the consultation room of a physician in the making of a diagnosis of a patient?

THE COURT: Oh, I don't care for comparisons. He may tell us what was in that room.

MR. BACHRACH: Q State whether or not the conditions under which the examination of these defendants

were conducted were favorable or unfavorable for the purpose of determining the mental condition of the defendants?

A I think they were favorable, and the peculiar aspect of their favorability was their complete co-operation, under circumstances that were free from any interference of any kind, emotional or otherwise.

MR. CROWE: Just a moment --

MR. BACHRACH: Q State whether or not --

MR. CROWE: Wait a minute. I move to strike that out as the witness' conclusion.

THE COURT : It may remain.

MR. BACHRACH: Q State whether or not, Doctor , during the course of the examination of the defendants you had the co-operation of the defendants and their attorneys?

A I did, absolutely.

Q Were the examinations of the defendants made separately or jointly?

A Separately.

Q Will you state if you please just how you carried

on the examinations of the two defendants? A The exam-

ination was conducted by a method which is, superficially, descriptive of question and answer.[†]

(The answer of the witness is continued on the following page).

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Harvey
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A⁺ 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 ~~as~~ of the body, as such of their relation to each other, and of their developmental history.

Objection
MR. CROWE: I submit all that the Doctor has testified to is his conclusions. He has not testified as to what he has done yet or what result was had.

MR. W. BACHRACH: I am asking him.

MR. CROWE: All his answers are lectures.

THE COURT: You will have all the opportunity you like to cross examine the Doctor as to anything he testifies to. The Doctor is only put on the stand to inform the Court as to the condition, the mental condition of those boys. You may cross examine him at length when the time comes.

*MR. W. BACHRACH: Go ahead, Doctor, the Court said

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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
MR. CROWE: Now, just a moment. It is apparent that he is not talking about this case at all. I don't want to cross examine him on his knowledge of medicine generally or what he found in 4200 other different cases. I submit he ought to be confined as to what he did with these two boys and what conclusion, if any, he came to after he had examined, so that I can confine my cross examination to the defendant in this case.

MR. W. BACHRACH: It is not necessary, if the Court please —

MR. CROWE: He is just cutting a swamp in a learned discussion that you and I don't know much about, your Honor.

THE COURT: That is true, that is why I want to listen to him.

MR. CROWE: That is why I want him to confine himself to the particular case, what he said to these boys, what

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they said to him and what conclusion he came to.

THE COURT: Finish your answer, Doctor.

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 look

4 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

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individual. It is the thoughts and feeling that are privy to every 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. It has as its function --

MR. CROWE: Pardon me. May I have the question read, I have forgotten just what the Doctor is answering. Please read the question.

MR. W. BACHRACH: I will repeat it if you like.

MR. CROWE: Let the reporter read it.

(Question read)

MR. CROWE: All right, go ahead, Doctor.

MR. W. BACHRACH: Go right along, Doctor.

THE WITNESS: 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

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

MR. CROWE: Is that all, Doctor?

THE WITNESS: No, that is not all.

* 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

7 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 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 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. He may intend, perhaps

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to give one impression, but he has no assurance that he will. He cannot control in the course of a prolonged examination the impression that he gives, because many of his impressions are given involuntarily, and without his knowing it, and so this question and answer keeps up this continuous observation of the patient keeps up with the physician in the position of advantage with reference to all of this knowledge or function which the patient does not have and cannot have and which he is hitching together in his own mind correlating as the result of his observations at all times, and at the end of the examination he is able to reach some kind of conclusion as to whether the functions as^{observed} in the patient have deviated sufficiently one side or the other from the average, The average dependent upon the type of individual that is before him to constitute disorder ~~and~~ disease, and what type it may fit in to.

MR. CROWE: Have you finished?

THE WITNESS: Yes.

MR. CROWE: Now, if your Honor pleases, the question

is, what did you do in reference to the examination of these two boys. I submit that this course is not responsive to the question and I move that it be stricken out.

MR. W. BACHRACH: The objection, if the Court please in any event is improper because the only thing the Court has a right --

THE COURT: It may stand.

MR. W. BACHRACH: As the result, Doctor, of your --

THE COURT: We will take a five minute recess.

(Whereupon a short recess was taken.)

(Whereupon, pursuant to a short recess heretofore taken, the following proceedings were had.)

THE COURT: All right, gentlemen.

MR. W. BACHRACH: From the result, Doctor, of your examination and observation ^{of} with the defendant, Richard Loeb, are you able to form and have you formed an opinion as to his mental condition at the present time and on the 21st day of May, 1924.

MR. CROWE: Just a moment. Objection. The doctor has not stated he has made an examination or stated

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what the examination consisted of, and before you can give a conclusion we have a right to know what he bases that conclusion upon.

THE COURT: He started out to tell you how he came to make the examination and you objected and said all the Doctor could do was give us his conclusions of what he found upon the examination.

MR. CROWE: No, if your Honor please, I insisted that the Doctor tell, not generally what the rules were but what he did in this specific case. I insist that we are entitled to that now, in other words, he ought to know what he said to the patient, what the patient said to him, what the patient did upon what he bases his opinion so that when our experts testify, if we put them on, they will be able to testify, tell whether that is a correct conclusion or not, in their judgment.

MR. W. BACHRACH: I will be glad to withdraw this question and adopt the State's Attorney's question and ask Doctor White --

MR. CROWE: All right.

MR. W. BACHRACH: Describe in detail everything you did

with respect to the two boys and what you found as to that?

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THE COURT: Now, we will let the Doctor go ahead and tell.

THE WITNESS: A Well, my examination to begin with -- I will detail Dickie Loeb.

MR. CROWE: You mean Richard Loeb, the defendant in this case, Doctor?

THE WITNESS: Yes. No objection to my calling him Dickie is there?

MR. CROWE: Well, just so we identify him.

THE WITNESS: The historical factors that I discovered were briefly -- I will make this as brief as possible -- He was not very well, he was rather a weakly boy during his earlier years up until about four and one half years of age.

MR. CROWE: Just a moment, Doctor, as you go along will you tell us who you got the information from?

THE WITNESS: All of the information I have was gotten either directly from the boys --

MR. CROWE: Well, tell us that part they told you and the part that somebody else told you.

THE WITNESS: Now, I have not separated it in this memorandum.

examination, afterwards.

THE COURT: If the Doctor can tell, tell us, Doctor, and if not --

THE WITNESS: A Well, that information as to the state of health of Dickie and during his first four and one half years I got from some collateral source. My recollection is that came from Doctors Bowman and Hurlburt's report.

During the earlier years of his life, feeling this -- for the next six or seven years, this information comes from Dickie himself -- he had a governess, a Miss Struthers, who was a rather unusual type of individual I take it from Dickie's description of her. She was an extremely rigid disciplinarian.

MR. CROWE: Just a moment, kindly tell us what description he gave of her so we may form a judgment as to whether she was as peculiar as you say she was. I suggest that the Court has a right to know what the description was. The Court may not think she was peculiar or may not think she was quite as peculiar as the Doctor does. I am entitled to know what the facts are here, and so is the Court.

THE COURT: You may tell us upon what you base your

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your opinion.

THE WITNESS: Two states of facts, one Dickie's own description that she was a rigid disciplinarian, exceedingly alert for minor infractions of all sorts and very critical of him and interfered materially with his associations with other boys of his own age, and so forth, which is obviously a very unwise thing to do,

MR. CROWE: Wait a minute, I submit he ought to tell what these interferences were.

THE COURT: No, he has gone into it clearly enough. He says Dickie told him those things. That is plain, We are not going to have every word that was said back and forth, there is no necessity of it. Dick had told the Doctor those things, is that what you say, Doctor, that she did this and she did that?

THE WITNESS: Yes, sir.

THE COURT: She interfered with his association with other boys, and so forth, and upon that the Doctor bases the fact that she was a rigid disciplinarian as well as the statement from Dickie that she was. Is that your --

THE WITNESS: Yes, indeed. I have not finished

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either.

MR. CROWE: I submit when a conclusion is given by a witness we are entitled to know --

THE COURT: You can find out on cross examination. Proceed, Doctor.

THE WITNESS: That she was not a -- did not become a confidante, and yet in some ways she had exceedingly she was exceedingly prudish in her attitude toward certain things, so he did not get any information about some of the ordinary facts of life, until he was very old, or relatively old. She pushed him tremendously in his school work, was apparently very ambitious with regard to him and stimulated and pushed him ahead, further than he would have gone without that sort of stimulus, rather taking the place of his mother in that situation, assuming it, and in addition to all of these facts, prudishness and rigidity of character, it appears from the Hurlburt and Bowman report which was based on the personal examination of her, that she later in life developed definite delusional tendencies.

MR. CROWE: Just a moment. The Doctor is now telling

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us about a report made by two other doctors who say they examined her, and we are getting pretty far out into the realm of hearsay when we go that far.

MR. W. BACHRACH: We will supplement that, if the Court please, by the testimony of the doctors who saw this nurse or this governess.

THE COURT: All right, you may go ahead, Doctor.

THE WITNESS: A So that she developed in her later years something at least that was surely close to a delusional state of mind, therefore, we have a perfect right to suppose that a person who develops delusions at the fourth decade of life might easily have had this sort of peculiar background that is indicated by the facts I have given.

Now, Dickie expressed himself with ^{whose} regret to this ~~rather~~ relationship to his governess and his future by saying that about fourteen years of age when he was first really projected out into the world and among associates somewhere near his own age, that he grew up over night; that during

all of that intervening period he had been held down, so to speak, by the rigid discipline of this governess, and her jealous interference with his relationship with anybody else, to such an extent he had never had the ordinary developmental experiences of children, and was projected into the world of early adolescence and had to meet that condition over night as he expressed it. It is significant, in relation to the governess, in order to escape her rigid disciplinary tactics, which I may say in passing were not exhibited in the way of corporal punishment, but in order to escape them he got into the habit of telling her lies, and the growth of that tendency to lie is significant in his later history, and that is why I mention it now. Whether it is of consequence or not I have no opinion, but during this early period of his life also, he made and was more or less intimate with a boy who later became criminal and served a sentence for criminal conduct.

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MR. CROWE: Who was that boy, Doctor?

THE WITNESS: Jack Mengel.

MR. CROWE: Spell the last name?

THE WITNESS: M-e-n-g-e-l. At the age of 15, I cite this as something which — the significance of which I cannot evaluate, but I cannot see how it can be left out of consideration of the whole picture, at the age of fifteen he suffered, as nearly as it is possible to get the facts, from a cerebral concussion. He was in an automobile accident and was so shaken up, shaken up so badly or struck on the head so he was unconscious for a considerable period following the accident.

In college he had an interesting and rather unusual career. He was generally conceded to be rather a brilliant student. He studied all sorts of things. He studied history, zoology, philosophy, and sociology, and it is significant, I think, as will appear in the later delineations of his make-up that he was especially interested in the history of the south, and problem of sexualism and in the

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view was the author and exponent of the Lost Cause.

He studied morals. I don't know that he studied them under that individual name in college, but he studied the general subject of ethics, either as special discipline or in connection with his sociology and I asked him something about what he thought of the moral order as it prevails and the explanation of it and discussion of it as it occurred in classes, and his general concept of what he got out of the discussion and study of the moral order of things, in his opinion it was a good deal of a jumble of nonsense. In a specific inquiry as to some of his own moral ideas he said that he believed for example, that a downtrodden man who did not get enough pay, needed money to live on, had a perfect right to take it any way he could get it. He had this feeling for the under-dog, a feeling that he might properly rise up and take the law into his own hands if necessary was set forth.

As regards his own conduct during his academic career and choice of his studies and so forth he very definitely stated his own initiative

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which followed the lines of least resistance. He had no special plan then or now as to his life, but he was trying to fit himself for whatever direction he was headed. He was just taking things as they came along in a more or less haphazard way, choosing them according to anything that might weigh the balance of his like or dislike, because he liked a professor, for example. In the scientific work he had been interested in paleontology and had come to the conclusion paleontology had offered a complete account of man.

MR. CROWE: Doctor, will you tell us what that is?

THE WITNESS: Paleontology?

MR. CROWE: Yes.

THE WITNESS: Paleontology is the science that deals with fossil remains, either of plant or animal. If it is animal it is paleo-zoology and if it is plant it is paleo-botany. The fossil remains are generally extinct species of life, and of course paleontology spreads out on the leaves of history the past history of life, preceding the existence of man upon the earth, and he believed that that evolutionary develop-

ment was sufficient to account for man. He always had more or less doubted the existence of God and now he comes to a belief in science sufficient to account for things. It is significant that during these earlier years of his college life that he was by some intellectual precociousness thrown into association with children that were materially older than himself, three, four and five years older, therefore he had to adjust himself to a personal environment that was somewhat developmentally beyond him.

This environment did not seem to lead to the development of ideals to follow, the good that was in that more adult situation, but rather some of the other things, and so he began to drink about this time, and his drinking was largely, from his explanation a matter of imitation of the older boys doing the sort of things that they did, trying to appear grown up the way they were, imitating the un-older boys and fortunately picking out the things that were not very desirable to imitate.

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He also says, with regard to his drinking, that his drinking helped at this time to dull his criticism; that at this time he had no vital interest in life, that he had a distinct feeling of inferiority, that he had felt as a child that he was not wanted in his home. There was no one in the home with whom he had any intimate confidential relations. He did not feel that he could go to anybody in the home familiar with his inner feelings and be confidential. Remember, that the governess was this most repelling individual on this side. She had taken the place of his mother, and that left him both without childhood companionship, but old adults who neither understood or was sympathetic, sufficiently based upon their understanding.

During all this period his lying which I have referred to as having begun to avoid the discipline of the governess continued. I would describe the language he indulged in in order to avoid discipline as a negative lying, just as a boy does. Now, later on in his history his lying became of a more positive character. If somebody in

the family, for example, would ask him where he was after he had absented himself from his home several hours without explanation he not only would negatively lie by saying "Oh, well, I was just -- I was not doing this that you did not want me to do" but he would build up a positive yarn telling what he had been doing, not really telling what he had been doing, but inventing a lot of things which he had been doing fitting in with what he knew to be the desires of his parents, so his lying in this stage of the procedure had evolved to a scheme which was more definitely pathological and just like a boy.

It is difficult to -- yes, I will mention this here, it needs to be referred to again. It is significant that during the course of the examination Dickie evidenced by his general attitude, and the uncertain way in which he answered questions, his hesitations and his changing from yes to no, that he had no clear cut conviction as to what his own past was with regard to many things. For example, I asked him whether he enjoyed the grilling which he got from the State's Attorney's office following

his arrest, and his first answer was immediately and quickly, "Yes", and I let him go along and then he was not so sure about it; keep on letting him alone and I guess maybe he did enjoy it and finally he winds up by saying it was exciting anyhow. So there is a very manifest uncertainty in the boy's mind as to where he stands with reference to certain things, and it is significant with this lying tendency, which developed earlier in life, has spread throughout his entire career. For example, in college he lied about his marks. He lied about all sorts of things. He lied to Babe Leopold, his comrade, about his attendance in college. While his marks were on the whole pretty good he made them a good deal better, so he was continually building up all sorts of artificial situations until he himself says that he found it difficult to distinguish between what was true and what was not true. In this attitude of vacillation and hesitancy --

MR. CROWE: Now, just a moment, it is apparent from that what the Doctor states is true, it is apparent that if what the Doctor states is true, he could not

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he could not distinguish between right and wrong. Truth is right, the other is wrong. I submit we are getting now clearly into an insanity hearing, and I suggest that a jury be impaneled.

THE COURT: Motion is denied. You may proceed, Doctor.

THE WITNESS: And this statement of his that he had difficulty in distinguishing what was true from what was not true is borne out by this general attitude of hesitancy, doubt and vacillation in ~~things~~ answer to many questions which I have described.

Now, in this period of his life beginning earlier than his college career, and dating back to somewhere in the neighborhood of nine years of age he began to develop a very active phantasy life as we call it. He himself uses a different term. He speaks of these phantasies, that is our technical term, imaginings, of the period of wool-gathering. He speaks of them as picturizations, and a considerable part of his ~~awakening~~ life when he was not otherwise engaged, was devoted to indulgence in these various phantasies. Now those phantasies are exceedingly interesting, not only by themselves but also in

connection with what follows.

MR. CROWE: Doctor, May I interrupt you?

THE WITNESS: Aye, Aye, Sir.

MR. CROWE: The condition you have just described is sometimes called building air castles, isn't it?

THE WITNESS: Yes, however air castles are usually considered to be obviously something that is exceedingly beautiful and generally desired. These do not fall into that description, but building air castles are phantasies, making phantasies.

MR. CROWE: That is quite common among all boys.

THE WITNESS: Surely.

THE COURT: Let the Doctor proceed without interruption and you may cross examine when he gets through.

THE WITNESS: These phantasies I will briefly describe. One of the phantasies was that he was in prison or in jail. He thought of himself as being confined behind the bars. The men and the women that surrounded him, friendly at least, because of course this phantasy repeated itself numerous times and with somewhat different formula each time; men and women around him were naked. He himself was often being abused or

or beaten; he would see people appearing at him through the bars and commenting upon the fact that he was a great criminal, looking upon him with curiosity. These people were oftentimes young girls. Some times he would dig for himself in the corner of the yard a hole in the ground or an excavation and go and lie in that, assume the same position in his phantasy that he does naturally, or did naturally in bed when he went to sleep that night.

He had other phantasies. He believed himself or he thought of himself in his phantasies as a great criminal. He considered himself the master criminal mind of the century, controlling a large band of criminals, whom he directed; even at times he thought of himself as being so sick as to be confined to bed, but so brilliant and capable of mind was not interfered with by such a helpless body, and the underworld came to him and sought his advice and asked for his direction, and so he directed this whole group of criminal conspirators from his sick bed. During this period and shortly after he played criminalistic games, I recall. He played the part of detective;

he would shadow people on the street for hours, following them and identifying himself in his own feelings as a detective, to see whether he could follow them without their knowing about it and discover what he was doing. He also would go through the street making all sorts of motions with his hands. Those motions were secret signs to the various members of this criminalistic band that he was phantasing in existence, and he would so direct imaginary persons on the street as to what houses to rob or what other criminalistic operations that he would engage in.

He enjoyed this game very much and played it over a considerable period of time, eliciting the comment from his comrade, Babe Leopold that it was of more or less nonsense or foolish from his point of view but nevertheless he continued and enjoyed it.

It is significant that in connection with his personal phantasy, his jail phantasy, that after he got in jail -- see he was in the same situation in reality that he had thought of time without number, as a child, and he preferred in jail to wear a

a ragged coat that was given him rather than a good coat, and he insisted upon wearing it, and he expressed himself about his being in jail as being comfortable in jail, sort of felt as if he belonged there, and said he was living out now what he used to picture to himself as a child.

A further fact of interest in importance in connection with these phantasies is that he still has phantasies in the jail, and that as he starts in on a phantasy life, that is he begins to develop a phantasy in jail, he will start off with the expression, "and you know Teddy". That is a continuation into his present life of a practice of his when he was an infant and when he had a teddy bear. He used to take the teddy bear, -- he used to take the teddy bear to bed with him and he would talk to the teddy bear beginning with this saying, "As you know Teddy" and then of course all this phantasy life would unfold. That significance and I call especial attention to it at this point, because later I want to show it is significant if I am asked as to my opinion as to his mental condition.

Now, with reference to the Franks case specifically I asked him a number of definite questions to develop his attitude towards that homicide, and it seems that the plan of this homicide was in the mind of these two boys for a period of months. It was a matter of almost daily discussion. If there had been passed before them in detail in the course of this discussion as to who might be the object of the homicide, various persons of both boys' families had been under discussion and were discarded for purely practical reasons and not for reason of sentiment. Dickie's younger brother had been under consideration as a possible object of kidnapping and homicide, and the parents had been discussed but it was believed in the working out of the developed crime that if any member of the family was the victim that perhaps such a project brought immediately into the family would probably hamper the free movements of the boys, they would be interfered with in their comings and goings to a material extent, so therefore they considered it impractical.

The objective of the crime, or the object

a perfect crime, he as the master criminal mind wanted to do a good job, wanted to commit a crime that would be perfect, that would be thoroughly and completely planned in all details, that would baffle the police, that would be an object of great concern in the immediate community, that would leave no clues, that would be an intellectual feat to accomplish.

THE COURT: You will take some time yet, Doctor?

THE WITNESS: Yes, sir.

THE COURT: We will suspend now until two o'clock. Tomorrow there will be a session beginning at ten instead of ten thirty and continuing until twelve. Tomorrow's session will be from ten o'clock until twelve. We will now suspend until two o'clock.

(Whereupon an adjournment was taken until two o'clock P. M., Friday, August 1st, A. D. 1924.)

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Friday, August 1st, 1924.

2:00 o'clock P.M.

Court convened at two o'clock P.M. Friday, August 1st, 1924, pursuant to adjournment heretofore taken.

Present: Same as before.

W I L L I A M A. W H I T E,

resumed the stand as a witness on behalf of the Defense, having been previously sworn, and being further examined in Chief by Mr. Bachrach, testified as follows:

MR. CROWE: May we have the last answer read, your Honor?

THE COURT: Yes, read the answer.

(Whereupon the last answer was here read by the Stenographer).

THE WITNESS: I asked him to name specifically the objectives that he had in this crime, and this is the order in which he gave them:

First, the joy in planning it.

Secondly, the thrill in committing it.

Third, the anticipation, pleasurable anticipa-

tion in waiting for the money.

Fourth, the publicity.

Fifth, the discussion, that is, his own discussion among the various people who were interested, with the knowledge that he possessed the key to the secret and none of the rest of them did.

And last and least, the money that was involved.

My understanding from him was that at the time this Franks homicide was committed he had at least several hundred dollars in the bank.

There are two or three other things with reference to Dickie that I left out this morning, and which I would like to supplement, that have come to my mind.

One is a story that he told me about calling on a young lady, and previous to calling on her he took a revolver and fired a bullet through his shirt and tore it, and otherwise made it appear that he had been having a hard time and had been shot at, and then when he called up her he told her that he was a bootlegger, practically a criminal, and had been having this exciting experience.

The other matters are collateral and confirmatory.

I have referance to two things. In the first place, the pictures of Dickie as a child. One was in a cowboy costume, the other as a policeman, which are confirmatory both from the point of view of the costumes and from the point of view of the general tense expression of the boy's face and the earnestness of his expression as to the very great interest that he had in playing two parts. And the other thing is a letter which was written to him in 1932 by the governess I mentioned.

One other fact --

MR. BACHRACH: May I interrupt you at that point?

THE WITNESS: Don't let me forget the thing I was about to say.

MR. BACHRACH: All right, I will come back to it.

THE WITNESS: Just a moment. I asked him -- I said, "Suppose, Dickie, this proceeding should go against you and suppose it should go as bad as it could go, how do you feel about your past life? Do you think you have had a pretty full well-rounded out expressive sort of career? Do you think you have got all there

is out of the game of life? Are you pretty well satisfied with it if you have to wind it up at this period?" And he said "Yes", he felt he had gotten all there was out of life and he was satisfied with his past record and that there was not very much to go forward to.

MR. BACHRACH: Q I hand you a letter and envelope and I will ask you to state whether or not that is the letter and envelope which you have just referred to in your testimony?

A Yes sir, it is.

MR. BACHRACH: I ask that this letter be marked Defendants' Exhibit 1 and that the envelope be marked Defendants' Exhibit 1-A.

THE COURT: They may be marked.

(Whereupon the letter was marked "Defendants' Exhibit 1", the envelop being marked "Defendants' Exhibit 1-A").

MR. BACHRACH: I would like an opportunity to read the letter at this time, that the Court may have the letter before him, if I may.

MR. CROWE: Objection, your Honor.

MR. BACHRACH: I offer to connect it up later on, by showing the handwriting, by another witness, of the governess who wrote the letter.

MR. CROWE: Purely hearsay.

MR. BACHRACH: This letter being offered merely for the purpose of showing that it was one of the factors considered by Dr. White in making his findings with respect to Loeb.

THE COURT: You may read it.

Whereupon the letter and envelop, heretofore marked respectively "Defendants' Exhibit 1" and "Defendants' Exhibit 1-A", were here read into the record in the words and figures as follows, to-wit:

MR. WALTER BACHRACH: Now, doctor, go on with the rest of your testimony.

A There are still one or two other things about Dickie, and then I think I am through with him for the time being. I asked him about himself and how he had been getting on in the past couple of years, and he said that he thought he had not been doing as well recently; that he had himself felt that he was not up to par mentally, compared to what he used to be; that his memory was not as good as it used to be, and that he found himself not as capable of even engaging in small talk as readily as he used to. So that he felt within himself that something apparently was going wrong, although he could not define it any more clearly than that. His estimate of himself with regard to Babe was that he thought Babe was perhaps intellectually superior to him, but he thought he himself was better looking and had better social contacts, and on the whole, after sizing the whole thing up, he would rather be himself than Babe. There was something else that has escaped me, but I will come back to it later on.

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MR. BACHRACH: Q As a result of these interviews, doctor, what are your findings? I am not asking you for your opinion as to Richard Loeb's mental condition, but as to your findings concerning the facts disclosed by these interviews?

A There are some very significant findings as the result of these interviews. One of the findings has reference to the gradual progressive growth of anti-social tendencies, the earliest manifestation of which is lying, to escape the censure of the governess, which went on and developed into what I have called the positive lying and boastfulness and drinking and the various delinquencies which he and Babe indulged in later on in combination. There was a gradual and progressive growth in the seriousness of that estrangement of compliance with social standards.

Then the other fact of very great significance has reference to the phantasy life. Now, of course, phantasies are perfectly normal characteristics of child life and, to a certain extent, of adult life. But this phantasy life of Dickie all through the years up to his present time has been cast in the same formula. Whereas, phantasy life is compensa-

tory, as I said this morning, it also foreshadows our real conduct. We do not accomplish much of anything in this world that we have not previously dreamed of accomplishing. So in the history of the phantasy life of an individual, we would expect to find that there were changes progressively going on, from the phantasy life of the child to the adult, and we would also expect in the normal child life that the phantasy life would show some obvious relations to reality.

The little boy is liable to imagine himself a street car conductor, or something of that sort, that has some fairly definite contact with reality. These are the types of things that he normally is projected toward.

The phantasy life of Dickie, however, strikes one immediately as being somewhat estranged from that usual child life phantasy life. He thinks of himself in prison, girls looking at him through the bars, as a master criminal, and the men and women about him abused and beaten and naked.

It has a characteristic which immediately raises the suspicion that it is not just the normal

Wish-fulfilling playlife of the child. And when we see that phantasy life going on year after year, always cast in the same mold, it becomes increasingly suspicious, and the significance of that is on the emotional side, because it is in the emotions that this phantasy life has its roots. The boy remains childlike and at the infantile level of development.

The other elements with reference to the phantasy life are also very significant, not only that in the original instance they did not show contacts with reality, but the tendency of this phantasy life in its rather grotesque and bizarre form, to break through from the dream world into actual realization in real life.

Dickie thinks of himself as a master criminal, and he goes through the streets motioning to his subordinates of his. He plays the part in real life, so far as within him the power lies. He plays out the part of the criminal. When he gets into jail he finds again that he has projected himself into a real situation that comports and measures up and is on all fours, to a certain extent, with his phantasy, so there is a tendency for the phantasy life, an ab-

normal phantasy life, to realize itself in reality, and in his inability, as I expressed this morning, to distinguish between true and false, the lie and the truth, is basically the inability, which he feels, to distinguish between the real world as it is and the phantasy world which has accomplished such enormous proportions within him.

He has lost the ability to differentiate and to draw clear lines, to tell just where he is.

Now, it is quite proper for four or five years of age, three and four, especially, to play with their dolls. They give their dolls names. The dolls have personalities. And the onlooker is quite at a loss to know whether the child really believes that doll has a personality which corresponds to the name that the child has given it or not. The distinction is not clear.

Here this lack of reality, this lack of distinction has been carried forward through the years, and his phantasy life, instead of being lived away from, or showing any tendency of development, has been dragged along with him. In other words,

he has grown to twenty years of age, but he has carried his infancy within the shape of an undeveloped emotional attitude toward life.

Now, wherever we have this infantile emotional tendency especially where accompanied by a more or less excessive development upon the intellectual side, we have a tendency gradually increasing as the years go on for the intellect on one side and the emotion on the other to draw further and further apart. In a well rounded, well integrated, well knit personality, emotion and intelligence go hand in hand. People know and feel about what they know at the same level of development. Here they know and feel about what they know on two levels and the two attitudes tend to become further and further separated until we see the marked mental disease, the malignant disease which ultimately lands in many of our institutions. We see a complete estrangement, a complete personality where there is no longer a possibility of bringing the two aspects of personality into sufficient harmonious union. Dickie is in a stage which if it goes on further is capable of devel-

oping that kind of very malignant splitting.

Q Doctor, will you now address yourself to Nathan Leopold, Junior, and state what you have obtained as a result of your examination of him.

A Babe, as I will call him, if I may, because that is the nickname by which everybody speaks of him, and I learned to too, --

MR. CROWE: Just a moment. I have no objection to your referring to him as Babe if you have no purpose in doing it, but I would like to have him identified as Nathan Leopold, Jr., the defendant in this case. Is that correct?

THE WITNESS: I will tell you one reason why I use the term Babe.

MR. CROWE: No, go ahead.

MR. BACHRACH: I will ask you to tell it. Tell us why you do it.

THE WITNESS: I fell in the habit very naturally and rather thoughtlessly of speaking of Dickie as Dickie. That is rather a common nickname, and when Babe came into the room one day and I did not speak to him as Babe but I did speak of Dickie as Dickie, he said,

"If you are going to call Dickie Dickie you will have to call me Babe, and if you don't I am going to be offended." And so I got to calling him Babe because that is the nickname he is known by.

Q Do you know whether or not Babe is a family name in the Leopold family?

A I don't know whether it is a family name. I have heard his father speak of him as Babe and address him.

MR. CROWE: Doctor, before you start -- I don't like to be interrupting, but may the same objection go to the testimony he is now about to give as went to the other?

THE COURT: The objection is overruled. You may proceed, doctor.

A There are certain significant facts with regard to Babe's early life. In the first place, at the age of about five to six he attended a school, Miss. Spade's School, which was a girls' school., I understand that it had been a co-educational institution, but that they had changed over entirely to girls, but at the time Babe attended it there was only one other boy. He himself says that he did not feel out of place, in the situation until later on he was made

fun of by some of his companions for having attended a girls' school.

After having attended Miss Spade's School, he attended the Douglas School, and the significant thing with relation to his attendance at the Douglas school was that from the ordinary standards he was culturally in a different class from all the rest. Of course I am talking from the standards as he expressed them, the standards as they lie in the minds of some people, he was the only boy in the school, for example, that lived on Michigan Avenue. Living on Michigan Avenue put him in a different social class, and so at this very early period there was emphasized in his mind by his cultural or social estrangement from his school companions that fact that he was a little set apart.

Up to the age of 12, he was cared for almost exclusively by governesses. He was taken to and from school by a governess, another characteristic which made him, set him in a class apart from the others.

He was exceedingly precocious intellectually in his early years, for example, he began to

He speak his first words at four months of age. He was poorly developed. He was small of stature and is still small of stature. At this early age, approximately five years of age, he began to develop an interest in birds, an interest which he carried on all through his later life to the extent of making a very elaborate ornithological collection and making some very creditable and some really original contributions to ornithology, teaching it in his later years and lecturing and presenting papers before ornithological societies.

At this time also he was interested very much in the churches. He wanted to know all about the churches in the neighborhood. He visited them. He was especially interested or dwelt at least in his mind upon the Crucifixion and already developed an interest which later on like his ornithology became a very dominant interest in his life. His interest in words -- at this particular time he was very much interested in the word "yes" in all the various languages in which it could be expressed; that is, what the word "yes" was in as many languages as he could find it.

He had prayers at this early age which were accompanied by muscular movements, and these muscular movements occurred in sets of four, wiggling his toes and heels. Four sets of muscular movements went with his prayers. It is significant in that connection that you find him now in jail indulging also, unconsciously largely, or consciously, only as an observer, in muscular movements that group themselves in a set of four, but this particular set of four is a set of four muscular movements that make the sign of the cross.

There were other interests that had been credited to him. At this early period of life one of these was the raising, so to speak, of his mother and favorite aunt to the level of the Madonna. His feelings resulting more or less in looking down upon women as being more or less intellectually inferior.

I speak of this here, it comes along chronologically in my notes, because there was a very significant happening that occurred, I think it was this week, two or three days ago, when I questioned him particularly about this aspect of his thinking in

these early days, and he resented very much having this feeling about his mother and aunt in the same breath, so to speak, with the Madonna, credited to him. He said that that had sort of been pinned on to him by some people who had examined him and that it was not so, that he did not have any such idea and he argued and fought and resented and resisted any imputation that those things were true.

He developed in early life a feeling that he himself was more or less set apart from others and that he differed from others in the direction of superiority. He was an exceedingly active youth. He occupied himself in constant, continuous, unremitting industry and activity. He was busy all of the twenty-four hours of the day. He did not loaf. He did not waste any time. He was at something all of the time. He developed very early his interest in his own mental ability and he felt that his mental ability, as he puts it, was stepped ^{up} off 20 percent as a result of lack of night's sleep, and that this itself rendered him unique -- that was the word he used constantly in speaking about himself -- that frequently if he

was going out early in the morning to study birds he would sit up all the night before or get up exceedingly early in the morning and he felt that his intelligence was made unique by this lack of sleep.

He, early began to drink and to smoke, largely also obviously to ape his elders. Because of his intellectual precocity he was projected into the companionship of boys several years older than himself. When, however, I, so to speak, accused him of doing this solely for the purpose of imitating his elders, he said that that was not the whole truth by any means, that whereas he had emphasized his uniqueness he wished to call my attention to the fact that there is in his makeup that desire to conform with respect to drinking and he said he drank first to conform and then to accept.

So that he felt that even in his drinking, or anything that he did, he must excel in the doing of. Very early in life he developed a feeling of antagonism toward the tender emotions, of which he was from time to time the host. The tender sentiments and the emotions, the sympathies which ordinarily animate average people, he resented, because they

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made him suffer. He turned against these tender feelings with the conscious and intentional attitude of destroying them, and he brought into the situation the instrument which already in his early days had been developed to such a marked efficiency, -- his intelligence. And he began here to destroy sympathy, emotion, tender feelings, and to develop a philosophy which later on in life has become very much elaborated, which is essentially a hedonistic philosophy, a philosophy wholly of pleasure and pain, a philosophy of complete and absolute selfishness, a philosophy of mechanism in which there is no God, where everything is explained wholly and solely and satisfactorily upon the mechanistic property. He says for example, in relation to this philosophy, to show how far it goes in his thinking and feeling, that murder is a very ^{small} ~~strong~~ thing to weigh in the balance as against his pleasure. So, in such a philosophy, without any place for emotions or feelings, the intelligence reigns supreme. The only crime that he can commit is a crime of intelligence, a mistake of intelligence, and for that he is fully

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responsible. He and Dickie he refers to as relative supermen, and despite the fact that he knew that Dickie lied to him about his marks in school, was boastful and untruthful, he nevertheless says that Dickie not only approached perfection, but far surpassed it. And in a scheme of the perfect man which he drew up, he gave Dickie a scoring of ninety, himself a scoring of sixty-three, and various others of their mutual acquaintances various marks ranging from thirty to forty. In discussing later on this appraisal of Dickie as far surpassing perfection, he stated upon one occasion that he had ^{begun} ~~begun~~ to have some doubts about it, and upon another occasion he said, very characteristically, I think, that he was very skillful in blinding himself to certain facts of reality. He said that about this, and also about some other matters that will appear later. With reference to the idea of supermen, he at one time discussed with the professor, I believe it was one of the professors in the law school, the abstract question of whether supermen should be held responsible or not for their acts, -- of course, Babe's view being that they should not. He considers himself, as I have already said, unique;

and his differences from others -- and by that I refer solely to his mental differences -- are all in the direction of superiority. At this point I have the note that, like thinking about the Madonna that was credited to him, he has been credited with saying that he in his present situation, although perhaps despised, was like Napoleon on St. Helena. I asked him about that, and he resented it, and said he never had any such feeling, and resented it in the same sort of way. It is interesting that in his college course he picked out studies more or less with the conscious intention of emphasizing his uniqueness; that is, setting him apart more completely from others. For example, he picked out such studies as Russian, modern Greek, Sanskrit, and certain Italian dialects which do not exist as languages today at all, but which only exist -- and I am giving now the information which he gave me, because I do not know anything about it -- in a few inscriptions somewhere. He studied these things because he knew and he felt that his knowledge of these recondite and abstruse subjects that nobody else knew anything about, would set him apart from everybody else as

different, unique, intellectually superior.

With regard again to his philosophy -- and I must beg pardon if I am a little discreet here, in following my notes -- and the fact that there was not any place for God in his philosophy, he disclaims the idea that in his philosophy he is solely interested in over-throwing God, but his interest is more particularly in setting up his own philosophy, which of course repels God. Consistency, as he said, has always been a God with him. This drive for activity took him through many subjects in college, with great activity outside, constant restless activity in all sorts of directions, seeking always for new experiences, new worlds to conquer, if you will, looking forward to new experiences with anticipation. This trial, he said, he looked forward to as being, or, as he expected it to be, one of the most keenly interesting, intellectual experiences of his life. Unfortunately he finds it very stupid and boresome.

He also looks forward to the experience of considering himself objectively as a murderer. He finds, as a matter of fact, after all, that that is not so exciting, because no material change has

happened. Murderers think and feel very much like anybody else. He thinks and feels very much like he did before.

This boy also, like Dickie, has a very interesting and significant phantasy life of a somewhat different character. I have already mentioned his interest in the Crucifixion in his very early infantile days, and how he visualized it, and how he was interested in visualizing someone as being nailed down. And in his phantasy life he not infrequently visualized himself as being abused.

But there is one particular phantasy that has run through many years of his experience, has been infinitely elaborated and about which he says he could talk indefinitely, for hours, and days, probably weeks. It is the "King-Slave" phantasy, as we have called it, and this in general is the motive, with infinite variations.

There is a king and there is a slave, and the king has usually saved the slave's life or the slave has saved the king's life. With Dickie, Babe fancies himself as being a slave, in which case he has saved the king's life, and the king is very

grateful, and the king wants to recompense him by giving him his liberty, which he refuses. However, he is a very unusual slave. He is not an ordinary, every-day slave. He belongs to the social grade of slaves, to be sure, but he is very powerful, physically powerful. The various kings, when they are in dispute with one another, if they want to settle their differences, each pick out one of their slaves to fight in single-handed combat. He is always the one that is picked out. He always wins. Some times, he says, he has found himself fighting many, many men in his phantasies, to save the king. At times it was getting where he was fighting a thousand men, single-handed; and then the ~~ki~~ thing would get so utterly ridiculous that he would shake himself out of the phantasy and perhaps begin over again.

But he comments again that he is very skillful in blinding himself to the realities. He sometimes fancied Dickie as the slave. He phantasied Dickie as being injured, seriously injured or in serious danger, and he saving him.

Sometimes he would put other people in

positions in his phantasy. A tutor that he liked at one time played in his phantasy the part of the slave.

Dickie not only played the part in his thinking life of a very superior person, but also Dickie was good looking, athletic, brilliant scholar, high marks and, as Babe says, he almost completely identified himself with Dickie.

Now, at the present writing, therefore, this boy has this pleasure, this hedonistic philosophy of life, this feeling of conviction of being superior intellectually to others. And there are certain other roots of that that I want to comment on just briefly.

As a youngster, he was not only small of stature but he was sickly. For a long period of time he had serious gastric intestinal upset, and had to be carefully cared for. And when he went to the Harvard School he was so small in stature that he was referred to as the flea. He also was referred to in the college books in other terms that were not complimentary. He was called "The Crazy Nathan" and "The Crazy Genius". At this period of life he

was exceedingly sensitive to these estimates of others, rather thin-skinned about it all, and did not like it, did not have very good social contacts, did not make friends very readily, because of this more or less superior attitude which tended to put him out of touch with his boyhood companions and make them ridicule him and make fun of him in this sort of way.

MR. CROWE: May we have our recess now, your Honor?

THE COURT: We will have a five minutes recess, gentlemen.

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

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(Whereupon pursuant to a short recess heretofore
taken, the following proceedings were had)

THE COURT: You may proceed.

THE WITNESS: Is there a question?

MR. W. BACHRACH: You were discussing Leopold.

THE WITNESS: Oh, yes.

MR. W. BACHRACH: Q Now, Doctor, let me ask this
question: As a result of the information you obtained
in your interviews with Nathan Leopold, Jr., at what
finds did you arrive, if any?

A Now, he presents more or less obvious similarities
with Dickie. They both have a phantasy life, a
passing phantasy life, like Dickie's, is estranged
from reality and continues along through the years
with the same formulation. But, his general
personality reaction towards this infantile component
is very different, if I may make a comparison.

Dickie has been the host of anti-social
tendencies which have been gradually increasing in
strength throughout the years until they have become
very strong indeed and they are in the line of these
criminalistic activities.

Now, in order to make my point clear X
here I might draw an analogy in the way in which
the body acts. The body when it is infected with
certain kinds of disease for example an infection
like typhoid fever, pneumonia, septicemia, develops
reactions which we call defense reactions. It
develops substances which are created for the purpose
of destroying invading organism or poison as the
case may be, and thereby saving the individual from
destruction.

Now, the mind does precisely the
same sort of thing. Just as within the body
we find that disease sometimes results in death,
some times it results in cure, and some times
results in some mid-position between cure and
death, which we may term a certain degree of invalidism;
so it is in the mind. *To be*

Now, with Dickie with this growth of
anti-social tendencies there is no evidence that there
was any adequate defense organism at work to protect
him. He became ~~the~~ increasingly the host of a
growing and more malignant anti-social disposition.

Breaking down the point of view of his capacity for social adjustment more and more as the years went on until he himself substantially expresses it that he finds he is failing mentally in the past couple of years, which I have already described.

Now, Babe does a very different thing. Babe with his feeling of inferiority, his small stature, this infantile component of his, doesn't break in a negative sort of a way under this bombardment, but develops a defense reaction, that is, develops a feeling of superiority and personal individualistic philosophy which has as its past -- I don't mean by this a conscious past, but its biological past -- the compensation for this feeling of inferiority with a feeling of inferiority that is to be compensated, for he develops a corresponding feeling upon the opposite side of the equation of an equal magnitude of superiority and he brings into the breach at this point this magnificently developed intelligence of his and utilizes that to manufacture his defenses to bolster up his weak points, and develops a philosophy of life which is a compromise for his physical and emotional

inferiorities, and which makes him feel at more home with himself, and better satisfied with himself. So the development in this case, in Babe's case is essentially positive in defense and compromise, whereas in Dick's case there is a continuation, disintegration and break-down in that direction, or slipping as I used that term.

Q Now, what findings did you arrive at in your interview with Loeb with reference to each of the defendants in combination with the other?

A Now, in my own opinion no understanding of the Franks homicide can be reached by a consideration of either one of these boys alone, just as we could not understand the development of any social institution solely by the study of any individual, but we would have to understand how man in his social inter-relationships function in order to understand the growth of such an institution, so we can only under-

5 stand this homicide by understanding the back and forth play of these two personalities as they are related to each other.

Now, Dickie with his feeling of inferiority develops certain anti-social tendencies which are characterized to a certain extent to compensate him personally, but which are disintegrating and socially destructive, namely his criminalistic tendencies. He develops that criminalistic tendency in his feelings as being the head of a gang or being in association with others, because more or less obviously it is not half as satisfying to an individual to be a great man or to have great power either for good or for evil and to exercise it in secret without anybody having knowledge as it is to have an audience, and Dickie needed an audience, and in his phantasies the criminalistic gang was his audience and in reality Babe was his audience. Babe thought he was a great man. Babe told him he was the greatest mind of the century; Babe constantly reinforced him in those aspects of his personality, where he felt weak, where he needed bolstering up,

6 where he needed stimulus to his amourpropra.

Now Babe's -- Dickie's tendencies were criminalistic. He needed his gang and Babe was his gang. Now, Babe had no fundamental criminalistic tendencies. Babe's tendencies could be expressed, as they were in the king and slave phantasy, as a constant swing between a feeling of inferiority and one of superiority. In his feelings he was first ~~as~~ one and first the other. It was quite characteristic of the emotional life that it tends to swing between extremes in this way. So he needed, as did Dickie, a compliment, and he picks out Dickie as his other ego to compliment him. In Dickie he identifies himself with that term, almost completely identifies himself with Dickie.

Now, as Dickie some times plays the part of the superior and some times the inferior; Babe plays the part of the superior and some times the inferior. No understanding of this relationship can be complete without the understanding of this phantasy of Babe's. Babe is generally the slave in the situation.

You will recall that in his early life he was especially interested in the Crucifixion, he was especially interested in seeing people nailed down and being subjected to people of greater power. He had phantasies of himself being beaten and rescued, and rather by preference takes the slave's position, although at times he says the slave is bound by a chain, it is a gold chain and it is a very weak one that could be easily broken. But he is the slave who is the powerful slave, and it will be seen here that he is not simply just the slave but he is the slave who makes Dickie the king, maintains him in his kingdom like the Premier who occupies the principal state office over the weakly King. He maintains the kingdom for the king and he is really the strong man, so in their position he occupies, either as king or slave, and he gets the expression of both components of his make-up with a desire for subjection on the one part and his desire for supremacy on the other. So ~~with~~ ~~their~~ affective and emotional relationships with each other, their phantasy lives place each in

8 in to the other, almost with this devilish ingenuity if I may be permitted.

In several of their joint experiences that wherever Dickie intended to fall down in his role of leader, Babe always stepped into the breach and picked up the direction of the situation. In the Franks case it was Dickie who jumped in and insisted upon the alibi arrangement. I mean Babe, after Dickie would have let it go by. It was Babe who insisted upon sending the last telephone message and taking such chances to bring the whole thing to a successful combination, after Dickie was convinced that they were fighting a losing cause, and that there was no sense in subjecting themselves to any further danger. He comes in and takes the reins wherever the other boy falls down.

It is significant that these boys, both of them had in mind, in Babe's case probably not especially seriously the possibility of killing the other member of the compact, but Dickie did think of killing Babe and the reason he thought of killing

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Babe, as he gave it to me, was because Babe after all had no stomach for these criminalistic activities, and he felt because of that the day might come when he would get him into trouble, and he went so far at one time as to interview another boy with the object in view of seeing whether he could not replace Babe, if he felt that Babe should become so dangerous that he would have to do away with him.

It is further significant and I should have said it with reference to Dickie, that all of Dickie's life from the beginning of his anti-social activities have been in the direction of his own destruction. He has been headed from the beginning for crime and self-destruction. Now, we don't ordinarily think of suicide as being more or less the end picture of a course of life which for years has consistently tended towards self-destruction, but certainly it very frequently is, and all of Dickie's activities that have been directed in this criminalistic channel have been headed towards destruction and he himself has definitely and

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and when he told me that he was satisfied with his life and that so far as he could see, life had nothing more to offer because he had run the gamut , he expressed in saying that with the feeling that he was at the end of the situation.

He lived his life out, that he had come to the to logical conclusion which his instinctive tendencies had for years been propped/

Babe on the other side has definitely constructive capacities of an intellectual character. Now, I do not believe, as I said, that the Franks homicide can be explained without an understanding of this relation. I can not see how Babe would have entered into it at all alone because he had no criminalistic tendencies in any sense as Dickie did, and I don't believe Dickie would have ever functioned to this extent all by himself, so these two boys with their peculiarly inter-digitated personalities come into this emotional compact with the Franks homicide as a result. A

Q As a result of your examination and observation of the defendant Richard Loeb have you formed an opinion as to his mental condition on the 21st of May,

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1924?

A Yes, sir.

Q What is that opinion?

A Well I have practically expressed it. He was the host of anti-social tendencies along the lines that I have described; he was the host of an infantile emotional makeup which was a long way from the possibility of functioning harmoniously with his developed intelligence. He was going in the direction of a split personality because of this inter-unresolved conflict and it was that type of a personality, related as I have described to Babe's, and in the way in which I described it that came to this final issue on the 21st of May.

Q Is that condition the same at the present time?

A It is the same, practically. I should say perhaps that Dickie might not be as well today as he was then, but it is practically the same.

Q What is your opinion as to whether his mental condition on the 21st of May was normal or otherwise?

A It was otherwise, decidedly.

Q Can you give a short descriptive term as to

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what his makeup was or what his mental condition was on the 21st of May, 1934?

A Well, I have said that the main outstanding feature was his infantilism. I mean by that these infantile emotional characteristics. That is the outstanding feature of his mental condition. He is still a little child emotionally, still talking to his teddy bear.

Q Are you able to fix the emotional age of Richard Loeb on the 21st of May, 1934?

mental

A The ~~emotional~~ age?

Q And emotional?

A Well, emotionally he is infantile, I should say some where around four or five years old, perhaps a little older. Certainly not over seven or eight. Intellectually, he passes his intellectual tests very well.

Q Now, have you an opinion as to the mental condition of Nathan Leopold, Jr., on the 21st day of May, 1934?

A Yes.

Q What is that opinion?

A Well, he also is the host of a relatively

infantile emotional aspect of his personality, but he has reacted in a differently -- he has reacted by a defense mechanism, which has produced the final picture of a marked disordered personality makeup in the direction of developing feelings of superiority, which places him very largely out of contact with any adequate appreciation of his relations to others or to society.

Q And what would you say was the emotional age of Nathan Leopold, Jr. on the 21st of May, 1924?

A Well, he is still very young. It is very similar to Dickie's, anywhere from five to seven, perhaps, but intellectually he measures up very high.

Q And is that true today?

A That is true today. *

Q Now, will you please -- pardon me. Doctor, would you elaborate for us a little bit more the functions of the emotions in relationship with the mind and the necessity in a normal human being for them to function on the same plan?

A The old psychologists used to split up the mind into various faculties which they called the will

intellect and feelings or emotions. We still use those terms. We differ from the old psychologists because the old psychologists regarded each one of those things as separate entities, as they called them faculties that had separate existence. The will was thought of very much like it was, like a motorman presiding over the activities of an individual. Now, we know that the will and intelligence and feeling are only different aspects of a unity and that they all function together and that the harmonious function of that unity depends upon their relations.

The individual, the normal individual who grows up develops all of these components and parallel experiences. An individual has to feel his way into the world in the same sort of a way he has to think his way into the world. The child can not possibly have the feeling of attitude toward responsibilities, for example, as the adult has, and that is generally recognized, and therefore the child is not held to accountability in the same way the adult has, no matter how much he might learn intellectually by rote as to those responsibilities,

15 so that we have to know and we have to feel
at the same level and we have to know things
and know that we know them by feeling that they
are true. And there are two aspects of the same
psychological function as it were like the facets
of a crystal. You might look at the crystal from
one side or the other; if you look at it from one
side you see the intellectual aspect in the fore-
ground and if on the other side it is the emotional
aspects in the foreground, but the more you
tend to separate these two facets the more you
permit one to go on developing less -- out of
relation to the other the more the energies of
that individual are poured into one direction and
don't get into the picture, and the other direction
the more a discrepancy is set up as between what
one thinks and what one feels, and that discrepancy
gets greater and greater until there is what we
call an inner conflict in which we want things
but we cannot direct ourselves through our
intelligence in a satisfactory way to bring them
to pass. And such people spend their lives

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dreaming dreams to accomplish nothing.

Q Now, will you tell us a little more in detail how the defects in the personalities of Richard Loeb and Nathan Leopold, Jr. entered into the commission of a homicide of Robert Franks?

A Well, the homicide as I have already stated was to be the perfect crime. That is Dickie's objective. That is Dickie's formulation.

Now, because of the affective and emotional relationships between the two boys, because of the identification of Babe with Dickie, because of Babe's desire to play this part with Dickie, that puts him in this double relationship of superior and inferior. He is willing to fall into this play into this plan because of the emotional premium that the relationship offers him. He is willing to do it because it gives him the opportunity for expression along the lines that are essential in his feeling. If he should find the expression,

disparity
Q Doctor, would the ~~superiority~~ stated in the case of each one of these boys between their emotional development and their intellectual develop-

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ment in any way affect their ability to resist their criminalistic tendencies, if any?

A Surely, a wide disparity of that sort throws the whole personality out of balance and therefore destroys or tends to destroy their capacity for social adjustment along generally conceived conventional lines.

MR. W. BACHRACH: You may cross examine.

CROSS EXAMINATION

By

Mr. Crowe.

Q Doctor, when is the first time you came to Chicago in this case?

A The first of July is my recollection of the date.

Q And how long a time did you remain in Chicago in that particular business?

A I think it was about ten days.

Q You returned to Washington about the 10th of July?

A I went to New York.

Q Well, you left Chicago?

A I left Chicago, yes.

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Q How much, if anything, have you been paid for that particular visit?

A I have been paid at a per diem rate of two hundred and fifty dollars a day.

Q Do you expect any more?

A At the same rate.

Q Do you expect any more than the two hundred and fifty dollars for that time?

A No.

Q So for every day you have put in this case you expect two hundred and fifty dollars a day?

A Yes.

Q And you have no understanding you will receive any larger fee later?

A None whatever.

Q Or any additional payments?

A None whatever.

Q Do you remember the case of Gonzales vs. The United States that was tried in Washington D. C., some time in 1912 or 1913?

A I think I do. Gonzales I have known very well. He is a patient in the hospital now.

Q And did you take any part in that trial?

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A I don't remember whether I testified or not. Gonzales -- I may have testified. You know whether I did. I am not sure, I had a good deal to do with the Gonzales case.

Q Well, do you know whether you testified in that trial or not?

A I am not sure. I suspect I did but I am not sure about it.

Q Did you make any report in that case that was used in evidence?

A I don't know.

Q Well, if there is a Doctor William A. White who is mentioned in there, that would be you?

A Yes, sir.

Q Especially if he is designated as the superintendent of a government hospital for insane?

A Yes, sir.

Q You would be the Doctor White?

A Yes, sir.

Q Now, Doctor, when you were talking to Nathan Lepold did you ask him who actually struck the blows that resulted in the death of Robert Franks?

A No, I don't think I did.

Q Did he tell you who actually did?

A I don't think he did, no.

Q Was there any reason why you did not ask him who the person was who actually struck the blow?

A I don't think of any especially, except it had no significance as regards their guilt one way or the other.

Q Did you ask him at that time or during any of your subsequent interviews with whom the crime had originated, in whose brain the crime had originated?

A I don't know that I did, but my description already indicates what I think about that.

Q When you talked to Richard Loeb did you ever ask him with whom the crime had originated?

A I don't remember asking such a specific question.

Q Or did you ask him who struck the blows which resulted in the death?

A I don't think I did.

Q Had you read the confessions that appeared in the newspapers purporting to have been made by these

two boys?

A I had read Dick's confession. I don't think I had read Babe's.

Q Well, you knew in a general way each boy blamed the other for having originated the crime?

A Yes, I read that.

Q And each blamed the other for having committed the actual killing?

A Yes.

Q And that was of no moment or consequence to you in forming your opinion in this case?

Well, I don't recall my mental state regarding that particular thing. I don't recall asking the boys that question.

Q Did you ask Richard Loeb to detail the manner in which the crime was committed?

A I don't think I did. I knew that pretty generally.

Q Well, did he tell you the details of the crime?

A I did not go all over the details of the crime with the boys, no.

Q Well, did he tell you any of the details of the crime?

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A I asked some questions about matters that I thought were pertinent a, about the chisel, about the acid, and about things of that sort.

Q Did you ask Richard Loeb or Nathan Leopold, Jr., to give you the details of the crime?

A No.

Q Now for how long a time did you question both of these boys while they were in each other's company?

A Oh, practically not at all.

Q Well, they were in each other's company occasionally?

A Well, I think the only time I questioned them at all when they were in each other's company was particularly this week, when I questioned them perhaps half an hour, each separately, when they were in the same room, and occasionally they were together for a few minutes when they were shifting from one to the other, but practically the entire examination was conducted separately.

Q Would it make any difference in your opinion, Doctor, if the facts were both of these boys while

in the custody of the authorities, each insisted that the crime had originated in the brain of the other and each strenuously that the actual killing was done by the other, and they showed so much heat that for hours they would not talk to one another and had threatened personal violence to one another for being blamed for the crime.

A No, I practically knew that. Not all of it, but I knew in a general way that attitude of the boys.

Q Well, would that indicate to you that situation that one was a slave and the other the king?

A I don't think that would have any bearing on the discussion as I have developed it.

Q Have you any opinion as to who actually committed this murder, which one of the two?

A Which one did the actual --

Q Yes.

A I think so.

Q Which one, in your judgment?

A I think it was Dickie.

Q Do you know of any reason why he should not have

all the other facts and circumstances in reference to the crime.

A Well, I presume he wanted to avoid the final issue, to lessen the offense.

Q He wanted to lessen his responsibility?

A Sure.

Q Now, Doctor, you said when you talked to Richard Loeb he would some times answer a question no, then look at you a while and hesitate, and then say yes. Is that true?

A Yes, that is substantially so.

Q And that is one of the elements that you took into consideration in forming the opinion as to his mental responsibility, Doctor?

A One of the elements that I take in forming my opinion as I have indicated its bearing.

Q Now, you were brought in to see these men by their lawyers?

A Yes, sir.

Q The purpose of your visit to them as they and their lawyers understood it, was to prepare a defense to the charge of homicide that had been brought against them?

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A It was not my purpose. I have described my purpose this morning. My purpose was to examine the boys and let the lawyers know what I thought about them.

Q Well, they knew who you were?

A Yes.

Q It had been explained to them that you were an Alienist?

A Yes, sir.

Q Don't you think they had sufficient intelligence to understand that it was a purpose of the lawyers to have you examine them?

A The boys had sufficient intelligence?

Q Yes.

A Oh, yes.

Q To prepare a defense?

A Oh, I don't know whether -- about that aspect of it, I was not asked to prepare any defense.

Q But in your judgment did Nathan Leopold, Jr. have sufficient intelligence when you and the attorney went in to see him that the lawyer had brought you there for the purpose of preparing a defense for Nathan Leopold, Jr. upon this trial of

murder?

A He had sufficient intelligence to know such thing if he was told it. I don't know what the lawyer told him.

Q And the lawyer remained there?

A He remained there.

Q Nathan Leopold, you say cooperated with you in every detail?

A Yes, sir.

Q Now, the fact that the State's Attorney, when the State's Attorney or anybody on behalf of the State went to see Nathan Leopold he refused to communicate with them in any manner and that he cooperated very freely with you, answering freely all questions put to him, what would that indicate as to the mental condition of this defendant?

A Indicate that he was defending himself from agencies that he thought were inimical to his safety.

Q And was willing to cooperate and work with anybody who would pull him out of his dilemma, is that correct?

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A Yes, that would indicate it, or there are things in that situation that don't indicate that thoroughly, but that would indicate it.

Q What are some of the other things?

A Well, for example talking to Babe about this situation in which he found himself he told me his attitude was this, that he had advised his father to disinherit him, cast him out, and let the law take its course, and let him be hanged, That was his attitude toward the situation. Now, that is rather contradictory to the other.

Q Did he tell you about the possibility of his entering a plea of guilty if his father could arrange a friendly judge?

A No, he did not say anything about that at all.

Q Or did he tell you about his chances of pleading not guilty before a jury?

A He did not discuss that.

Q Or did not go into that?

A No.

Q Did he talk about the ability of his family to hire able lawyers and bribe a jury?

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A No, he did not say anything about that at all.

Q Now, how many persons -- from how many persons did you get any information in reference to Nathan Leopold, Jr. that you base your opinion on?

A To the best of my belief at this moment, I did not get any information from anybody except Nathan Leopold, Jr. and some assistance in the Orientation with reference to the whole situation from Mr. Bachrach.

Q So basing your opinion as to the mental condition of Nathan Leopold, Jr., you are depending entirely on information you got from the defendants' attorneys?

A I beg pardon, I want to supplement that, I had read -- there is one other thing I did have, I had read the so-called Bowman and Hurlburt report which had been prepared previous to my coming to Chicago and which was an examination of both of these defendants, and was put in my hand as being so much factual material they had gathered, so I would not have to go over it, for example all kinds of X-ray examinations and things that everyone could not work together, that would have to be made by one

one person and put at the disposal of others.

Q To what extent is your opinion based on information derived from any other source except from Mr. Bachrach and Nathan Leopold, Jr. himself?

A Why not at all, I don't believe.

Q So in other words you are relying upon what they told you and basing your opinion on that?

A Sure, just as you rely when you want to know what is the matter with the patient, you examine the patient.

Q Now, is there anything the matter with Nathan Leopold, Jr. physically that you can point out to us?

A I did not examine him physically myself. There was a physical examination made in this report, and there are some indications, but I was not especially interested in the indications as they developed there for these purposes, for purposes of this here.

Q Well, is there anything in his physical makeup that you can point out to us that would indicate to us in any way that his brain is affected?

A Nothing specifically relating to his brain.

There are certain functional abnormalities that were brought out in the report. I don't know as I could detail them all. I remember pulse rate and and metabolism, and things of that sort that indicate certain departures from the normal in its functions

Q Well, did you take those into consideration in making up your mind as to his mental condition?

A No, it is not my habit to take into consideration in this kind of a situation because they have no reason which is obvious to me. If you want to determine what is the mental condition of a person you examine into his mental condition, you don't examine something else. Now, you might examine the physical condition and find all manner of things, and you could not determine from those physical abnormalities what the mental state was. The help that they give is to help to explain how the mental state came to be what it was. If you want to know the mental state you examine the mental state and then examine the physical state if you want to help find out how that came about, so if there was anything the matter with this boy mentally, these physical factors would have

absolutely no meaning in this situation. If there is something the matter with them mentally then we don't give the physical factors, we don't need the physical factors to hitch on, they are only confusing.

Q You made no physical examination of Leopold, and --

A No, either one.

Q From looking at him he represents to be a normal healthy man of the age of nineteen years or thereabouts?

A Striking under-stature that is all.

Q He is very well developed muscularly, isn't he?

A Yes.

MR. CROWE: Can we recess now, it is four o'clock.

THE COURT: You cannot finish with the doctor tonight?

MR. CROWE: Oh, no.

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

(Whereupon an adjournment was taken until

Saturday, August 2nd, A. D. 1924, at the hour of ten o'clock A. M.)

Saturday, August 2, 1924.

10:00 o'clock A.M.

Court convened at 10:00 o'clock A.M.,
Saturday, August 2nd, 1924, pursuant
to adjournment heretofore taken.

Present: Same as before.

W I L L I A M A . W H I T E ,

resumed the stand as a witness on behalf of the de-
fense and being further cross examined by Mr. Crowe
testified as follows:

Q Now, Doctor, you say that Loeb at times considered
killing Leopold.

A Yes.

Q Your only authority for that is Loeb's own state-
ment?

A That is all.

Q When he was confessing to the State's Attorney
of this County there is no reason that you know of
why he should not have told the State's Attorney all
the people he intended to kill.

MR. BACHRACH: We object. Whatever he confessed to the State's Attorney has no relation to the present inquiry.

THE COURT: Oh, let him answer.

THE WITNESS: I don't see any reason why he should. I do not know anything about the circumstances specifically at that time.

MR. CROWE: Q Well, the fact that he told you and did not tell me that he intended to kill members of his family and also his slave is one of the elements that you took into consideration in giving your opinion as to his mental condition.

A I don't think I considered that he did not tell you.

Q But the fact that he did tell you that he intended or had contemplated killing these people is an element that you took into consideration in forming your opinion as to his mental condition.

A I took into consideration everything that he told me, everything that he did, and everything that he did not say so far as I could interpret it.

Q Now, did Leopold ever contemplate killing Loeb, to your knowledge?

A The only information I have about that is the letter that he wrote Dickie in which he threatened to kill him and which I asked him about, and he said that he never really had considered it seriously.

Q As I understand it, doctor, there are two elements in the make-up of an individual, there is the intellect and the emotion?

A Those are two elements, yes; not the only two.

Q For the purpose of discussing the condition of the minds of these men, did you consider those two, emotion and intellect?

A Yes, I did consider them.

Q Now, there are recognized tests among doctors for determining the age, the intellectual age of the subject, are there not?

A There are tests, yes sir.

Q Did you apply those tests in this case?

A I did not apply them, but one of my confreres did, and acquainted me with his result.

Q Dr. Hickson?

A Dr. Healy.

Q Did you talk to Dr. Hickson?

A No.

Q You have not conferred with him at all in this matter?

A No.

Q Now, you are of the opinion that Richard Loeb intellectually is plus par; he is above the ordinary?

A He showed up very well on the intellectual tests, yes sir.

Q Now, as to his emotions, you said yesterday he had the emotions of a child three to five; and then you raised it, I think, to seven?

A Well, I am not sure as to the age limit; I don't know that it would be possible to fix an age limit.

Q You mean, there is not any test for that, or any standard, as there is for the intellect, is there?

A There are not any well-standardized tests for such things, no sir.

Q That is a guess, or a matter of opinion?

A Based upon experience, of course.

Q Have you any children, doctor?

A I have a step-child and a grandchild. None nearer than that.

Q Now, which is responsible for the murder in this case; the emotional man or the intellectual man?

A Well, you cannot split a man up that way into two parts. You can look at each aspect of him, but when the man acts, he acts as a whole, with all of his powers.

Q Well, where does the crime originate, in the emotions or in the intellect?

A Well, I hardly believe that can be answered, except to say that the emotions represent psychologically the instinctive drives of the individual. If we were going to speak in this manner, and try to say where action originated, we would say it originated in the drive of the instincts, which are represented psychologically as emotions or feelings, more particularly. But that I don't believe would be a complete statement of the situation.

Q Could the intellect here have stopped the emotions at any time during the six months they were planning this crime?

A I don't know.

Q Now, doctor, do you think a child of five years of age, with the emotions of a child of that age, or a man with the

emotions of a child five years of age,

would show any great consideration for the feelings of others?

A Ordinarily not.

Q Do you think a man with the emotions of a child five years of age, when he got into a serious predicament which was going to bring disgrace upon himself, would ask the authorities not to divulge the names of decent girls who were -- very friendly with him?

A Not just from that point of view. Now, if you will be a little more specific: you are evidently talking about the defendants.

Q I am talking about Richard Loeb and Leopold.

A Yes. Well, you remember that I told you about Richard Loeb that he was always hesitating between more or less opposite courses of thinking and feeling.

Q How about Leopold?

A Leopold is very much more definite, but in the course of his examination there were moments when he showed the essentials of emotions which under ordinary circumstances he did not show at all.

Q Well, regardless of these two men a child of five would not show that same consideration for the

feelings of other persons, would he?

A Ordinarily not, but then one cannot lump all children of five, of course, in the same category; and then one of the characteristics of people who have these discrepancies in their makeup is the inconsistency -- the consistency of the inconsistencies of some of their types of behavior.

Q Would a child, five, who had committed a murder of this sort, in a recital of it, when asked who else if any he had contemplated killing, give the name of the grandson of his father's partner, and then say, "Can't that be suppressed, because I don't want to get Dad in any difficulty with Julius Rosenwald?"

A Now, of course, such a question as that, Mr. Crowe, is impossible for anybody to answer. We --

Q Would a child of five show that concern, show that he did not want to get his father in trouble with his partner?

A Let me finish my answer.

MR. CROWE: I would like to have you answer that question.

MR. WALTER BACHRACH: I object, your Honor.

MR. CROWE: Then he can explain it.

MR. DARROW: No.

THE WITNESS: No, I am going to explain why nobody can answer that kind of a question.

MR. CROWE: All right, go ahead.

THE WITNESS: The person who is a student of human conduct gets his opinion from actual existing human situations. Now you are painting a hypothetical situation that never existed, and does not exist, and does not hitch on to anybody in their findings, and pure figments of the imagination. No human being can tell what a person who does not exist would do under circumstances that do not exist.

MR. CROWE: Q All right. Now assume, Doctor, that when I questioned the defendant Richard Loeb he told me that they had contemplated killing Billie Deutsch among others, and I asked who Billie Deutsch was, and he said "He is the grandson of Julius Rosenwald. Can we keep that name out because Dad is out at Sears, Roebuck with Rosenwald, and it might embarrass him in his relations with him." Does that show the emotions of a child of five, or the emotions of a

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grown man?

A It did not show either one. It shows a certain amount of affection that the boy had for his father and a desire to act in accordance with that affection.

Q Affection is emotion, is it not?

A Affection is emotion.

Q Would that be the emotion of a child of five or of a grown man?

A You might expect it from either one.

Q This infantile emotional state that you say exists of a boy of five years in Loeb, has that existed all the time in him?

A Since then, yes.

Q Since five, and it has always been undeveloped, has it?

A Yes.

Q And exists alongside of and in the same individual as superior intelligence?

A Yes.

Q Now, which was it, this superior intellect or the five-year old emotion that planned the murder and kidnapping of the little boy with the minutest details

that were six months in the making?

A I think I have already answered that by saying that the essential drive to action comes from the emotional side.

Q Which planned it?

A The boy as a whole acting as a unit, did the planning, but the drive that directed him in that direction was more largely emotional than intellectual.

Q Then if the emotion and intellect cannot be separated and the boy as a whole did this, would it not be fair then in stating his age to take the plus age of the intellect and add it to the other and average it?

A No, that would be ridiculous.

Q If this condition of the two levels were a constant condition in Loeb, how do you account for the fact that for a part of his time he could lay aside all of this and pursue his university studies and appear normal to his associates, with nothing unusual observed by anybody, so that even his immediate family were startled when this crime was fastened on him.

Will you explain how such an emotional infantile

character could appear so normal in all of his human contacts?

A Unfortunately that is a very common experience with these people rather than uncommon. These undeveloped, emotional youngsters enjoyed the affection of their teachers and their parents because of their useful and childlike characteristics which attracted their love and affection. The very nickname, Dickie, would indicate the attitude which his parents had towards him, they considered him a youngster, and he was a lovable youngster, and there was a great deal of affection displayed towards him by those who met him, and that is the very characteristic that blinds people to the things that are going on beneath the surface and do not show to the untrained eye on the surface. We are dealing with that kind of situation all the time, and are trying to show people how to look for danger signals underneath rather than be misled by what appears to be a smooth and untroubled surface.

Q What is criminal intent?

A I don't know, you tell me.

Q You don't know what it is?

A Not if it is a legal term, and I take it that it is. I suppose it is the intent to perform a crime, I don't know.

Q Have you not referred to criminal intent in your testimony?

A I said criminalistic tendencies.

Q What is that?

A Tendencies to conduct which lead in the direction of some of the defined crimes, anti-social conduct.

Q What is responsibility, doctor?

A Responsibility -- in my opinion -- I have a different opinion of it from most people, is a legal fiction which is pinned on to the defendant for the purpose of justifying a verdict either of guilty or not guilty as the case may be.

Q That is the only definition you care to give of it?

A I think that state of responsibility is an archaic state like that of the old psychologist considered the will as something within the individual. The state of responsibility ordinarily used in law, as

near as I can understand it, is something which is conceived to reside in the individual which he may have or may not have, the same as he may have a molar tooth or not have it. I conceive it is the critique, it is the expressed formulated critique of society that when society thinks a person ought to be punished they say he is responsible and when they think he ought not to be punished they say that he is irresponsible. That is my conception of responsibility.

Q Then you do not agree with the law and think that the law is wrong?

A I am not in accord with the law in a good many things, in my thinking.

Q You think that the law is wrong in its definition of responsibility?

A I have explained what I think about responsibility, but I understand that the law defines it differently and to that extent I do not agree with the law.

Q In your opinion did Richard Loeb who appeared normal to his teachers at the university and to his fellow students and who, for at least six months, had partaken in planning the murder in question in

this case to the minutest detail, have the power of choosing to carry out that plan or not. Answer yes or no.

A I can't answer it yes or no.

MR. WALTER BACHRACH: Objection.

THE COURT: Do you say you can't answer?

THE WITNESS: I said I couldn't answer it yes or no, sir.

MR. CROWE: Q What is your answer? If you cannot answer it yes or no, answer it anyway you want to.

A Well, of course I know what he did. Whether he could have avoided doing it or not is largely a metaphysical question. He did not avoid doing it, and so far as I can see inside of him, the powers that were at work within him at least impaired his capacity to choose very materially.

Q Now, is he in any different position in this respect than any other criminal?

A That is one of those other vague terms. I don't know. I can't talk about any other and every other criminal. A criminal is not an entity that is clearly defined.

Q You said, did you not, the fact that he did it showed that he could not avoid it?

A No, I didn't say that. I said the fact that he did it -- he did it; that is the fact. Whether he could avoid it or not I conceive to be largely a metaphysical question, an unanswerable type of question, but so far as I am acquainted with the forces that were at play in him, I am sure that he certainly was seriously impaired in his capacity to have chosen not to do it.

Q Are you able to tell from your examination of Richard Loeb whether or not on the 31st day of May, 1924, he knew the difference between right and wrong?

A Are you talking now about the difference between right and wrong in the legal sense?

A I am talking about right and wrong in any sense.

MR. WALTER BACHRACH: I insist the State's Attorney say what he means.

THE COURT. You may ask him both ways. Ask him one question first.

MR. CRONE: Q What is right in the legal sense,

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and what is right in the moral sense?

A That is what I would like to know. I am not very familiar with the Illinois statute. I am accustomed to the language, "Capacity to differentiate right and wrong." I never heard that defined; I never heard any legal definition of what that meant.

Q What is your definition of right, regardless of the Illinois statutes?

A Well, right is in conformity with the mores.

Q And did Richard Loeb on the 21st day of May, 1934 know the difference between right and wrong?

A He knew intellectually, for example, in my opinion, that murder was prescribed by the law; but I conceive that the knowledge of right and wrong which the average person possesses -- and again I am talking about a purely hypothetical type of individual that did not exist --

Q I am talking about Richard Loeb. Did Richard Loeb know that it was wrong to kill Robert Franks?

A He knew intellectually that it was against the law.

Q Did he know it was morally wrong?

A He had no adequate feeling attitude toward it

moral wrongfulness.

Q But did he have sufficient capacity to refrain from killing?

A I don't know.

Q Is Richard Loeb, in your opinion, insane?

MR. WALTER BACHRACH: I object to the question.

THE COURT: Objection sustained.

MR. CROWE: Q What distinction, doctor, is there between mental illness and insanity?

A Well, mental illness is sickness of mind. Insanity is something you gentlemen know about; I don't. It is purely a legal and sociological term. It is not a medical term at all.

Q You do not use the word insanity?

A Yes, I have used it occasionally. I used it in the title to a book, but I do not use it medically; I do not use it as a classification of mental conditions. Persons are insane after a court of competent jurisdiction has brought in a verdict that they are insane, and so classified them legally. That is the only thing I mean by insanity.

Q When you used the word "Insanity" as the title of your book, what thought did you intend to convey

by it?

A I was talking or I was discussing in that book the question of mental disease in relation to the criminal law, and I picked out the word "insanity" because I thought it was a good title; that it would convey a better meaning to the average person who was looking over the bookstalls and they would be more apt to take it. If I had used some recondite philosophical term they probably would not have had anything to do with it or would not have known what I was talking about, or thought they would not.

Q Now, doctor, in your opinion, Richard Loeb is mentally sick?

A Mentally sick, yes sir.

Q And you would not say that he was insane?

MR. WALTER BACHRACH: I object.

THE COURT: Sustained.

MR. CRONE: Q Now does the fact that it is a part of their defense --

A It is a what?

Q -- it is a part of their defense and the desire of his lawyers that he should be mentally sick and not called insane, does that cause you to back away

from a definition of insanity?

MR. WALTER BACHRACH: I object to the question.

THE COURT: Sustained.

MR. CROWE: Q Have you got your original report here?

A No sir.

Q In your original report didn't you say these defendants were insane?

MR. WALTER BACHRACH: I object.

THE COURT: Sustained.

MR. CROWE: Q Did Nathan Leopold, Jr. have the power of choice -- I mean this same Nathan Leopold, Jr., who for years pursued the study of ornithology, and you may assume that he was above the average of his class in law school, in whom nothing abnormal was noticed by those in daily school and social contact with him, -- in your opinion did he have the power of choice to do or not to do this carefully planned kidnapping and murder, planned previously in detail both as to its execution and in its avoidance of detection?

A I don't know.

Q In this book you were talking about did you not

define insanity?

A I think I defined it in some such way as I did just now, as a legal and social classification. I have also defined it as being or meaning synonymous with certifiable.

Q You wrote another book, the something or other. Didn't you define insanity in that?

A Psychiatry.

Q Did you not define insanity in that book?

A I did not discuss insanity in that book. So far as I know, the word does not exist in that book except in the footnotes, they say it is a legal and sociological classification. I may be wrong; I have not read the book recently, but I think that is right.

Q Doctor, from your examination of Nathan Leopold, Jr., you are not able to tell whether he had the power of choice on May 21st, 1924?

A I cannot, and I do not believe any human being is.

Q Do you know whether or not Nathan Leopold, Jr. from your examination, knew the difference between right and wrong on that day?

A He knew it intellectually, but he did not have the feeling attitude that was in conformity with such

knowledge, in harmony with it.

Q Isn't that true of every criminal?

A I haven't personal acquaintance with every criminal. I cannot tell you.

Q Well, with other criminals you examined, isn't that true?

A No. The last murderer I testified for killed his wife and immediately thereafter threw himself over her body and wept and prayed to God to put the breath of life back in her body, and came down to the station house and confessed?

Q Didn't he know the act he did was wrong?

A He did.

Q And before he committed it he knew it was wrong?

A I think so.

Q Well now you were able to tell that in his case, were you?

A I was able to say I thought I did because he said so, he testified, that he gave evidence of it in his actions and said that he did and was sorry for it.

Q If Nathan Leopold said he knew that this murder was wrong, would that have the same weight with you?

A Well, I have no doubt he would say he knew it was wrong so far as the law of the land was concerned, but his daily conduct on the emotional side negatives the assumption that he has an even remotely feeling attitude toward it.

Q If Nathan Leopold, Jr. said he had the power of choice on that day, you would believe him?

A Well, I might believe he was giving me his best judgment, but I don't believe anybody could go back into the past history of a person, and say whether an act that has been accomplished could have been done otherwise. That is a purely metaphysical speculation.

Q Well, do you know of any way you can determine whether any person has the power of choice, or knows whether a given thing is right or wrong?

A I don't see that there is any special necessity for determining such things from my point of view. You have a practical necessity here, and I have tried to tell you how I thought that is carried out through the fiction of responsibility.

Q In your testimony you said Loeb was the master

criminal of the two?

A I said he thought he was.

Q Is he?

A What do you mean; is he the leader of the two?

Q Is he the leader of the two in this crime?

A It is almost impossible to separate these two personalities, and put one of them in the position of leader, and the other in the position of defendant.

Q Well, in your judgment which --

MR. WALTER BACHRACH: Just a minute. Let him finish his answer.

MR. CROWE: All right.

THE WITNESS: If you will wait I will tell you what is in my mind, and that is the best I can do. The character of the act was the outgrowth much more of Dickie's way of thinking and feeling than of Babe's. But the relationship that was maintained between them was largely maintained as the result of Babe's intellectual agility and insistence that their quarrel should not be final; that their relationship should continue; and he was willing to make all sorts of concessions to the continuance of that relationship, and was intellectually and otherwise cleverly finessing

the relationship so as to maintain it. So the continuance of the relationship is probably due more to Babe's finessing, and the characteristics of the act more to Dickie's way of thinking. I cannot separate them any more than that.

Q Which one in your judgment has the stronger mind?

A That is another question that does not mean very much. What do you mean?

Q Which has the stronger personality?

A I will try and take that sort of question the best I can. I should say Babe had the most definite, clear-cut, cleanly conceived objectives, that he had a more highly developed aspect of his mind, namely, his intelligence, with which he was pursuing those objectives. Babe has a largely constructive component in his personality makeup. He is building up something, if only defenses. On the other hand, Dickie's whole makeup impresses one as being more upon the other side of the equation, more of a tendency to disintegration, to follow along the lines of least resistance, and lack of constructiveness.

even in building up defenses.

Q For the purpose of this question, assume that in this relation or association between the two defendants, there is a third person; that it has been the habit for a long time past for Loeb and Leopold and a boy named Rubel to chum around together, and each week on set days they dined, first at Loeb's home, next at Leopold's home, and then at the hotel where Rubel lived; and that that relationship has continued for a long time. In discussing the association between these defendants, you stated that their relationship was that of king and slave, did you not?

A From the standpoint of Babe's feeling towards it only.

Q Would it modify your opinion if you learned that in reality this close association was of three young men, as I have stated?

A I don't know. You will have to go further than that.

Q Well, the fact that there was an association, not between these two alone, but that there were three intimately associated together for a long time past; would that change your king-slave theory?

A You have not been sufficiently descriptive of this third component to give me anything to think about at all, except that there is another boy somewhere in the world.

Q The fact that these two have a third companion, that they were intimate with; would that make any difference in your king-slave theory?

A Not just in the way you have stated it. You have not stated anything that argues either one way or the other.

Q Well, would it be wise now for the State's Attorney to have the third member of this trio sent to the psychopathic hospital for such study as you made of these defendants?

A I don't know anything about him, except from the name you have quoted. How can I have any opinion on that, -- and the fact that he knows these boys?

Q The fact of these two boys, by reason of their association together, you said brought about this murder?

A Yes.

Q When you know that not only did these two boys closely associate together, but that they had a third

companion who went to school with them, chummed with them, ate with them and palled with them, -- what influence did that third person have on their minds?

A I don't know anything about it.

Q You haven't any idea?

A You haven't told me anything about him except his name. How can I tell you?

Q You don't think it would be advisable to have him examined before he might commit a murder?

A I don't know anything about it. I haven't any data of any kind. There is no harm to examine him or anybody else, if you want to.

Q You knew that Nathan Leopold with his super or plus intellect, was studying law?

A Yes sir.

Q Did you know that he had asked his professor about the various punishments that might be visited on the person who committed this particular murder?

A I knew that some such thing in general was discussed, yes.

Q He has a very remarkable memory?

A Yes, he has.

Q And you did not see him for a month after he had confessed?

A No.

Q You knew that his attorneys were, from what you have read and from what you have been told, preparing some kind of a defense for him?

A I presumed that that was their job, yes.

Q You knew that other doctors had visited him prior to your going in there?

A Yes sir.

Q You do not think that a young super-intellectual who was studying law and preparing a defense would try to mislead you?

A I wasn't very much frightened at any such possibility.

Q Do you think that Nathan Leopold would attempt to mislead you?

A I don't think he did.

Q Is he capable of doing so?

A I don't know. He hasn't, in my opinion. That is the best I can say.

Q And if he has lied about it, about the various matters that we have heard you discuss, that would

change your conclusion, would it not?

A I wouldn't be surprised if every comma and every dot over every "i" and every cross of every "t" might prove in some instances not to be in harmony with things as they were, but I think that my general conception of the whole situation is the correct one, and I have not been deceived in that. There may be some minor details --

Q Now going back, assume that he has fooled you and that the things that he has told you about himself which led you to the conclusion that you now have were all lies, then you would not have the same conclusion, would you?

A If things are all different from what they are, my conclusion in regard to them would be different from what it is.

Q From what he said they were, if things were different from what he said they were, would you have a different conclusion?

A You would have to specify that in detail. I don't know what you mean. If he said he had a blue necktie around his neck and the tie he had on was black, it

would not alter my opinion.

Q You do not assume, I presume, that you formed your conclusion that this man is mentally sick but not legally insane from the fact that he may have told you that he wore a blue necktie?

MR. WALTER BACHRACH: I object to that question because it has legal insanity in it.

THE COURT. It may be stricken out.

MR. CROME: Q You do not assume that I think that you formed your conclusion on blue neckties or red neckties, do you?

A No.

Q Now, take the matters and things that you have related upon which you base your opinion that Nathan Leopold is mentally sick as told to you by him are false, you would have a different conclusion, wouldn't you?

A As I said, if the things are different than they appear to be, naturally I would have to have a different set of conclusions.

Q Now if these fantasies that Richard Loeb told you about are greatly exaggerated by him or manufac-

tured by him, you would have a different conclusion?

A Not necessarily, no, because we sometimes in our examination of patients, when the patient cannot give us any fantasy life spontaneously, we ask him to make up any kind of a yarn, anything that comes to their mind, and from such a yarn we can get as intelligible an interpretation as to his fantasy life.

Q You have not any suspicion that before you got in some lawyer or other doctor might have told these defendants, these boys, to tell you certain things?

A You mean certain things that were not so? No, I have not.

Q You have not any suspicion of that sort?

A No.

Q And these boys have sufficient intellect and sufficient interest in this case to try and build up a story for you that would lead you to believe that they were mentally sick, haven't they?

A Theoretically, perhaps, they have, but I think probably they might have a little more sense than that. They may have sense enough to appreciate that it is to their interest to do just exactly what they did do, and that would be to be perfectly frank with me.

Q Now, Doctor, you say that Loeb has a splitting of personality, that is, a mental and emotional splitting.

A A beginning of a splitting.

Q Is that dementia praecox?

A Dementia praecox is an outstanding --

Q Is it dementia praecox, yes or no?

MR. WALTER BACHRACH: We object.

A I wont answer questions yes or no. I am entitled to state my answers fully.

MR. CROWE: Q All right, answer yes or no -- you cannot answer it by yes or no?

A You are trying to make me say apparently that Dickie has dementia praecox.

Q No, no --

THE WITNESS: Wait a minute, --

MR. CROWE: I don't care whether you say he has or has not.

THE WITNESS: All right.

MR. WALTER BACHRACH: I object to counsel arguing with the witness.

MR. CROWE: Q I am asking you whether he has dementia praecox and you are a very learned authority?

MR. WALTER BACHRACH: I object to counsel arguing with the witness.

THE COURT: If the doctor says he cannot answer it by yes or no and he may answer it in the manner he sees fit.

MR. CROWE: I first want to know whether he can answer it by yes or no.

THE COURT: He said he could not.

MR. CROWE: All right.

THE COURT: (To witness): Isn't that what you said, doctor?

THE WITNESS: Yes.

MR. CROWE: Q What percentage of patients admitted to St. Elizabeth's Hospital are suffering from dementia praecox, if you know?

A Perhaps thirty percent.

Q And you are in favor of the admission of cases of dementia praecox to hospitals, are you not?

A Yes.

Q Isn't that because you consider them legally insane?

A No.

Q Is dementia praecox insanity?

A I don't

know; that is for you lawyers to say.

Q What is moral insanity?

A That is another kind of insanity which I do not cozen. It is an old term.

Q What is depravity?

A Depravity is a moral term. It is not a psychiatric term at all. You know what it means as well as I do morally.

Q And you know what moral insanity means as well as I do?

A It is an old term which has been out of use for nearly a generation.

Q What used it to mean when it was in use?

A As near as I can recollect, it used to mean a type of mental disease that resulted in the commission of morally reprehensible acts as the result of emotional disturbance of some sort without any disturbance of the intellect or delusion or what we consider the obvious and necessary signs of insanity.

Q In other words, we have a case of it here, according to your notion?

MR. WALTER BACHRACH: I object to any inquiry about insanity.

MR. CROWE: Oh no. He does not say this is legal insanity, moral insanity.

MR. WALTER BACHRACH: We object.

MR. CROWE: Q Isn't that the situation we have here according to your notion?

A That is not the description of the situation here, no.

MR. CROWE: Can we take a recess now, your Honor?

THE COURT: Yes.

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

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Court reconvened pursuant to short recess heretofore taken, whereupon the cross examination of the witness WILLIAM A. WHITE was resumed by Mr. Crowe, as follows:

MR. CROWE: Q Doctor, you said yesterday it was rather a significant fact that Loeb, or Dickie, as you prefer to call him, would involuntarily state or begin a statement to you by saying, "Now, Teddie", and that was due to the fact that he used to take a teddy bear with him, and got into the habit of talking to a teddy bear. Are those exclamations, "Now, Teddie", involuntary?

A I don't think so altogether, no. I don't think they are entirely involuntary.

Q Would you say that some time during a lengthy conversation he was bound to begin some statement by saying "now, Teddie"?

A No, no; you evidently misunderstood me. I said that since he has been in jail he has continued to have these same types of phantasy that he has as a kiddie, and that as a child he used to in beginning

his phantasy indulgence, if you will, address his teddy bear with that phrase, and that now in jail he finds himself entering upon these phantasies with that same formula.

Q In other words, the "Now, Teddie" proposition originated after he got in jail?

A No.

Q That is, it was revived after he got in jail?

A I don't know whether it has gone on in the interval or not. But it was a part of his formula as a kiddie, and it is in his formula now. I don't know whether that specific thing has gone on during the interval or not. I presume it has.

Q Did you inquire?

A No.

Q You were not interested in whether or not he had revived this after he got in jail?

A It isn't because I wasn't interested. You might go on with these cases until this time next year, and you wouldn't exhaust the details. My objective was to get the broad conception of the mechanisms which were involved, and as soon as I felt satisfied about that,

I didn't follow out every little last detail, or I would not have been anywhere near through yet.

Q You only went into the important details?

A I went in sufficient to satisfy myself of what the situation was.

Q Well, you covered all of the important details?

A I covered sufficient details to satisfy myself what the situation was. I may have skipped some things that would be conceived important, if we had the whole story in all in its details before us. I wouldn't be surprised but what I did. But I satisfied myself as to what the situation was, and that was what I was after.

Q Your purpose was to form an opinion as to the mental condition of both these defendants on May 31st, 1924, the day of the murder?

A Yes.

Q That was your employment?

A Generally, -- and their existing mental condition when I examined them.

Q And in getting from them various or alleged facts as a foundation for your opinion you did not go

into the story of the crime of that day at length at all?

A I did not. It wasn't necessary to do that.

Q You thought it was more important, to know what state of mind Loeb was in on May 21st, 1934, that you know what he did when he was five years of age, than it was to know what he did upon that day?

A No, that is not a fair statement of the situation.

Q You inquired at considerable length into what he did when he was a kiddie, as you term it, but you did not go into the details of this astounding crime?

A I knew the details of it sufficiently.

Q Where did you get them?

A I knew them from the Bowman and Hulbert report; I knew them from the public press; I knew them to a certain extent from the boys, though I did not discuss them much with them. I had various other colleagues that worked on the boys, and we all talked the things over together, and we were acquainted sufficiently well with all the details of the crime to use that knowledge in forming that opinion.

Q And you had no desire to get all of the details first hand from these boys?

A Well, it would have been impossible and foolish to have approached the examination with an original attempt to do anything like that.

Q Do you now think it was important in making up your mind as to who was the king and who was the slave, to know in whose brain the crime originated?

A I have told you what I have thought about that. As I said, it would have been a foolish thing to start the examination by examining into the details of this homicide. It is essential, if you are going to conduct a mental examination, in the first instance to establish a rapport with the people you are going to examine, and that would not have been a very wholesome approach to that end. So we started in with a lot of other things. By the time I got through I knew enough about those boys so that it was not necessary to go back and inquire into all of the miserable details of the crime.

Q And you were not interested sufficiently to ask either one of them who it was who actually did the

murder?

A No, I didn't have to ask. I knew when I got through with the examination, or thought I did. I was interested, but I wasn't curious.

Q Now have you told all of the examination you have made?

A No.

Q Well, give us what you have left out?

A I don't know whether I can remember everything or not, I will do my best.

I remembered after I got off the stand yesterday that I had forgotten to tell what Babe had told me he would do in case the case went against him, that is, in case he was to be executed. He told me that one thing he would do would be to accumulate about ten or write down about ten of the world riddles --

Q Now pardon me, Doctor, that is in event the case went against him and he was sentenced to be hanged?

A Yes; he would write down about ten of the world riddles, have them put in a safety deposit vault, appoint a commission of scientists who after his death would make an attempt to get into contact with him

for the purpose of seeing whether he could solve these

world riddles. A spiritualistic sort of performance. He was careful, however, to assure me that he did not believe at all in that sort of thing.

He said also that he expected there would be an interval of two or three months between the sentence and its execution, and that would give him time to write a book or books, he had not formulated just the plan of the exposition that he had in mind, but it was a plan to present to the world his philosophy. He felt that he was sufficiently unique, sufficiently unusual, sufficiently interesting to make such an effort worth while. He felt that he stood upon the stage where he could speak to the world, the world was his audience temporarily, and that that was a great opportunity to speak to the world and tell them his philosophy.

He admitted upon my questions that it was a philosophy of utter and absolute selfishness, and that it would be destructive if adopted by the world.

He wanted also to write what he called an apologia which would demonstrate among other things that he went to his end consistently and not as per-

haps some people may expect. That was one of the things I forgot to tell you.

Q Now what else?

A How?

Q I say what else?

A Yes. I did not mention also a number of other delinquencies in which these boys were engaged. They did a whole lot of criminalistic things over the period of the last year or so.

Q That is, they told you they did?

A They told me they did, yes.

Q And you believed them of course, doctor?

A I believed this that I am going to tell you.

Q Is there any of the stuff they told you that you did not believe, doctor?

A Yes, I told you about Dickie; for example, that he himself did not know his own mind, just exactly where he stood with relation to certain things and it was quite impossible sometimes to be sure what his attitude was.

Q What about Nathan?

A Nathan knows where he is every minute.

Q And he has not lied to you at all?

A I don't remember any particular instance at this moment where I believe Nathan lied to me. I think he was frank, as frank as he could be.

Q You are satisfied that he has been absolutely truthful, that is, Nathan has, with you all the way through?

A Well, I think he has made an effort to be frank with me and I think in all essential details he has been.

Q Don't you think it is strange that he lies to Loeb and he lies to everybody else except you?

A That Babe does?

Q Nathan, yes.

A No. You know when a person is in a situation in which these boys find themselves, naturally even very badly diseased people are capable of defending themselves and doing things that are calculated to be to their advantage.

Q The fact that Nathan Leopold has lied to every other person that he has talked to except you, don't make any impression on your mind at all? Does it?

A Well, I just answered that question.

Q And we have got to take your judgment of the matter if we are to believe that he did not lie to you, haven't we?

A Well, you have got to take my judgment as long as I am here.

Q We have got to take your judgment, yes. Now what else did they tell you?

A They told me about a series of depredations or criminalistic things that they had done.

Q What are some of them?

A I will tell you.

Q All right.

A They had smashed windshields of automobiles; would ride alongside of an automobile and throw a brick through windshields, and had stolen automobiles.

Q Pardon me. Were they drunk or sober when they did that?

A At times they had been drinking. Both of them drank.

Q That is rather common for people who are drunk to break things, isn't it, especially among young

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fellows?

A I don't know now. Some people who are drunk do break some things.

Q And it does not follow because a drunken man throws a brick through a window that he will plan a murder for six months, does it, doctor?

A No.

Q All right. Now tell us something else about them?

A They set fire to several buildings, three instances I think they gave me of having set fires.

Q Did they both do it or did one of them do it?

A Well, they were acting in conjunction.

Q Were they both present when they told you this?

A No.

Q Now tell us what Loeb told you about these fires?

A Well I remember one instance where a small shack was set on fire. My recollection is that he did it, but I am not clear on that point now, but I think he did, and having set fire to it ran away.

Q Doctor, aren't you certain --

MR. DARROW: Wait a minute.

MR. CROWE: Just a moment; aren't you certain of all the facts you are basing this conclusion on?

A Well, I am --

Q Or are you guessing at some of them?

MR. WALTER BACHRACH: I object. Counsel does not let him finish his answer.

MR. CROWE: Now are you certain --

MR. WALTER BACHRACH: Wait a minute. I object.

THE COURT: Let the doctor finish.

MR. CROWE: Q Are you certain which one of these defendants --

THE COURT: Objection sustained.

MR. CROWE: I will withdraw the question and ask another one, your Honor.

MR. WALTER BACHRACH: We will object to the withdrawal.

THE COURT: No, he may ask another question.

MR. CROWE: Q Doctor, are you certain whether Loeb told you about these three fires or whether Leopold told you?

A I haven't got my notes with me. I am quite sure that Loeb told me about them, and I am quite sure that Leopold told me too.

Q All right. Now tell what they told you about these fires?

A Well, this shack was set on fire, this particular one --

Q When and where was it?

A I don't know where it was.

Q Didn't you ask them?

A It was out in the middle of a lot somewhere. I didn't ask them what part of the city it was in --

Q How long ago?

THE COURT: Wait a minute. When you ask the doctor a question let the doctor answer it.

MR. CROWE: But your Honor, as he is going along and he says they told about a fire, --

THE COURT: He can't answer with your continual interruptions.

MR. CROWE: All right.

THE COURT: Let him answer what Richard Loeb and Nathan Leopold told him about these fires and then you can ask him when he gets through.

THE WITNESS: They had set fire to this shack and then ran away and had parked their machine some dis-

tance off, and after the crowd had accumulated they drove back to the scene of the excitement and mixed up with the crowd and talked to the various people constituting it, discussing what had happened, how it came about, how it might have come about and so forth, and got a great deal of enjoyment out of feeling that they knew the secret of the situation and could discuss it with these people who did not know.

MR. CROWE: Q Now, doctor, did they tell you where that shack was located?

A No, I don't think they did.

Q Did you ask them?

A I don't think I did.

Q Did they tell you the time, the day and the year and the hour that it was done?

A Well, I think I knew in a general way at the time. I can't tell you now. I haven't got my notes with me this morning.

Q Can you give us any information that will enable us to check up and show whether this actually happened or whether they had just imposed upon you?

A No, I can't give anything to satisfy you.

Q If you were able to tell me the date on which it

happened and the location don't you think I would be able to obtain proof as to whether or not they were lying to you or telling you the truth?

A You probably would be able to tell whether such a thing happened in the city.

Q And your conclusion depends entirely upon the fact that you believe what these boys told you?

A Well, of course, it depends entirely upon the estimate I had made of these boys from a thousand different things, of which this is only one.

Q Well, if they have fooled you and consistently lied to you then your conclusion isn't worth anything, is it?

MR. WALTER BACHRACH: I object. He has been asked that question ten times.

THE COURT: Let him answer.

THE WITNESS: Things are all different; things are all different, that is all.

MR. CROWE: Q Now what else did they tell you, doctor?

A They told me about the robbing of the fraternity house in Ann Arbor. That was, as I recall it, in

November of 1923.

Q What did they tell you about that?

A They broke into one fraternity house and stole something, broke into two fraternity houses and stole some things.

Q What did they steal?

A Well, let me see, one of the things they stole was a watch, I believe.

Q What else?

A There was something else, but I cannot remember what it was, something they picked up on the way out, which I don't remember. The watch is the only thing I recall --

Q Now, doctor --

MR. WALTER BACHRACH: Wait a minute. Let him finish his answer.

MR. CROWE: Have you finished?

THE WITNESS: (Continuing) -- and they told me also about attempting to break into a house, break into the wine cellar of a house and they did not make such of a success of that.

MR. CROWE: Q Now, doctor, if you assume it has

appeared in evidence that these two men knew that you could tell from an examination of the documents what kind of typewriter they were written on, that they intended to write some letters in furtherance of this criminal conspiracy and murder on a typewriter, that they were afraid if they purchased one it could be traced back to them, and in order to make it impossible to detect them they stole a typewriter out of one of these fraternity houses, assuming that to be the fact, that is an indication not of mental disease but of extreme caution, is it not?

A It might be an indication of both.

Q What would it be an indication of in the murder trial, caution or disease?

A It would be an indication that they were beginning to plan the homicide, if that is so.

Q And an indication of caution?

A An indication of caution, too.

Q Where was this house where they were going to break into the wine cellar?

A I have forgotten where it was.

Q Did you ask them where it was?

A I think I did, but I don't remember.

Q What did they do in the attempt?

A They tried to jimmy their way into the place, but did not succeed because it was too strong, I believe.

Q You cannot tell us where it is so that we can check back?

A No, I cannot. I may have it in my notes, but I don't know.

Q What else did they tell you about?

A They told me about --

THE COURT: If the doctor has his notes do you want them?

MR. CROWE: Yes, I would like to get his notes.

THE COURT: You may bring the notes in at any time if you will, doctor, and then if it is in there let them know where it is.

MR. CROWE: Yes, and I would like to have you bring in your original report, doctor.

MR. WALTER BACHRACH: We object to any report. This witness has not testified to anything except his notes.

MR. CROWE: No, but I have asked the witness whether or not in his original report he didn't find these

boys insane and then after finding out what the defend-

ants' position was --

THE COURT: Well, I don't care --

MR. CROWE: It affects his credibility.

THE COURT: The Court here has said repeatedly that there is no question of insanity in this case.

These two defendants are presumed to be sane, legally sane, and they are presumed to be responsible for the act they committed, and the only question in this inquiry is one that I am forced and directed by the statutes of this State to listen to, evidence in mitigation, if there be any, of punishment, and after all that evidence is in, to give that evidence what weight it is worth and determine whether or not there is anything here in mitigation of the punishment. There is no inquiry here as to the sanity of these boys. They are legally sane.

MR. CROWE: I understand your Honor's position, but your Honor does not understand mine. You are asked to believe what this doctor tells you. I have asked him whether in his original report he did not make a different finding than he is now testifying to, and that he changed it in order to suit the purposes and needs of the lawyers. If I can demonstrate that by

his original report, you are not going to have as much confidence in his testimony as if I cannot demonstrate it, and for the purpose of affecting his credibility I would like to see the original report.

THE COURT: You may see it, if the Doctor has it you may see it.

MR. CROWE: Q (To the Witness) If you have it, will you bring it?

A I have not got it.

Q What did you do with it?

A Mr. Bachrach has it.

MR. CROWE: (To the witness) Will you ask your lawyer to give it back to you so that you can give it to me?

MR. DARROW: I object to that, we are not his lawyers. You can ask him just as well as we can.

MR. CROWE: Q Are you willing that I should see your original report?

THE WITNESS: I don't care what you see.

Q Will you get it?

A I don't know.

MR. WALTER BACHRACH: We object to any inquiry into this report because on the statement of the State's Attorney he is seeking to affect the credibility of the

witness on a matter which the Court has ruled to be immaterial.

MR. CROWE: If your Honor please, if I can prove that this man has changed his conclusions, that at one time he was willing to swear for \$350 to one thing and on another occasion he is willing to swear to a different set of facts for \$250, I think I have destroyed the value of his testimony, and if he is not willing to produce the report I will let it rest with that.

MR. BACHRACH: That is what you think.

MR. CROWE: Well, if he is not willing to produce the report, I will let it rest with that.

MR. DARROW: Have you finished your argument?

MR. CROWE: Q Have you finished about telling me about the criminal acts they told you of?

A I think I have gotten to the point where I was about to say what they told me as to the arrangements they had made whereby they cheated at cards, and they had made considerable money in gambling in that way.

Q Now, doctor, you said that young Loeb had no definite object in life, that is, he had not decided on any life's work?

Q But he had decided to be a master criminal?

A Yes, he had that.

Q He made a pretty fair success of that until they dropped the glasses, didn't he?

A Oh, well, I don't know if we can talk of such a thing as being successful. He made a sad mess of his life, either whether he was caught or not.

Q If the glasses had not been found, and the State's Attorney had not secured a confession, do you think these boys would have gone right along committing other crimes?

A I suspect they might have probably done so. I do not see any reason why they would not.

Q Now, are there any other crimes or misdemeanors they told you they had committed that you have not related?

A That is all, with the exception of certain facts which are of a character which I would prefer not to state in open court, because I believe his Honor has been willing to hear those things in camera.

Q Out of those matters, have you now told us all?

A I think I have, all that I can recall at this

moment. I think I have told them substantially all, at any rate.

Q Now, is your opinion based solely on the facts that you have testified to here, or have you used others, that you have not here described?

A Of course my opinion is the result of a series of events. When I came here to Chicago I was given this Bowman and Hulbert report, which had been prepared especially to save time and effort, to economize the time of men who came from out of town, and I took that report, and then I made my own examination. During the course of the examination, and since, I have been in constant conference with my confreres; I have been made acquainted with their results, the results of their findings; and the continuous occupation of this case during all of this period, from these various angles, -- they are the facts which are at the basis of my opinion.

Q Have you conferred with Dr. Hickson?

A I told you I had not.

Q Have you conferred with Dr. Hall?

A To some extent.

Q Dr. Neymann, with Dr. Neymann?

A To some extent.

Q Dr. Neymann is of the opinion that these men are legally insane, is he not?

MR. WALTER BACHRACH: Objection, your Honor, to what some other expert's opinion is.

THE COURT: Sustained. Dr. Neymann is here in the courtroom. I saw him the other day.

MR. CROWE: All right.

Q Did you use the words "association tests" in arriving at your conclusion?

A No, I did not, but Dr. Healy did, and Dr. Neymann did, I think also .

Q You did not?

A No.

Q Why not?

A I rarely use those word tests. I have my own attitude and feeling about them, which I can go into if you want to discuss it.

Q You do not think it was necessary?

A I didn't think it would be illuminating.

Q Now, you said that Richard Loeb told you that as a boy he had nobody to confide in except this nurse?

A Yes.

Q And that she was a rather prim, prudish severe woman. Dick was pretty fond of her, was he not?

A Yes, I think he was.

Q And he loved her?

A I think he had affection for her, yes.

Q So he was not afraid of her?

A Well, not in the ordinary sense. I think that he didn't have a very close bond of sympathy in certain aspects of his makeup.

Q Well, where was his mother all this time; could he not have confided in her like other boys do?

A Well, he was pretty much handed over to the governess.

Q His mother paid no attention to him?

A No, I wouldn't say that, but you know that when a boy is put in charge of a governess, that sometimes means the governess really steps into the mother's shoes, and takes her place; and this governess very largely did that.

Q What did Dick tell you about his mother? Did she neglect him, or was she a loving mother?

A Well, Dick told me that he thought his family

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had more or less neglected him, but he thought that their intentions were perfectly good, and that they had intended to do the right thing by him in every way and that he did not harbor any ill feeling toward them.

Q Will you answer the question. What did he tell you about his mother?

A I don't remember specifically any more than that.

Q Did you ask him whether his mother was in town, or would leave him for long periods, a year or two years, without seeing him?

A No, but I know from what he said that he was in the care of his governess a very large portion of the time.

Q How many brothers has he?

A I am not sure.

Q He has one older than he is?

A And one younger.

Q As a matter of fact, he has two older brothers and one younger?

A I am not sure; I think he has.

Q Did he tell you that his brothers would not talk

to him or would not associate with him or acted contrary to other brothers?

A No.

Q Did he tell you about his valet?

A No.

Q Would it have made any difference if you knew that in the last eight or nine years he had a valet that he was very fond of, a man, a very decent fellow, in whose company he was a great deal.

Q No, it wouldn't make any difference. This expression of Dickie's now, that he feels alone in the world, and without any sympathy or confidants, etc., is a very common expression that we are very familiar with. Neurotic types of individuals always feel that way. They always feel isolated from others. It doesn't make any difference how interested other people may be in them; they always have that type of feeling toward the rest of the world.

Q A person who would feel the way you want us to believe Dick Loebfelt, that he had no friends, and was alone, would be a sort of morose, melancholy

fellow, would he not?

A Well, he did have periods of depression, and he has thought seriously, if you will recall as I told you, of suicide.

Q Would the fact that he was very much interested in all outdoor sports, baseball, tennis, golf, and games of that sort, fond of dancing, fond of company, that he was very popular with all of the servants in his home, popular with all of his boy and girl friends, lead you to believe that maybe he was trying to mislead you as to the melancholy, lonesome feeling that came over him?

A No, indeed, I was familiar with practically all of these things that you have stated.

Q And the fact that a number of girls were very fond of him and he was fond of them; that would make no difference?

A I knew that.

Q You would still believe him when he told you that he was a poor, friendless, lonesome soul?

A I know lots of people who have that feeling, who have apparently good contacts with other people, and

lots of friends.

Q You say that when Dick was a boy his folks showed you a picture that he had taken in a soldier's uniform?

A In a cowboy suit.

Q That is a dangerous tendency in young fellows, is it not?

A To have their pictures taken?

Q To have their pitcutres taken in cowboy suits?

A I don't think so.

Q You do not think that any of the mothers here, after hearing your testimony, are going to be alarmed of the fact that they have taken their boys that way?

A I hope not.

Q Have you ever read Huckleberry Finn or Tom Sawyer?

A Many years ago.

Q And you came to the conclusion from their antics, phantasies and day dreams, and the way they treated poor Jim, that they were mentally sick?

A My recollection of them is exceedingly vague. I don't know much about them.

Q If these two boys did the same general things that your two boys, Dickie and Fabe, did, do you think that

they were mentally sick, or not responsible for the consequences of their act?

A Huckleberry Finn and Tom Sawyer were literary fictions. I don't see how they could have been either sick or well.

Q There are a good many fictions in all your scheme of life; responsibility you say is a legal fiction?

A Yes.

Q And insanity is a legal fiction. And the power to decide right or wrong: what kind of a fiction is that?

A I don't know.

Q Is there anything that would embarrass your end of the case, that is not a fiction?

MR. WALTER BACHRACH: I object, your Honor, to his referring to his end of the case.

MR. CROWE: All right. That is all.

MR. WALTER BACHRACH: Are you through?

MR. CROWE: Yes, that is all.

THE COURT: If you wish to question the doctor about those things the doctor said he would prefer not to mention in public, because of the presence of

ladies here, you may examine him in my chambers at any time.

MR. CROWE: I assume all that is in the record now, and I have no desire to go into it further, unless your Honor or the defense desires to.

THE COURT: No.

MR. CROWE: I think we have a copy of that in the record now. Your Honor has substantially the whole thing, anyhow.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. WALTER BACHRACH.

MR. BACHRACH: Q Was there anything peculiar or significant to you in the picture shown to you of Dick dressed in a cowboy outfit?

A I thought it showed an exceedingly tense little face; it indicated that he was playing the part with a tremendous amount of earnestness; and of course I cannot help but hitch that whole thing up as being consistent with all of the things I have testified

to with regard to his life history.

Q Was that picture different than the ordinary picture of a boy dressed in a cowboy outfit?

A Of course I think in this particular aspect that I have described, which especially attracted my attention. There was another picture, too, of Dickie, in a policeman's outfit, that gave me the same expression.

Q A picture of unreality?

A A picture of tense interest in the part that he was playing at the time.

Q Mr. Crowe has mentioned the Gonzalez case which was heard in the District of Columbia a number of years ago. Can you tell me approximately when that case was tried in the District of Columbia?

A I think Mr. Crowe mentioned the date, that is the only way I can tell.

MR. CROWE: 1912 or 1913.

A Yes. That is the only way I would know it. I would not be able to recall any other way.

MR. BACHRACH: What was the sentence imposed upon Gonzales in that case?

MR. CROWE: I object. The only thing I asked him about

was whether he was the same William A. White who was interested in that case, and he said yes.

THE COURT: Sustained. The Court is not interested in any other judgment in any other case.

MR. BACHRACH: Q Do you know where Mr. Gonzales is now?

MR. CROWE: I object.

THE COURT: Sustained.

MR. BACHRACH: Mr. Crowe inquired about it.

THE COURT: I don't care. I don't want to know about it.

MR. WALTER BACHRACH: We are perfectly willing to let it rest if no inference is to be drawn from the reference to Mr. Gonzales in Mr. Crowe's examination.

THE COURT: Have you anything further with this witness?

MR. BACHRACH: That is all.

THE COURT: It is within five minutes of adjourning time and there is no use putting another witness on the witness stand at this late hour.

MR. BACHRACH: Very well.

THE COURT: We will suspend now until ten thirty Monday morning.

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Monday, August 4th, 1924.

10:30 o'clock A.M.

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

Monday, August 4th, 1924, pursuant to adjournment heretofore taken.

Present: Same as before.

THE COURT: I must apologize for being late this morning, gentlemen, but I could not help it. I had an engagement downstairs to impanel a grand jury and I went down there.

MR. DARROW: Shall we proceed, your Honor?

THE COURT: Yes.

MR. DARROW: Dr. Healy.

D R . W I L L I A M H E A L Y ,

a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DARROW.

MR. CROWE: Your Honor, I assume the same questions will be asked as to his qualifications and I merely

want to make a formal objection without argument.

MR. DARROW: Q Give us your name.

A William Healy.

Q Where do you live?

A Boston.

Q What is your profession?

A I am a
physician and psychologist.

Q How long have you been a physician and psychologist?

MR. CROWE: Now, if your Honor please, I desire
to offer the same objection, based upon the same rea-
sons we advanced to your honor when Dr. White was on
the stand.

THE COURT: Same ruling.

MR. DARROW: Q How long have you been in that pro-
fession?

A Since 1900, most of that time.

Q Where did you graduate?

A I graduated first from Harvard University and then
from Rush Medical College.

Q Rush Medical College in Chicago?

A Yes sir.

Q When did you graduate there?

A 1900.

Q Where did you first locate?

A First I had charge of the women's department of the Wisconsin State Hospital for mental diseases.

Q How long were you there?

A One year. I was then five years in general practice in Chicago. Then I went abroad and studied for a year, in Vienna, Berlin and London. Then I came back and settled in Chicago, and entered into the practice of neurology and psychiatry.

Q How long did you practice in Chicago?

A I became head of the Psychopathic Institute of the Juvenile Court in 1909, and I was in the practice of neurology privately for about two years.

Q How long were you head of the Juvenile Court in psychiatry in Chicago?

A From 1909 to 1917. Then I became director of the Judge Baker Foundation in Boston, which is a foundation for the study of conduct problems, behavior problems, for the courts, particularly the Juvenile Court of Boston, and for social agencies.

Q Are you such director now?

Q What other professional activities have you?

A I am a lecturer at Harvard University and Boston University. This summer I am on the staff of Columbia.

Q How long have you been at Harvard?

A About the last two years.

Q In what line?

A In the Department of Social Ethics.

Q Have you any other position or work in connection with the courts of Boston?

A No, except cases from the juvenile court of Boston, and from some of the outlying courts, which come to our Foundation for study.

Q And that has been ever since you have been with the foundation?

A That is what it was established for.

Q About how many such cases have you had for observation in Boston?

A Probably thirty-eight or thirty-nine hundred.

Q What societies if any are you connected with?

A Quite a number of scientific Societies. The American Neurological Association, the American Psychiatric Association, the American Psychological Association, the

American Institute of Criminal Law and Criminology, the American Association of Ortho-Psychiatry, and a number of others.

Q Are you connected with any hospitals or institutions?

A Chairman of the Trustees, Boston Psychopathic Hospital.

Q What is their work?

A The studying of mental diseases.

Q How long have you been chairman?

A About four years.

Q Have you written any books on these subjects?

A I have written a large textbook, "The Individual Delinquent" and a book entitled "Pathological Lying, Accusation and Swindling"; a book entitled, "Mental Conflicts and Misconduct"; a book entitled "Honesty"; a small book on "Case Studies of Mentally and Morally Abnormal Types"; and last year we got out a series of "Case Studies of Conduct Disorders", mostly.

Q Where were the books published?

A They are published mostly in this country. They have some English editions too, some foreign editions.

Q During all of this time in your professional career what have you made your chief study?

A The study of conduct disorders.

Q Had any special reference to adolescents?

A Yes, particular among adolescents. I have seen very little of adults, purposely. Nearly all of them children and adolescents.

Q What age do you count as adolescence?

A Adolescence, the definition of adolescence is from the time of puberty until twenty-one or twenty-two, according to the physiological development of the individual.

Q How is that as to boys, as to being a critical time with them?

A I beg your pardon?

Q How is that age as being a critical time with boys?

A It is an exceedingly critical time on account of the many new impulses that come to the individual through his physical life and mental life.

Q Have you testified much in court?

A I have actually testified from either side very

seldom indeed. I give reports directly to the Judge.

Q In Boston?

A Yes, and did here too.

Q And you did here?

A Sat with the Judge here for three years, Judge Pinckney and later Judge Arnold.

Q You came here from Boston in this matter?

A Yes.

Q For what purpose?

A To study these two boys, the cases of these two boys, Leopold and Loeb.

Q What have you done toward studying them?

A Well, I have studied the boys themselves and I have gone over a great deal of other material, seen a good deal of material in the way of letters and photographs, and I have seen acquaintances and relatives, studied the reports, particularly upon the physical side, of Doctors Bowman and Hulbert; gone into matters connected with the developmental history and family history, and have given a considerable range of psychological tests to each of the two boys; endeavored to get data on their emotional life, and on the alterations,

if any, of their personality.

Q How much time did you spend with them, about how much?

A You mean in actual days?

Q Well, figure it any way you want to.

A I began on July 4th and I have seen them a considerable number of times since. The last time I saw them was on July 27th, that is, in the jail. I have seen them the equivalent, certainly, of a number of whole days.

Q And suitable facilities were provided for the study in the jail, were they not?

A They were very satisfactory indeed, very. We had a nice, quiet room there. I was generally alone. Two or three times my colleagues were with me for a little while. Mr. Bachrach was present on all but one day, gave very good help in the matter. Very satisfactory conditions.

Q That is Mr. Walter Bachrach?

A Mr. Walter Bachrach, yes.

Q You may state in your own way about what examination you made to ascertain their mental condition.

A What examination that I made?

Q Yes, physical examination?

A The examinations from which I have drawn any conclusions are concerned with the general physical observations of the boys, especially with regard to any nervous disturbance.

As I said before, the giving of special mental tests of various sorts; observation of their personality; observation of their emotional life; studies of their correspondence and the correspondence of others to them; interviews with a number of other people concerning their experiences, their home life, and so on, and concerning the peculiarities of their associations. I am afraid that is a good deal of repetition.

Q In the course of those studies you learned the facts of this homicide, in a general way at least, did you not?

A I suppose I had all the facts from what I had seen in the newspapers and heard from Mr. Bachrach and Mr. Hulbert in Chicago -- from Dr. Hulbert and Mr. Bachrach when they visited me in Boston.

Q You learned, then, before you saw the boys or at different times? You did learn them, anyway?

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A Yes.

Q And you took that into consideration?

A Yes, and anything that came out at the interviews seemed to be entirely corroborative.

Q Did you have a certain letter that was written by Nathan Leopold, Jr. to Richard Loeb in reference to some misunderstanding between them and their future conduct, that was introduced by the State?

A I read that in the newspapers in Boston. I think I read a copy of it -- yes, I am sure I read a copy of it in your office or at least glanced it over.

Q Did you have any other?

A I have had a tremendous grist of letters, yes.

Q Did you have any that especially throw light on this subject?

A There are some that I think throw a great deal of light.

Q Do you have any here now that have not been introduced in evidence?

A Yes, I have one.

Q This is a letter that you have considered and which you consider throws light on the mental condition?

Q Have you it at hand?

A Wouldn't you rather that we brought that in at its proper place in the study of the case?

Q Yes, I just did not want to overlook it, is all.

A Yes.

Q Perhaps the best way, Dr. Healy, would be for you to state in your own way what means you took and what findings you made as to each one of them. You can begin with either one of them, whichever is most convenient for you.

MR. CROWE: If your Honor please, before the doctor starts, I do not like to be interrupting him while he is talking, but I would like to say that up to date all the statements have been generalities. We have a right to know exactly what the doctor did; what the conversations were; what the acts were, and everything, so that we may know whether he is drawing a correct conclusion from those facts. So I would like to have the doctor be specific in his statements.

THE COURT: Yes.

MR. DARROW: That is what we expect him to be, your Honor.

THE COURT: Yes, we expect him to go right on in

logical form and detail everything he did and said so you can be fully advised upon what he bases his conclusion and upon which you may then want to cross examine, and you may cross examine at such length as you desire.

MR. DARROW: He may refer to his notes made at the time, I suppose?

THE COURT: Yes, there is no objection to his referring to his notes.

MR. CROWE: None whatever.

THE COURT: You may proceed, doctor; start in at the beginning of the examination of these boys and tell us what you did, what conclusions you arrived at and how you came to arrive at those conclusions.

THE WITNESS: First, let us start with the association between the two boys as a matter of study.

MR. CROWE: Just a moment; by the two boys you mean the two defendants?

THE WITNESS: Yes, I mean Leopold and Loeb.

There is such a mass of material that if my memory fails me on just exactly where I got all my information from, you must pardon me, but I shall endeavor to be very explicit.

As far as I can find out from the account given by the boys themselves and from their relatives, their association began at fifteen years of age. They just barely knew each other earlier, but that is the time they first came together. It is very clear from the study of the boys separately that each came with peculiarities in their mental life which I shall dwell on later; each arrived at these peculiarities by different routes; each supplemented the other's already constituted abnormal needs in a most unique way.

And, in regard to the association I think that I ought to say perhaps at this point that from the accounts that I have received of it, that the crime in its commission and in its background has features that are quite beyond anything in my experience or knowledge of the literature. There seems to have been so little normal motivation, the matter was so long planned, so unfeelingly carried out, that it represents nothing that I have ever seen or heard of before.

As judged by their conversation and by

their correspondence, their compacts, their quarrels, their deeds, all tend to show a most strange and pathological relationship.

According to the stories of each, the idea of their coming together for crime purposes, began in a very definite way with their planning of extensive cheating at bridge, which, however, they were not very successful at and they did not continue so they say.

MR. CROWE: Now, just a minute. You are still going into nothingbut generalities and opinions. Cheating at bridge. Tell us what they told you about it so that we may know whether it is as strange as you think it is.

MR. DARROW: Go ahead.

THE WITNESS: I havejust stated. that they told me their crime began with their cheating at bridge and their planning to do so. Isn't that the specific sort of statement that you want, Mr. Crowe?

MR. CROWE: Go ahead.

THE WITNESS: Although Loeb had been in delinquencies earlier, according to his very extensive account of these delinquencies, this was the first time --

MR. CROWE: Now wait a minute. I insist that we

find out what these delinquencies are.

THE COURT: He is going right on to tell you what they are.

THE WITNESS: I will be very glad to tell you, sir.

THE COURT: Go right on and tell us.

THE WITNESS: That this was the first time, evidently, with anyone else he carried out a serious delinquency and it was an eventful action for him as well as for Leopold. Then each of them gave me the account; --

MR. CROWE: Just a moment. What are the delinquencies that they told you?

THE WITNESS: Let me tell it in order. I will come to all that later.

MR. CROWE: The thing that I am objecting to is that this is apparently a speech. I think he ought to testify like the ordinary witness does, your Honor. I can't cross examine him on some of the things in his speech, but that is unsatisfactory.

THE COURT: The doctor has prepared himself, I should judge, from the way he is starting out, for this testimony, and he has it in his mind in a certain order, and he is now leading up. Tell us what they said to you, doctor, what Loeb said and what Leopold said.

Instead of saying, "The boys said, " state what each one said. Tell us as near as you can what Loeb said and what Leopold said about the crime, and then you can give your conclusion later.

THE WITNESS: I will get to that. Both Leopold and Loeb told me that starting with this action and continuing, drinking was also considerable of a bond between them. The criminalistic activities of Loeb previously, according to his own account, began with his stealing in the neighborhood. There was a matter of his getting in at a window, and taking a vase when he was about nine years of age. Prior to that time there was a digging up of some money from the yard next door, that he knew a little boy had hidden.

MR. DARROW: Q This is Loeb you are referring to now?

A Yes. There was quite a little stealing from shops about the city here, pencils, dental floss, all sorts of small articles that he took, so he says, for the purpose of getting the thrill of taking them. For the moment I don't remember anything else that occurred until the time when they joined activities. There may have been something else that will come out later. In

the matter of the association, I have the boys story told separately about an incredibly absurd childish compact that bound them, which bears out in Leopold's case particularly the thread and idea of his fantasy life. For Loeb, he says, the association gave him the opportunity of getting someone to carry out his criminalistic imaginings and conscious ideas. In the case of Leopold, the direct cause of his entering into criminalistic acts was this particularly childish compact.

MR. CROWE: You are talking about a compact that you characterize as childish. Kindly tell us what that compact was.

A I am perfectly willing to tell it in chambers, but it is not a matter that I think should be told here.

MR. CROWE: I insist that we know what that compact is, so that we can form some opinion about it.

MR. DARROW: I suggest it be in Chambers.

THE COURT: All right.

MR. CROWE: Tell it in court. The trial must be public, your Honor. I am not insisting that he talk

loud enough for everybody to hear, but it ought to be told in the same way that we put the other evidence in.

THE COURT: It would be public, if there was only one outsider in here. If it is something that is unfit for publication --

MR. CROWE: There is no desire on my part to bring out something unfit for publication --

MR. BACHRACH: It ought not to be given to the newspapers by this reporter, your Honor.

THE COURT: Oh no. This is not for the papers at all. This will not be given to the newspapers, Mr. Reporter.

The witness then made the following statement to court, counsel and court reporters:

THE WITNESS: This compact, as was told to me separately by each of the boys on different occasions, and verified over and over, consisted in an agreement between them that Leopold, who has very definite homosexual tendencies, which have been a part of his makeup

for many years, was to have the privilege of -- do you want me to be very specific?

MR. CROWE: Absolutely, because this is important.

THE WITNESS: (Continuing) -- was to have the privilege of inserting his penis between Loeb's legs at special rates; at one time it was to be three times in two months, if they continued their criminalistic activities together, and then they had some of their quarrels, and then it was once for each criminalistic deed. Now, their others so-called perverse tendencies seemed to amount to very little. They only engaged in anything else, so far as I can ascertain, very seldom, but this particular thing was very definite and explicit.

MR. BACHRACH: So that it need not be repeated, make it clear what the compact was.

MR. DARROW: I do not suppose this should be taken in the presence of newspapermen, your Honor.

THE COURT: Gentlemen, will you go and sit down, you newspapermen. Take your seats. This should not be published.

MR. CROWE: Q What other acts, if any, did they

that they did rarely or seldom?

A Oh, they were just experimenting once or twice with each other.

Q Tell what it was.

A They experimented with mouth perversions, but they did not keep it up at all. They did not get anything out of it.

Q And Leopold was --

A Leopold has had many years -- shall I go into this whole subject while we are here now?

THE COURT: Yes.

THE WITNESS: Leopold has had for many years a great deal of phantasy life surrounding sex activity. That is part of the whole story and has been for many years. He has phantasies of being with a man, and usually with Loeb himself, even when he has bonnection with girls and the whole thing is an absurd situation because there is nothing but just putting his penis between this fellow's legs and getting that sort of a thrill. He says he gets a thrill out of anticipating it. Loeb would pretend to be drunk, then this fellow would undress him and then he would almost rape him and would

be furiously passionate at the time, whereas with women he does not get that same thrill and passion.

MR. CROWE: Q That is what he tells you?

A Surely.

MR. DARROW: That is all I believe of that.

THE WITNESS: That is what he tells me. And of the other part, of course, Loeb tells me himself. That is exactly what they did, and how he feigns sometimes to be drunk, in order that he should have his aid in carrying out his criminalistic ideas. That is what Leopold gets out of it, and that is what Loeb gets out of it.

MR. BACHRACH: Q When in connection with the compact in point of time did they start, with reference to the compact?

A Their criminalistic ideas began on the same day, when they began their cheating at bridge. It was on the day when they first made it out. It was the first time in a berth, and it was when Leopold had this first experience with his penis between Loeb's legs, and then he found it gave him more pleasure than anything else he had ever done. To go on further with this, even in jail here, a look at Loeb's body or

his touch upon his shoulder thrills him so, he says, immeasurably.

Is that enough?

MR. CROWE: I think that is all.

THE COURT: The press has all of this. They have got a copy of it and they know what it contains. There is no necessity of taking it down.

MR. DARROW: Q This letter that was written and introduced in evidence --

MR. CROWE: I didn't hear that.

MR. DARROW: Q This letter that was written and has been introduced in evidence from Leopold to Loeb you consider has more or less bearing upon this matter you have just been relating?

A You mean the one that has already been published?

Q The one that has been published.

A Yes, I do. Only not specifically, of course, not in detail.

Q No, but bearing on it.

A Not specifically, but it gives a very unfair statement of the situation, and in regard to the association I would say that Dick Loeb insisted to me on a number of occasions that he has never found anything in his-

self that would lead to his deterrence; he would do it over again; nothing in him to deter.

The Court here held a short conference with the attorneys, out of the hearing of the reporters.

THE COURT: All right, doctor, go ahead.

THE WITNESS: And -- on the part of Leopold I have the statement from him that well, yes, he would continue also in this sort of affair, and this sort of association, however, more from an intellectual standpoint. He would get satisfaction of his desires, his own personal gratification, and that would be enough. Now, if I may, I will go to a discussion of my findings as to Leopold himself.

One sees Leopold exhibiting pretty definite signs of nervous instability, frequently shows a greatly exaggerated use of the muscles of the face, exhibiting many nervous gestures, ready flushings and pallor. I also see signs in him of great nervous energy, and I may say at this point that I should agree with the Bowman and Hulbert report which I presume will be gone into later, that their results show

evidences of some pathology of the glands, the internal secretion, probably of the sympathetic nervous system.

Concerning Leopold's mentality I find conclusive evidences by a giving of a considerable number of mental tests that he possesses very high intelligence.

MR. CROWE: Q Now, will you give us those tests, doctor.

A Would you like them in detail?

Q Absolutely?

A I gave the general age level intelligence test, the so-called Stanford-Binet test, and as expected that showed very little, because Leopold could pass all the tests without trouble, and the scale does not go high enough to test such ability as he has. He passed all except one test for visualization.

In the course of this test I went into the matter of his auditory memory span, and found he had nothing very phenomenal in this way.

I gave him a so-called silent reading test, in which one is asked to read a number of paragraphs, and to give answers concerning them in order to show the rapidity of understanding and comprehension and

the ability to react quickly to the matter presented.

On this he gets a score that is much --

MR. CROWE: Doctor, I asked, would you kindly give what the tests were.

THE WITNESS: You don't want the results on them?

MR. CROWE: I want the tests first.

THE WITNESS: You want the tests first?

MR. CROWE: Yes.

THE WITNESS: I gave the Stanford-Binet set of tests, I gave the Monroe Silent Reading Test. I gave the test known as --

MR. CROWE: I know, but what are they?

THE WITNESS: What I am telling you.

MR. CROWE: All that is Greek to me.

THE WITNESS: I just told you this other test was a test for comprehension, by reading.

MR. CROWE: Describe the test.

THE WITNESS: That is what it is.

MR. CROWE: No, you say, "I gave him a number of tests." I don't know what they were. I don't know whether he had to stand on his head or not.

THE WITNESS: He had to read. I told him what to read and I gave him passages to read.

MR. CROWE: Tell us what you gave him to read, and tell us what happened after he read them.

THE WITNESS: I don't know of any better way than the way I am doing.

MR. DARROW: I suppose the tests are very well known tests?

THE WITNESS: Very well-known.

MR. DARROW: That is all.

MR. CROWE: I don't know what the Monroe Test is. I never heard of it.

THE COURT: Tell us what the Monroe test is. Give us all the facts.

THE WITNESS: The Monroe test is a test that emanated from the Kansas State Teachers College, and one that is used, as I say, for the study of individual ability to comprehend written language.

MR. BACHRACH: Suppose you be more explicit, doctor, and tell us so that we can all know what it means. I am in the same boat that Mr. Crowe is on that.

THE WITNESS: One reads certain passages or paragraphs and answers them with pencil.

MR. CROWE: Q What did he read? And what answer did he make? That is what I want.

A That is what I am attempting to tell. He read them. He gave a score on them.

Q But tell us what he read and what his score was?

A Would you like me to read all of these tests?

Q Certainly .

A It is an awfully long job.

MR. DARROW: Can't you do it on the cross examination?

MR. CROWE: No, no. We are entitled to it on direct examination.

MR. DARROW: I think you are not.

THE COURT: Let the doctor go on and tell, and then you can cross examine him at length when you come to the cross. If you will explain, doctor, when you apply such a system or test, that it means reading a paragraph from Homer or whatever it is, have a little paragraph read from it, and then give his answer thereto; that would be sufficient, and later if they want to go into it further they can do it.

THE WITNESS: It is an awfully long job to read these tests.

THE COURT: I know, but we don't care how long it takes, doctor, if it takes three weeks, if it is going to be of any enlightenment to us in this case. Time

cuts no figure.

THE WITNESS: The whole test shows him tremendously high ability on the whole thing right through. I can summarize it right now at the start, and you won't know any more at the end. I will be very glad to go into it, but that is all it shows.

MR. CROWE: I appreciate you are very anxious to give your conclusions, but I want to know what they are based on.

MR. DARROW: I object to that statement. The doctor is perfectly candid with you.

THE WITNESS: I am perfectly willing to read these off.

THE COURT: All right, doctor, go ahead and read these off.

THE WITNESS: In the Monroe Silent Reading Test, No. 1 is: "The Chinese believe that whatever their ancestry did, they must do. Since their fathers had no railways, telegraphs or telephones, they must have none. They dislike new things. Will you expect to find the civilization of China modern or ancient?"

"Ancient" he answered.

MR. CROWE: He answers "Ancient".

A The answer is "ancient" which is correct.

No.2 is: "The tighter a wire is stretched the higher the tone produced when the wire is struck. Two wires are stretched, one with a fourteen-pound weight pulling on it, and another with a ten-pound weight pulling on it. Which wire will produce the higher tone, the former or the latter?"

He answers: " The former."

No.3 is: "The battle of Hohenlinden occurred December 3, 1800, during one of Napoleon's campaigns. The battle was fought between the French under Moreau on the one side, and the Austrians under Archduke John on the other side. In this battle, Archduke John led the army of what country?"

His answer to that was "Austrian".

No.4: "Ocean currents are caused by the wind. North of the equator the currents of the Indian Ocean move generally eastward during the summer and westward during the winter. Ceylon is in the Indian Ocean, north of the equator. Underline the word below which tells in what direction the wind generally blows there in December."

His answer is "West".

THE COURT: I don't think you need to take every question and answer. You have got enough now of what questions were put to him and how he came to answer them, and you say his answers were what?

THE WITNESS: His answers to the whole set of questions were not only correct, but they were done in the most rapid time of anybody I have ever known to take the test.

THE COURT: No need of going any further along that line, is there, on that particular test?

MR. CROWE: Not on that test.

THE COURT: That is all, doctor, on that.

MR. CROWE: I would like to know what these other tests are.

THE COURT: Now, if there are any other tests that were employed, give them.

THE WITNESS: The next test was a test for language ability. The exercise data of the Kelly-Trabus scale is published at Columbia University. This is a test in which certain words are left out of sentences and to have to fill in the sentences.

THE COURT: Now, will you give us a sample of two

or three questions put along that line, doctor.

THE WITNESS: Yes, we will take some of the later ones on that.

THE COURT: Any one.

THE WITNESS: Take, for instance, Question 36. It says, "To friends is always the it takes". And then they fill in the words and so he makes the sentence, "To make friends is always worth the trouble it takes."

"The least difficult, are by no, always the most, are the tasks the most disagreeable."

And he fills in: "The least difficult tasks are by no means the most agreeable, nor are the most difficult tasks always the most disagreeable."

MR. CROWE: He answered those correctly, didn't he?

A He fills in.

MR. CROWE: Q He filled those in correctly?

A He fills in those words.

THE COURT: And did it all?

A Did it all extremely well.

THE COURT: Now, if there are any other tests, you may give them.

A I gave him the so-called equivalent proverbs test.

Q Give us an example of that, doctor.

A An example of that is as follows:

You are given on this some twenty proverbs, and then you are given these on one side with the numbers on them, and on the other side twenty other proverbs, and you are told to tell which one of the first set of proverbs the second one is similar to. For instance, "Bend the willow while it is young." Is it like "Ill nature needs no tutor", or "An old dog will learn no tricks" or "Sail when the wind blows" and he answered all of these twenty questions perfectly.

THE COURT: We will take a short recess at this time.

Whereupon Court and Counsel here took a short recess.

Court convened pursuant to short recess
heretofore taken.

Present: Same as before.

D R . W I L L I A M H E A L Y,
resumed the stand for further direct examination by
Mr. Darrow, as follows:

MR. CROWE: May I interrupt? Will you give me the
name of that last test?

THE WITNESS: That is the Trabue test -- or I beg
your pardon, I think we were talking about the Proverbs
test, weren't we?

MR. CROWE: Yes.

THE WITNESS: That is this one here.

MR. CROWE: Thank you.

MR. DARROW: Q State what other tests you made.

A I think in stating the matter with regard to that
Monroe Silent Reading test that the time allowed on
that test is five minutes and during that time very few
individuals -- in fact, I do not think I have ever seen
a single one answer all the questions correctly, whereas

Leopold answered them all correctly in three minutes and 15 seconds.

Another test I gave him was for reasoning ability, known as the syllogism test, Thurston's syllogism test and the language of that test is, "Silver is heavier than iron, copper is lighter than Silver, therefore copper is heavier than iron."

Or another one: "All the members of the City Club are members of the University Club. Smith is a member of the University Club, therefore he is a member of the City Club."

There are twenty such tests in syllogistic reasoning, and he did them all --

MR. CROWE: Will you give us one more sample there, doctor?

THE WITNESS: I beg your pardon?

MR. CROWE: Will you give us one more sample?

THE WITNESS: "Henry's father George has a brother William who has a son James. Therefore George is James' nephew."

These questions are to be answered, whether they are right or wrong, and he answered them all

correctly but slowly and with more difficulty with this sort of thing than he did with the other tests given. I tested him also for his motor control, in a certain simple tapping test in which he is asked to tap one square after another on a sheet of paper. There he showed his control to be very good indeed, making a record of 106 squares tapped without any errors, which is above any medium norm which we have. I gave him some tests that are included in a list of tests which are the only ones that I know of that deal particularly with this type of mentality, known as Roback mentality tests for superior adults. I did not take the time to give him all of these, because they are exceedingly long, but I will tell you which ones I did give him. Here is a so-called "difficult directions" test in which you say these symbols above here. If the square is smaller than the circle and the triangle put together, do not put a cross here, but if the diamond is below the square, make a in the figure to the left of the circle. If the star in the diagram has no more than seven points, write no here, etc. They are tests to see whether a person gets confused, or whether he can follow those well. He

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did these all correctly and very speedily. Another test is the so-called judgment test for which you are allowed fifteen minutes. You are asked to put opposite the given sentence -- and there are some thirty sentences -- an "s" if it is a striking or significant statement, a "c", if it is a commonplace statement, an "a" if it is an absurd statement, a "t" if it is a tautological statement, and a "j" if it is a joke. They are such sentences as these:

"The secret of genius is to suffer no fiction to exist for us, and to realize all that we know."

"Other men are lenses through which we read our own minds."

"Make the necessities of life too expensive for the poor to reach them, and they will save their money, so that in time, provided this practice is rigorously carried out, there will be no paupers."

"What has not been accomplished in the present cannot be reproduced in the past."

MR. CROWE: Q How did he answer those?

A He answered them all very well and correctly, -- let me rescind my statement. He answered them in

seven minutes, but he made three or four mistakes.

Q How many were there altogether?

A Thirty.

Q Read three or four that he made mistakes in?

A I don't believe that I could, because since I gave them to Loeb, I erased his answers on the first ones. He did a so-called cryptogram test in which he is allowed fifteen minutes, for deciphering a sentence that is written in symbols in which you have to draw deductions concerning what letters these symbols represent. He did this correctly in five minutes, whereas fifteen minutes is the time allowed.

"The following symbols constitute a sentence of nine words. The symbols" -- then it gives a certain symbol -- "stands for "m", and then certain other symbols represent the word "with". "Try to decipher the code and do not give up the problem until time is called."

I gave him another test of these series, called the problem test, and the time allowed was twenty-five minutes. The directions are:

"Answer the following questions concisely but convincingly. Three minutes on the average for question should be ample time." The result of

this was quite interesting to me, because he wrote at such tremendous length in the endeavor to express his own conception of things, and insisted on running over into thirty-three minutes. The first question is:

"If raising the marks of one student will give him a higher standing in the class, why not raise the marks of all in the class, so that they can have a better understanding?"

His answer was:

"This is a perfectly absurd statement. Raising the marks of one student raises his standing in the class only by comparison with the other students. His marks are high or low only relatively to those of others, and therefore, should the marks of all students be correspondingly raised, no one of all would have a higher standing than before. If an object measured in terms of another, or other objects, be increased at the same time that the other object or objects are raised, and in the same ratio, the relation between them remains unaltered."

The next one is, "If two negatives make an affirmative, why not say that two wrongs make a right?" His answer to that is, "The force of one

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negative is to show that the statement just made is not true. When another word of negation is added, it does not deny the original statement, but that statement in its negative form namely, the statement plus the negation thereof, to negative a negation, amounts to an opposite of the affirmative, but this cannot be carried to the case of right and wrong. Here while a wrong may be called a negative right, the addition of another wrong does not act to negate or deny the first, but creates a new negative right, and cannot be applied to the first situation. The two are totally independent and do not act one upon the other." The interest in this, of course, is in the fact that this boy suddenly proceeds to write in this prolix fashion, wanting more time, page after page, in answering these questions as you have seen, with a good deal of overstatement, and not concisely at all, as the directions call for. Now did you want the detail on that Binet test? He passed all except one. The only failure that he was in the so-called paper cutting test, in which one takes a sheet of paper and folds it over and then makes a cut-out;

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and the person is asked to think of this paper as being opened up in his own mind, and how it would look with this piece cut out. He had difficulty with this, although when I carried that scheme further, he developed a logical method of reasoning it out, even though he could not visualize it apparently, and did extremely well with it. That was also true in another test that I gave him, which we have always considered an extremely difficult one, known as the McAlly cube test. You are told to see in your own mind a cube that is three inches in all directions, in all measurements, and that is painted on all sides. Suppose that cube is composed of one inch cubes. How many of those cubes will be painted on three sides, two sides one side, and no sides at all. His answer in one minute was entirely correct.

MR. CROWE: Q How many cubes are there?

A 37. The answer in one minute was entirely correct, which of course is an astonishing result, because many of us are not able to answer that in 5 or 10 minutes.

Q And some of us not at all? A A lot of us. I would find a great deal of difficulty with it myself.

Then I gave him the so-called Kent-Rosanoff

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association test that has been used a good deal by psychiatrists in order to see his reaction times and the quality of his mental reactions. With a stop watch in hand you are asked to respond as rapidly as possible with a word directly after a so-called stimulus word that is given. For instance, with a stop watch I say to the person "table", and the person answers, for instance, "chair, room, music, books," or anything that comes into their mind, and the point is in how rapidly can they get out a word and what is the nature of the word.

Now Leopold got out these answers in a most remarkably short time, very frequently being under one second, four-fifths of a second, for instance, and I thought I caught some in even three-fifths of a second but the interesting part that developed in this test is the fact that his mind is so rapid in his reactions that at times he found difficulty in saying a word because several others seemed to come into his mind almost simultaneously, and I caught him once when he had checked off saying the first syllable, and I asked him what he wanted to say and instantly he reeled off five or six other words that

he might have said. A very remarkable exhibition.

Now, this test is also used to determine whether an individual has emotional reactions. I used it to no great extent in this fashion, that is, I did not introduce words as they are sometimes introduced to see whether there would be emotional reactions to those special words, with one exception. I did introduce in his case the word "chisel" and I also did in the case of Loeb, and got no special reaction, that is in the way of a lengthening of a reaction time.

But during the course of this I was very much struck by the fact that while he was so exceedingly rapid in his general reactions, when I said the word "trouble" he did not answer for six seconds, and then said the word "plus" and the next word that came along was "soldier", which he responded to by the word "general" in 3-4/5 seconds, and I asked him then what the trouble was and he said, "I am all upset now", which I think is the first evidence I have seen of his having any emotion under the surface at all, or anywhere.

MR. CROWE: You are now talking about Leopold?

THE WITNESS: Well, I have not quite finished --

MR. DARROW: These are all Leopold.

MR. CROWE: These are all Leopold's tests?

THE WITNESS: What?

MR. CROWE: These are Leopold's tests?

THE WITNESS: Yes, I am speaking about Leopold's tests now.

MR. CROWE: Yes.

MR. DARROW: Yes.

THE WITNESS: Yes, that was Leopold. Then I also gave him a test known as the picture completion test too, which is a set of ten pictures in which there are cutouts, and the person is asked to select from among sixty squares the particular picture which would best fit the meaning of the particular cut out which would best fit the meaning of the picture. They are specifically made with the idea that some of the cutouts may pretty nearly answer the meaning correctly but not ~~ga~~ do it thoroughly and well.

This test is, as we call it, a test for apperceptions or practical judgment. On this he did very poorly indeed, much to my surprise. He made a

score of 56.5 out of a possible 100, and that is just the average for twelve years; or stated in another way, twenty-five percent of the ten year old boys do better than that.

MR. CROWE: Can you give us one or two illustrations there if you have got them?

THE WITNESS: I could bring them at another session and show them to you much better.

MR. CROWE: Do that this afternoon.

THE WITNESS: Because it would take a long time to explain that. You can see it instantly.

MR. CROWE: All right. Do that this afternoon.

THE WITNESS: Now I think that exhausts the group of tests that I made, with one exception I remember now. Leopold has developed logical methods of so-called mnemonic devices, memory devices by which he can remember things in most remarkable fashion. You can make out a list of twenty words and he will read them over and then he can tell the order of those words or if you tell him any one of the words he can tell which word came after it and which word came before it and so on.

Not only did he exhibit his ability to do that but he exhibited his ability to do it on the day after, when we had no intention of asking him, in twenty-four hours.

He gave a very interesting account of how he did that trick. He took one word, or rather he took all the rooms in his house and then he placed, as I remember it, one word in each room and associated that word with that particular room, and its contents, and then he could recall very readily the words by the relationship of the rooms in his house.

He also has demonstrated to my mind his very great attainments in the science of language. You heard Dr. White speak of the different dialects he has learned, but Leopold also does this sort of thing; he writes the French with Greek letters; or German in Sanscrit character, and things of that sort, playing with philological ideas, enjoying the whole performance most tremendously he enjoys nothing evidently quite so much as his great mental activity.

His conversational powers are extremely good and he is, all through, very argumentative.

Now concerning his personality which is the

next thing I would like to take up in my notes, one finds him very definitely by observation and by an account of him, extremely energetic both physically and mentally, showing as I say this great pleasure in mental activity; he does not want to stop after a half day of these arduous tests but would like to go on. It seems there is a great deal of what psychiatrists call pressure to mental activity, very little fatigue, and great desire to go on elaborating his thoughts. He is very enthusiastic and forceful about anything he initiates, throws himself into it with a very great deal of zest, making many gestures, being very talkative, having very many ideas on the subject to get out, about almost anything you speak of.

He throughout the examination showed himself to be self-centered and egotistic beyond any normal limit. From all accounts of him given by his family, particularly by his father, he has been for years very rebellious against obligations, social obligations, religious obligations and various sorts of conformities.

MR. CROWE: Doctor, pardon me.

THE WITNESS: Yes,

MR. CROWE: Go back a little where you said he was self-centered and egotistic and he showed it during this examination. Will you at this point tell me how he showed it?

THE WITNESS: By his constant inconsistencies --

MR. DARROW: I think the doctor ought to tell his story and then you can cross examine.

THE WITNESS: Nearly all of this will be cleared up later when we go into this matter in detail.

MR. CROWE: The only thing is, we may forget it and if we can get it as we go along we are entitled to it.

MR. DARROW: Doesn't it go along in chronological order, doctor?

THE WITNESS: I am trying to present it in chronological order because there is such a mass of it.

THE COURT: All right. Go ahead, doctor.

THE WITNESS: In a very curious way he is very punctillious about keeping his appointments, for instance. We have some evidence from a Dr. Bernheim, I think it is --

MR. DARROW: Bernheimer.

THE WITNESS: He says that Leopold became very

annoyed when the doctor was not there exactly on time. He is very careful about finishing his mental tasks for us. If he has not finished them the time before he comes next time with a slip of paper and says, "This is what I forgot", or "I did not do this", and he is, judging by some of the letters I have or had seen just as punctillious in keeping his appointments with his classes in ornithology, in bird life, getting other fellows to take charge of them within a day or two or within a few days after the crime was committed.

He appears with us altogether and not unfriendly, but he is extremely critical of other people and decidedly supercilious about his own mental attainments. Very stubborn in his opinions. He is right; the world is wrong. His father says that years ago Leopold has argued repeatedly with him about the nonsense of ethical ideas, about the nonsense of having a conscience and doing as other people do in regard to right and wrong.

As far as I can judge from my numerous interviews, he has extremely little sympathy or feelings or conceptions of gratitude except in some very narrow fields, with regard to his family life

in particular, and it is particularly clear that he is melodramatic about the whole situation; he enjoys immensely playing a part.

He himself said to me that it is very much like a drama, and that he thought the best way was to play the whole thing out in the same way; he would enjoy it best that way whatever the ending was.

Now the next thing I should like to discuss would be in regard to his emotions or moves and there judging from his own story of himself particularly, there has been a tremendous subordination of many normal feelings and emotions to this excessively developed conception of himself as a superior individual; and he has reacted thus and is reacting all the time in a most abnormal way in regard to this and particularly in regard to the whole crime. I am immensely struck --

MR. CROWE: Doctor, just a minute. Are you going to give illustrations of that later on?

THE WITNESS: Yes sir. I am immensely struck too by the fact that notwithstanding his opportunities in life for culture and comfort and ease, that he

shows so little disgust at jail surroundings. His main concern seems to be and he himself says is whether or not the reporters say the right thing about him; and one observes a very distinct exhilaration, even as we saw him in jail whenever there was opportunity for him discussing himself or displaying his own powers.

And again I might state that considering his emotions I saw no evidence whatever of what one might expect to be normal emotional life in jail, or as related to discussions of the crime. The only evidence of it was in this test, whatever that may be worth.

The main thing, of course, we are interested in, is whether there would have been alterations in personality, and my judgment is that there seems to be some steady impairment of his own judgment considering himself particularly, and his relationship to the realities of life, inasmuch as he has been so willing to throw away his remarkably fine chances in his environment and as an individual who has such remarkable abilities, throwing away these chances for such petty awards in relation to a most heinous crime.

This conception of himself as a superior being, really superior to laws and social regulations, is very apparently then destructive of his own self interests. He might have been a distinguished scholar; he was already quite an eminent investigator of bird life, having published really very commendable contributions in this field, and an individual with normal judgment would have naturally developed his real superiority and not taken such extraordinary chances of ending his career.

There is another contradiction there that comes out in his life attitudes and in his behavior, a contradiction between his notion of his being a superior being and his behavior on such extremely low personal and social levels.

And concerning his inner mental life, which of course is the main concern of the psychiatrist, we find in the first place he has gradually evolved quite delusional ideas concerning himself, and if you will permit me I will go into those a little later.

But in important spheres of life he seems to feel and think and act as if he were a superior being with desires and his own will as guides to

conduct. He says he is a superman on the basis of the philosophy of Neitzsche.

In jail, even though he may be despised, he is Napoleon on St. Helena.

He says that there is one thing that he is afraid that he has not "gotten across to us scientists", and that was his final remark the other day, and that is, that the most important thing, much more important even than preserving his life, is the preservation of his dignity.

Dr. White gave you the account of the ten world riddles that he wants to put into a vault and try to answer after death.

He also wants to write an autobiography if he can, showing how his nineteen years have been packed full of the most interesting and pleasurable and valuable experiences. He wants to make a last speech, if he has to make a last speech, showing that he has had a consistent life career. Ever since he was a little boy he says consistency has been a court of god to him.

And then we come to the matter of his day dreaming, which again is a very important thing, not because we are not all subject to day dreamingas

children and in our later life, but because his early day dreaming was so abnormal in its extent and has been carried along so abnormally and carried over into everyday life.

He began, so he says, with dwelling mentally on the pictures of suffering and causing others to suffer, which would seem to be a proof of something going wrong already in his emotional life as a little child. There was the crucifixion, which he has dwelt upon, which made, he says, an abnormal appeal to him, and the idea of somebody being tied or he tying someone.

And he went on and told me, at great length, and elaborated freely upon the theme that he had first developed with Doctors Bowman and Hulbert, ~~the~~ namely, the theme of the king-slave phantasy, which he began, evidently very early in life, and which has some very strange components of a childish and abnormal nature, of which I have spoken in this, because that was not open to the public. The slave would be a person that would be made to suffer, but he would be a good looking, strong man in some ways. Saving the life of the king he would be offered liberty, but he

would refuse his liberty. Sometimes he himself would be the slave, and sometimes he would be the king.

As time went on, he belonged to a caste of slaves, a class of slaves; he himself was bound to his king by a golden chain, which he could easily have broken. He explains this by saying it was a vestigial remnant; his slave was as really as good as any kind. At other times he has phantasies about a boy being captured and beaten, and the king saves his life; or himself as a slave being stolen by gypsies, and brought up subject to punishment; or a boy who is captured in war time, and beaten, but saved by a nice young girl; and all through there are these continual croppings up of suffering or causing to suffer in these phantasies. This imaginary life was developed very early, and had all along this abnormal material, and it kept up even last year. He has told us about this himself, and his aunt tells me that notwithstanding his tremendous activity and vigor, she had noted that sometimes during the last year he came in and went and lay down on the couch, and she supposed he was taking a nap, but these were the periods when he says he voluntarily

went into his periods of day dreaming. These phantasies apparently have had an immense influence upon his life. They have come up again and again, and have had relationship to his relations to Loeb, and to other boys earlier. Normal phantasies, of course, are carried out with all of us in our ambitions, and in our interests in general. This boy carried his abnormal phantasies very early over into real life. He distinctly remembers, he tells us, even at twelve years of age, identifying a camp counsellor as a slave, and putting him into this position of slave-knighthood. Other boys were gradually drawn into this slave idea; any boy who would appeal to him as good looking was eligible for playing the part in his phantasy life; and he tells us of elaborating a scheme of capturing these, and even of branding them; he had a special sort of imaginary and complicated brand, which he applied in his phantasy to the inner calf of the leg. Most significant, according to his own account of his life, is the fact that three or more years ago, soon after their first acquaintance, Loeb began to be woven into his phantasy life.

Loeb would figure sometimes as the king, and sometimes

as the slave, but it was a transfigured Loeb. Loeb would be an ideal man, wonderfully good looking, an athletic star, a brilliant scholar, a fellow who got the highest marks in college. Now he knew none of these things to be true, but he forcibly transformed Loeb; he tried to make himself believe these things, and he himself says that he told many others about his admiration for and belief in Loeb; and from one of the boys acquaintances I have confirmation of that fact. It seems to have been really a rather extoracious fact, that Loeb himself object to, that he was so continually praising Loeb and putting him on a pedestal. Dr. White told you about his stating that he made a chart of the perfect man, in which Loeb ranged much higher than himself. But it is also interesting to note that Leopold himself speaks of having made a complete identification of himself with Dick. Now, to this point we have the fact that Leopold is able to recite poetry at great length, and that in itself is an interesting thing, it seems so incongruous. All at once he is able in prison to declaim poetry, some three or four pages, which he dictated to me as fast as I could get it down.

The other day in the court room he passed me a little memorandum, and said this was the part of the poem that he had in mind particularly, one of Lawrence Hope's poems that he recited to me, and which I will give you a larger excerpt from if you want it. This is what he wrote the other day, in court, and passed it to me:

"Let me dream once that dear delusion
that I am you,
O heart's desire."

And he prefaced it by "In re Dr. White's remarks about identification with alter ego, Dick; see poem I quoted to you." That line comes in this stanza, -- it is hardly worth reading the whole poem: This is what he quoted with a good deal of apparent feeling, to me:

"Long past the pulse and pain of passion;
Long left the limit of all love;
I crave some nearer fuller fashion,
Some unknown way, beyond, above;
Some infinitely inner fashion,
As wave with water, flame with fire.
Let me dream once that dear delusion
That I am you, O heart's desire."

MR. CROME: Q Who is the poet that wrote that?

A Lawrence Hope, he tells me. I am not familiar

with it. I am informed by one of my confreres, however, that that is the fact. In his phantasy there was a ready changeabout of himself with Loeb and he fitted into Loeb's suggestion about their criminal activity because he could work out his double-faced scheme, the phantasy scheme of being either a king or being a slave.

Bearing upon this whole problem of his phantasy life and upon his delusional tendencies, his ideas of superiority, and a fact that seems to be very well substantiated from his relatives, is that for many years he showed an abnormal and intense energy. Many witnessed that. He is never idle a minute. He has no ordinary fatigue. He would remain up all night when he was going to undertake some special task or investigation next morning often, because he thought he could do it better if he remained up.

As we know by his actual productions, he has been continually reaching out for new subjects to study, and developed a formidable list. In his room he has an ornithological collection, which I have seen, which is really very remarkable. I do not know the exact number of birds in it, but a lot

of very rare specimens; I think they stated there were something like three thousand specimens in the collection.

He has been continually seeking new life experiences, and ideas and sensations; a great talker and arguer throughout, showing an intense physical and mental attitude for years, and demonstrated it through the period of his examination.

THE COURT: We will now adjourn until two o'clock this afternoon.

Whereupon an adjournment was here taken by Court and Counsel to 2:00 o'clock P.M. August 4th, 1924.

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Monday, Aug. 4, 1924.

2:00 o'clock P.M.

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

Monday, August 4th, 1924 pursuant to adjournment heretofore taken.

Present: Same as before.

D R. W I L L I A M J. H E A L Y,

resumed the stand, and being further examined, testified as follows:

DIRECT EXAMINATION
(continued)

BY MR. DARROW.

THE WITNESS: Shall I go back and show this test that was asked for this morning? Here is a set of pictures representing the activities of a boy during one day in his life. The person who is to be tested is informed of that fact, and is asked to select something that fills in the spaces there, that makes the meaning correct. Of course, anybody would observe that this boy is getting up, and he has one shoe on and one shoe off. So he selects a shoe. Now, he might select a bedroom slipper, or a low shoe, but he has a high shoe on, so he naturally selects that

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to fill in. You pass this to the person who is being examined, and say, "Fill in each one of these as you go along with the correct meaning."

So you go through with these things. I have seen many a shrewd country boy make a pretty nearly perfect record on this, while this particular lad, with his fine mentality, only did as I have stated. There is nothing but common sense judgment required in this rather than any specific type of learning.

Finishing the points concerning Leopold's inner mental life I would like to say at this time that I, with the rest of them, was impressed with the validity of his recital and his imaginative life, because it fits in so well with his life trends and activities and then because also this sort of phantasy life is very similar in its qualities and the way it came out to the so-called autistic thinking, that is, reveries, that is done by patients who have mental disorders. This came out spontaneously with the first investigators, Drs. Bowman and Hulbert, and were elaborated more or less to each one of us.

In connection with this boy's inner mental life we find a great deal of pathological admixture of inferior and superior concepts, ideas and

strivings, not only in his diseased imagination, but also in his behavior reactions in real life. There is nothing more impressive in this respect than the fact that here was a boy who already showed such tremendously good powers and had such widely good chances for developing in the line of his especial abilities, but at the same time was willing to go on with these thoroughly pernicious activities. It appears to me to reflect a profound disorder of judgment, this contradictory existence of impulses and ideas which were living side by side. It indicates a spontaneously abnormal rift or tremendous contradiction between his intellectual precocity and his judgment and his emotional condition. There was no normal and consistent personality developed.

Then if I may, I want next to speak of his early peculiar tendencies which have already been spoken of to some extent.

His being at five or six years of age so much interested in the religions and different religions; interested in going to different churches; interested in the ideas of the Crucifixion and the Madonna and early questioning why there were so many

different ideas about God. About that same time he began a desire which he has had all his life, of wanting to complete everything, to do a good job out of everything, to go to all churches; to know all the words in the different languages, for the equivalent of "yes".

He tells us he asked his nurse to be awakened at night at odd hours. He remembers distinctly wanting to visit 100th Street simply because it had the number 100. He wanted to be taken to see a certain Madonna picture.

His interest in churches we have been told about also by his family, and at the same time there began this very intense mental activity; he began his collections with a great deal of zeal in the study of insects and birds and then later other collections.

He tells us that at four years of age he had begun to catalogue the minor saints and to learn something about their lives from the nurse that he had.

His development of his peculiar personality tendency that amounted to practically a delusional.

form, is, to my mind, very interesting. Of course, he showed early very extraordinary intellectual superiority and it was early recognized by his mother and by certain teachers; he was soon set apart and superior.

I asked him what hardships he ever had to meet in the world. He never had any. He says he never had any disappointments; he was not allowed to have any.

As a young child he placed his mother and a favorite aunt, as you have heard, on the level with the Madonna as most wonderful persons, and in conversation apparently retains this sort of ideal, although he thinks that women are quite inferior. To the psychiatrist this, of course, has considerable interest, because it relates to his own origin. He thinks of himself as coming somehow from very wonderful people.

And then we have his superior accomplishments and the ideas which he early developed of doing very odd things which would set him apart. He was very tense about doing well those studies, about making wonderful collections, about showing that he

had an abnormal resistance on a very peculiar resistance to fatigue. He says he strove for perfection; he thought in the fourth dimension; he hoped to find the universal language.

And then next what is even more interesting it seems that he very early thought of himself as possibly a completely intelligent individual who might experiment with ideas of right and wrong and conscience and God.

You will remember he is reported to have told the authorities when he was in custody that a conscience was drilled into him until he was eight years of age and then after that he proceeded to drill it out.

And so he began as a child to deliberately overthrow the idea of God and of conscience and of sympathy and of social responsibility as unnecessary and unworthy.

The following are two or three of his expressions:

"I have reveled in the fact that I have had no qualms of conscience". Speaking of family loyalties, "I was trying to break down any feeling that I had for my family. I have tried to kill affection

for years."

He says that he at first, from the intellectual standpoint, doubted the existence of a conscience; that is something that tradition has handed to us or we learned at our mother's knee, and then by the result of experiment he found that he could completely down it.

Only gradually he seems to have developed the superman idea, and at this point I should like, if I may, to cite a letter dated last October, in which he dwells on that.

MR. DARROW: We will show by another witness the genuineness of the letter.

THE WITNESS: This is a letter that I myself picked out from a large batch of letters which were brought to me by the members of his family. The whole letter has a very great deal of interest on account of its verbosity and the peculiar playing with ideas, that is so characteristic of individuals of his type of mentality. It is a very long letter.

MR. DARROW: Q Does the envelope bear a post office stamp and date?

A It bears the stamp of the post office, Toledo, Ohio,

Ellis Avenue, Chicago, a special delivery letter.

MR. CRONE: Read all of it.

A "October 10, 20th Century Limited, 1:45 P.M.

"Dear Dick: I want to thank you first of all for your kindness in granting my request of yesterday. I was highly gratified to hear from you for two reasons, the first sentimental and the second practical. The first of these is that your prompt reply conclusively proved my previous idea that the whole matter really did mean something to you, and that you respected my wishes, even though we were not very friendly. This is a great satisfaction, but the second is even greater, in that I imply from the general tenor of your letter that there is a good chance of a reconciliation between us, which I ardently desire, and this belief will give me that peace of mind on which I based my request.

"But I fear, Dick, that your letter has failed to settle the controversy itself, as two points are still left open. These I will now attack. As I wrote you yesterday, the decision of our relations was in your hands, because it depended entirely on how you wished to treat my refusal to ~~that~~ that I acted wrongly. This request you do not answer. You imply merely that because of my state-

ment that, 'I regret the whole matter' I am in part at least admitting what you desire. I thought twice before putting that phrase in my letter, for fear you might misconstrue it, as in fact you have done. First, you will note that I said that 'I regret the whole matter' (not any single part of it). By this I meant that I regretted the crime you originally committed (your mistake in judgment) from which the whole consequences flow. But I did not mean and do not wish to be understood as meaning that once this act had been done, I regret anything subsequent. I do not in fact regret it, because I feel sure, as I felt from the beginning, that should we again become friends, it will be on a basis of better mutual understanding as a result of these unpleasant consequences which I deliberately planned and precipitated. Further, even if I did not regret those consequences, it would not follow at all that I consider myself to have acted wrongly. I may regret that it is necessary to go downtown to the dentist, and still not feel that I am acting wrongly in so doing. Quite the contrary. So if you insist on my stating that I acted wrongly,

as a prerequisite to our renewal of friendship, I feel in duty bound to point out to you that this is not the meaning of what I wrote. In this do not think that I am trying to avoid a renewal of these relations. You know how much I desire a renewal but I still feel that I must point this out to you, as I could not consider re-entering these relations when you were under the misapprehension that I had conceded to what you demanded. On the basis of this construction of my words, then, Dick, should you base your decision. Next comes the other point of issue, namely, whether I wish to be a party to a reconciliation, supposing that you wish on the basis of the previous statements to do so. Here the decision rests, not with you, but with me. Now, as I wrote you yesterday, you obviated my first reason for a refusal by telling me what I wanted to know, but another arose, the question of treachery, and that is not quite settled in my mind. For the purpose of this discussion, I shall not use the short term 'treachery' as you suggested in your letter, to cover whatever you want to call it. I have no desire to quibble over terms, and am sure we both mean the same thing as treachery. Very well.

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The whole question must be divided into two, namely, treachery in act and treachery in intention. On your suggestion, the first was to be settled by phoning Dick, as I did, I apologizing verbally on condition that you were right, and implying the same apology from you in case you were wrong."

MR. CROWE: Q The Dick referred to there is Dick Rubel?

A I couldn't tell you.

MR. DARROW: Yes.

MR. CROWE: Q Have you made any effort to ascertain that?

A I do not know that I have read this part of the letter before, -- (reading):

"You were proved wrong, and I am sure you are a good enough sport to stick by your statement, unless you question whether I did all you suggested in good faith. Hence, you remove any previous charge of treachery in act. If there was such. But the second is not so simple. I stated, and still hold, that if you still held me to have acted treacherously in intent, our friendship must cease. You circumvent that by saying you never could have held this

opinion because you believe me to have acted hastily, etc. I did my best in stating that I was wholly responsible for all I said and did, since I had planned it all, and if there were malice at all it would be malice aforethought. You refuse to believe me. Now, that is not my fault. I have done my best to tell you the true facts, (since they were in my disadvantage) and hence have discharged my obligation. I still insist that I have planned all I did. You can believe this or not as you like or come to your own decision, or whether you still think I acted treacherously. If you say you do not, then I shall infer either that you never thought so (although you accuse me of it) or that you have changed your mind (and imply these as an apology for ever thinking so) and continue to be your friend. All I want from you then is a statement; that you do not now think me to have acted treacherously in intent, which I will construe as above. Then it is up to you whether you will forego my statement of wrong action or will on your part break up our friendship. Please wire me at my expense to the Biltmore Hotel, New York, immediately on receipt, stating, one, whether you wish to

"break our friendship or to forego my statement, or, two, whether or not you still think me to have acted treacherously. If you want further discussion on either point merely wire me that you must see me to discuss it before you decide. 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 extraordinary privileges without also putting on him extraordinary responsibility would be unfair and bad. Therefore, an uebermensch 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. To cite an example, 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 choose 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 did not and do not wish to charge you with a crime, but I feel justified in using any of the consequences 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.

"Now, Dick, just one more word to sum up. Supposing you fulfill both conditions necessary for our reconciliation. One, waive claim to my statement, and, two, state yourself that you no longer think me to have acted treacherously. We are going to be as good or better friends as before.

"I wanted that to come about very much, but not at the expense of your thinking that I have backed down in any way from my stand, as I am sure of that in my mind and want you to be.

"Well, Dick, the best of luck if I do not see you again and thanks in advance for the wire, I am sure you will be good enough to send. Hoping you will be able to decide in the way I obviously want,
I am

Babe."

"P.S. Excuse scrawl. Train is moving. Your spelling, young man, is abominable, and I for one should advocate that Tomsie-boy be taken away from your instruction in the subject."

MR. DARROW: You want to mark that? Will you mark it for us?

MR. CROWE: All right.

MR. DARROW: Defendants' Exhibit 2 of this date. Mark it inside and outside.

Would you like to look at it now?

MR. CROWE: Let me look at it. There is no objection?

MR. DARROW: No.

THE WITNESS: And much to this same point is the fact told, as I understand, Mr. Darrow, by one of the teachers in the University of Chicago, that during the last term Leopold got up in a class on torts and insisted that laws might be applicable to ordinary people but not to supermen.

With us, Leopold ridicules our type of work, as far as psychiatry is concerned. He insists that there is nothing in the way of mental disease or lack of balance on his part. He is a different individual, but the difference is only one of superiority.

My opinion about all this is that this group of delusional tendencies shows no consistency or normality. His ideas about himself as a superior person are so widely different from the sort of life that he enters into. With all of his self love he does not show a normal self regard. He proves intrinsically his defective judgment in this. He has not taken an ordinary attitude toward himself, a normal attitude. He has not been consistently headed toward the development of his alleged superiority.

MR. CROWE: Pardon me. There is no objection to my keeping this letter over night, is there?

MR. DARROW: No.

THE COURT: You may have it.

THE WITNESS: We are naturally, of course, much interested in the development of Leopold's emotional life. It seems clear that with his very deliberate subordination of his feelings that he has had all the more energy to give to his intellectual pursuits. His feverish mental activities have been made all the more possible because he has not, as he himself indicates, wasted any time of emotion.

We have some clue as to how this has developed on his part. There was the fact of his early small size and his being very specially taken care of by nurses, of his being taunted as he tells us, by being sent to a girls' school for a couple of years, and then, through with that, being accompanied to a public school by the nurse.

His reaction to this was that he could down his sensitiveness, down his feelings, by thinking of himself as being a superior type of an individual, and he has been, he says, surprised at his own success.

He expatiates nowadays on his own cold-

ness as being desirable. It has led him to the position where he is now, as an intellectual who can keenly observe things. He can enjoy what he sees in jail, his own notes of the trial. He tells us that he has had considerable interest in observing himself as a murderer and says that before the murder was committed that he had some thought of the possibility of observing his own actions in such a situation.

Asked about his own feelings or emotions, especially as related to any question of sympathy for anybody who was attacked or murdered or kidnaped, he said to me, "Making up my mind to commit murder was practically the same as making up my mind whether or not I should eat pie for supper, whether it would give me pleasure or not."

Now, conclusions concerning Leopold's mentality. In my opinion on account of --

MR. CROWE: Just a moment, doctor.

THE WITNESS: Yes.

MR. CROWE: Before you get into your conclusions, hadn't you better now go into details as to the various

things which were said or done that caused you to come to those conclusions.

THE WITNESS: All this I have been recounting is simply the source.

MR. CROWE: This morning when you said he was eccentric, you said later on you would give the various things that caused you to think he was eccentric and egotistic. You said you would give these later on.

THE WITNESS: Yes, I am going to give those now. That is what I am going to do now.

On account of his abnormal phantasy life developed as abnormal material in childhood and continued in abnormal ways during an abnormal extension of years.

On account of his chronically developed delusional notions about himself, particularly as being a superman.

On account of his subordinated emotional life to the extent that it is now pathologically out of accord with his intellectual life.

On account of his defective or deteri-

erated judgment which has not permitted him to see the pathological absurdity of mixing phantasy and real life, and the effect of displacing emotional life.

On account of his abnormal urge toward mental activity and his diminished sense of fatigue.

On account of his disintegrated personality so that he fails to really care for his much beloved ego and enters into a thoroughly childish and absurd compact which endangers him.

On account of all this, in my opinion, he is thoroughly unbalanced in his mental life, or to use another term mentally diseased.

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MR. CROWE: When you use the other term, do you mean the same?

THE WITNESS: Yes.

MR. CROWE: You think he is insane, then?

THE WITNESS: I don't think anything about it.

MR. CROWE: He isn't insane, he is sane?

THE WITNESS: I Didn't use the word "sane" or "insane" I have not thought about that matter.

MR. CROWE: Go ahead.

THE WITNESS: He has a paranoid personality. His conversational powers and his scholastic ability lead him to be unrecognized. His maniacal tendency, his over-excitedness and over-energy have been interpreted as evidence of cleverness, and it is typical of such cases that they remain frequently in the world unrecognized.

MR. DARROW: Q What effect will that have on — well, strike that out. To what extent were those responsible for his acts?

A This crime in particular?

Q Yes, this crime.

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A To my mind this crime is the result of diseased motivation; that is, its planning and commission.

Q Yes. A It is possible only because he had these abnormal mental trends with the typical feelings and ideas of a paranoid personality. He needed these feelings and ideas supplemented by what Loeb could give him. There is no reason why he should not commit the crime with his diseased notion. Anything he wanted to do was right, even kidnaping and murder.

There is nothing in the feelings of sympathy which would prevent him, because of his disintegrated personality, there was no place for sympathy and feeling to play any normal part. In other words, he had an established pathological personality before he met Loeb, but probably his activities would have taken other directions except for this chance association.

Q Now, will you take up Loeb next, and then consider the two together.

MR. CROWE: Doctor, have you finished on the specific acts and facts upon which your conclusion is based as to Loeb?

THE WITNESS: Yes.

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THE COURT: Counsel have requested that we have a five-minute recess now on account of the air and the humidity in the room, and they have something to talk about outside, so we will have a five-minute recess.

Whereupon a short recess was

here taken by Court and Counsel.

Court convened pursuant to short recess
heretofore taken.

Present: Same as before.

D R . W I L L I A M H E A L Y ,
resumed the stand for further direct examination by
Mr. Darrow, as follows:

MR. DARROW: Q Turn to the Loeb part, and state
what you did, the investigations you made, and what
you found with reference to Richard Loeb.

THE WITNESS: I should like to add one point, if I
may. You had a little conference, and interrupted
me, and in answer to your question, was that all
from which I drew my conclusion, I should say it
was, with the single exception of those matters
that we took up together.

MR. CROWE: Yes.

MR. DARROW: He meant to include that. I don't
know whether I called your attention especially to
the letter introduced by the State's Attorney. You
said that was included in your consideration?

A Yes.

MR. CROWE: Q It is on the same subject matter

as the other letter?

A Yes, but giving a very different aspect to it, from which one draws inferences to my mind that are unwarranted.

MR. DARROW: Q Will you proceed.

A In the case of Richard Loeb, I see nothing particularly from the physical side by a general examination, that is of significance. He is a well-built, active fellow, but though apparently calm and pleasant in his demeanor, he does show signs of some nervous disturbance in the muscular twitchings of his face, and in the asymmetrical use of his mouth, which is very pronounced, one side frequently being drawn up in peculiar fashion.

Inquiry from the family makes it plain that this condition has developed during the last two years. He stammers very slightly indeed.

Concerning mental tests, and if you care I will go through the same sort --

THE COURT: Go ahead.

THE WITNESS: Not as many mental tests quite were given to him; for certain special reasons they did not seem necessary. He also as a college grad-

uate and a young man of considerable education rates too high to be fairly tested. On the ordinary test Stanford-Binet test he gets a very good rating and passes them all with one exception which is known as the code test in the sixteen visualization series. A test that calls for some visualizing powers but is a matter of no great importance.

MR. CROWE: Just give us a sample or two of the tests you applied to him.

THE WITNESS: Of what these tests are, and so on?

MR. CROWE: Yes, as you did in the case of Leopold.

THE WITNESS: Yes. I have not given this before. These form a set of tests year after year and are of considerable value for children, but when it comes to adolescence of good education, they are not of nearly so much value.

For the 18-0 series, for instance, the first test and that is a test also for several years previously, is the so-called vocabulary test. Here we have 100 words and the individual examined is asked to give the meanings of those words. Now you have to pass seventy-five words to get the 18 year old series, and he only gives 78 words, which for a

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graduate from college is a pretty poor record, as an ordinary 18 year old individual is merely a high school graduate. I do not think it is worth while giving you the words he failed on.

MR. CROWE: Yes.

THE WITNESS: Do you want them?

MR. CROWE: Yes.

THE WITNESS: Such words as artless, depredation.

MR. CROWE: What did he say artless meant?

THE WITNESS: I do not know. He did not give it a satisfactory definition, that is all. Depredation. That is artless, a-r-t-l-e-s-s. Gravel, harpy, declivity, fen, incrustation, sapient, retroactive, and so on.

MR. CROWE: There are some of those we would muff on, aren't there?

THE WITNESS: Those are all standard for testing individuals 18 years of age, so it is no test as to what we will do.

Now other tests of this same series. One of them I have mentioned before is this so-called paper cutting test in which you are asked to visualize a sheet of paper after it has been cut. He passed

that correctly.

The next test is to be able to repeat eight digits after they are said to you in this fashion. Reading them slowly to him and he is allowed to say them back just as fast as he pleases. He is given three trials on this and he only has to do it once. Seven, two, five, three, four, eight, nine, six. He passed that without any trouble.

Another one of the 18 year old tests is to repeat the thought of a passage which is read to him. Shall I read that passage?

MR. CROWE: If you please.

THE WITNESS: "Tests such as we are now making are of avlue both for the advancement of science and for the information of the person who is tested. It is important for science to learn how people differ and on what factors these differences depend. If we can separate the influence of heredity from the influence of environment we may be able to apply our knowledge so as to guide human development. We may thus in some cases correct defects and develop abilities which we might otherwise neglect."

That test is simply to give the idea of

the passage. They are not asked to remember it at all.

The fifth test of that series is to repeat seven digits backwards, taking all the time that you please.

The sixth test of the series is the old ingenuity test perhaps some of your or many of you have heard; the mother sent her boy to the river to get seven pints of water. She gives him a three-pint vessel and a five-pint vessel. Show me how the boy can measure out exactly seven pints without guessing at the amount, beginning by filling the five pint vessel.

He is allowed five minutes to do that. These are samples of the test. This is the standard intelligence test that is used almost everywhere nowadays.

MR. CROWE: Did you tell how he came out on those?

THE WITNESS: He came out all right. He showed normal motor control in the tapping test we spoke of in the case of Leopold this morning.

On the same Monroe Silent Reading test for which we have pretty well established norms,

he failed on quite a number of them and gained a score

which was the equivalent of twelfth grade. That is the last year of high school. I don't think it is necessary to read that again, is it?

MR. CROWE: No, but give one or two examples of where he failed.

THE WITNESS: Of where he failed?

MR. CROWE: Yes.

THE WITNESS: Well, this is test No. 6 of this series:

"The wall enclosing the whole island and the waters, each built for a double purpose of bulwark against the river and defense against the mob was said to have rendered the palace unfit for constant occupancy, inasmuch that legates abandoned it and moved to another residence.

"Underline the word that tells us what it was that rendered the palace unfit for occupancy."

He underlined the word "river".

MR. CROWE: What word should be underlined?

THE WITNESS: Wall.

MR. CROWE: Wall?

THE WITNESS: Yes. Another one he failed on. "When

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the air is heavy the liquid in a barometer rises and when the air is light the liquid falls. Suppose the barometer registers ten degrees lower at twelve o'clock than it did at eight o'clock. At which time was the air heavier?"

He says twelve o'clock. That gives him, as I say, a score equivalent to the ordinary four year high school.

On the syllogism test, the reasoning test that I spoke of this morning, the so-called Thurston syllogism test, he works hard at it, takes seven minutes to do it, and gets it correctly except for one failure.

MR. CROWE: What was that failure?

THE WITNESS: What was it?

MR. CROWE: Yes.

THE WITNESS: I couldn't say. I would have to go all over it now. I haven't it in mind.

In the equivalent proverbs test where he has some twenty Proverbs to reason about, generalize about, he gets sixteen correct and four errors.

MR. CROWE: What is his answer on the two negatives;

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The two wrongs making a right; read that.

THE WITNESS: I didn't give it to him.

A standard test that correlates with the general intelligence is again this language test by which you fill out certain words. On this he makes a good many errors, and gets a total score again that is only equivalent to a fourth-year high school. Not at all equivalent to a college grade. You do not care for the errors in here, I don't suppose, do you?

MR. CROWE: Well, give us just one or two, as examples.

A Well, he says, "One should not as a rule direct attention to uninteresting things." He leaves blank one that says, "To eat one is a (blank) person". It seems easy enough.

MR. CROWE: That first one, will you read that again?

A "One should not as a rule direct attention to uninteresting things." It is incorrect to say "One should not".

He says --- and this is poor language again --- "The sun is so bright that one cannot read in it directly without causing great discomfort to the eyes."

"The least difficult things are by no means always the most important. Many are the important tasks found the most disagreeable." A pretty incoherent sentence, no meaning to it.

On that judgment test I gave, that we spoke of this morning, in which you asked to say whether a sentence is striking or it is commonplace or it is absurd, and so on, he gets only twenty out of thirty correct.

MR. DARROW: That is a judgment test?

A Yes. Judgment of the sense of these different sentences.

MR. CROWE: Give us an example of each.

THE WITNESS: I beg pardon.

MR. CROWE: Will you give us an example of some of these that he passed.

THE WITNESS: I do not know whether I have got the scorings left or not. I am a little afraid that the rubbing out that I did in order to use it with the other fellow interferes with the statement. But I have the record, and I could work it out at length. He got 20/30ths or two-thirds of them right. In this test he does better than Leopold somewhat, and

he gets abbutthe medium, fourteen years, showing again

not nearly so much shrewdness in judgment as one would expect to find from a fellow of his years and probable education.

I also gave him this Association Test, the Kent-Rosinoff Test, without any marked result. This performance is just about an average one, without any very definite evidence of any emotional disturbance -- none at all, in fact -- and no particular results in the length of reaction time, but just about an average performance. That is about the extent of the tests that I gave. He was very much interested in that cryptogram test that I spoke of, and said that he found it a lot of fun, and worked very hard indeed. That is the sort of thing that challenges him, because it has a sort of hidden meaning, something that might be used as a code, and he worked very hard, indeed on that, and got it all right in six minutes and thirty seconds

MR. CROWE: Q What is the usual time?

A You are allowed fifteen minutes. The result of this simply is, I found him to be a fellow of certainly not more than average intelligence, which of course one is tremendously surprised at, on account

of his remarkably precocious record, having entered college at fourteen years and three months, and graduated when he was just eighteen. His language ability is not good; he does not express himself well, either in any tests given or in his ordinary conversation. I have read a great many of his letters, and most of them are expressed in very simple terms, and not always very coherently. Considering his practical judgment, I have talked to some people who have known him over many years, outside of his own family, and members of his own family, and I was much surprised to learn that in spite of this academic accomplishment, he has been regarded as very much of a kid in practical judgment -- that is the expression they used -- and some of them have said, "without any evidences of practical sense."

Q Give some instances of that.

A I am merely giving now what others have told me in that regard.

MR. DARROW: We will furnish you some.

MR. CROWE: Q You cannot cite any instances?

A No.

MR. CROWE: Then I move that his statement be stricken

out as clearly hearsay.

THE WITNESS: Certainly, but it helps me to form an opinion, that is all.

THE COURT: He has told you that part of his conclusions are based on the examinations he made, and what was told him by the parents.

MR. CROWE: But he cannot give me specific instances.

THE COURT: Mr. Darrow said he would.

MR. DARROW; If we donot furnish you some instances, we will consent to its being stricken out.

THE COURT: Q Would your conclusions have been different if you had not gotten those statements from others?

A I think I should have arrived at exactly the same conclusion, but I attempted to be sure, to corroborate and confirm as much as possible, and I have taken a great deal of pains to do that. His life history and his conduct I should have relied on that for that. He is not at all interested in mental tasks. He forces himself to, and can work with fair attention and persistence, but it is a good deal of grind for him. Concerning his personality, it came up very clearly from observing him, talking to him, and

hearing about him, that he is in general rather a lazy individual, but he can on occasion energize himself very well indeed, though most remarkably lacking in ambitions and normal interests, which seems very strange in the light of his training and his tutoring.

MR. CROWE: Q Will you give some specific instance on which you base those conclusions?

A I asked him to think of any interest that he has ever had in life, any ambitions, and he can think of nothing except his early inner idea of being a criminal. I have asked the same question of his parents and friends, and they can think of nothing that he ever really cared thoroughly to do. One of his friends whom I saw last night, who has known him for many years very well, said that he was a boy that never finished anything, who never had any deep interests. One finds, then, that this secret abnormal mental life that he has been carrying on unbeknown to his governess, tutor and to his family over these many years, has in a most curious way swallowed up his ambition.

He has apparently had, judging by his own very straightforward account of himself, a great love of excitement and adventure.

He describes his heartbeats and excitements and physical sensations under various conditions, beginning with, for instance, the stealing, which he says he did at nine years. He had a tremendous thrill from doing it in the dusk and carrying it out, and from carrying out these criminalistic practices of shadowing people, and so on, that he tells about, and that others have said something on.

But he also appears to have been pretty strong in an emergency, as on one occasion where he went out into pretty rough water over at Charlevoix and brought back some members of his family, and as evidenced by his certainly most cold-blooded handling of the situation in his criminal adventures.

One notes that he is very friendly, pleasant, well mannered; in the jail takes especial pains, for instance, to see that first of all we order what we want for lunch before he considers ordering for himself, having very charming qualities, which I have heard much about from other people, including this man whom

I saw last night, a very charming boy, having many nice qualities on one side, and nobody who reads the small volumes from his old governess or from his girl friends can doubt it, and yet on the other hand, having carried out for many years a dual personality, having been an extensive liar and a most unscrupulous individual, in a manner and to an extent that is quite beyond any in my experience. A curious desire of sympathy in pathological ways, and evidently this dates back to his early imaginative life, a most curious and abnormal affair. A tremendous contrast between his very well evidenced desire to get along socially and to have some nice girl friends and to have boy friends, contrasted with the fact that he is most remarkably, according to even his own account and according of course again to his life history, most remarkably unscrupulous, untruthful, unfair, ungrateful and disloyal in many social relationships, disloyal even to his comrade when he cheated him, in buying liquor, and to his fraternity when he robbed them.

MR. CROWE: Doctor, are you going to give illustrations of the matters you have just been describing?

THE WITNESS: I have just given some.

MR. CROWE: Not merely the last, about robbing the fraternity, but the disloyalty to his friends, and his tremendous lying, and this and that and other things.

A Disloyalty to his friends, of course, in the first place to his governess, to whom he was writing, with whom he was in the closest contact, at the same time that he was carrying on these criminalistic practices, by himself most generally, and occasionally with others. His unfairness in that whole situation, of course, the same way. His disloyalty to his girl friends, who thought he was leading one kind of life when he was leading another.

But he expresses on the other hand, some loyalties in certain and narrow spheres, to family life in certain ways, and he has some well expressed and very decent ideas about girls.

All of that, of course, shows a disparity and a contradiction that to my thinking is certainly abnormal. The ability to carry on for many years, as a child, this tremendously contradictory dual life is certainly pathological.

He appears to have been an even tempered boy, with occasional depressions, which he can, however, readily dispel, according to his story, by making good social contacts. He tells us -- and that is the only evidence -- he tells us that he has frequently contemplated suicide.

So we have those very curious quips and displacements in his emotional life, his desire for sympathy in childish ways.

MR. CROWE: Give us an illustration of that.

THE WITNESS: An illustration of that would be the fact that while he has been in jail I happen to know that he has sent out a letter to a girl, to ask her to station herself on Dearborn Street, where she could look through a certain window, which he gave in a diagram -- I saw the letter -- which he gave in a diagram, and look up there at him. Not that she could see him at all.

He tells us he has a distinct feeling and desire for sympathy; that while Leopold, for instance, is inclined, unless he can give his ideas, to retreat from reporters, he is apt to stand up near to the bars, and when around people he would take a particular

satisfaction, which has some peculiar interest to us, in his being looked at there. In a most curious and wistful fashion, he seems to have these emotions in one way, and yet on the other hand, of course, we have only to look at his deeds to realize the extreme lack of feeling and sympathy which he has shown in the most desperate human situations, making a mixture that is very strange.

Naturally, we are interested in the standpoint from his mental development in whether or not he has shown alterations in personality. About this I do not feel at all sure. He feels that when he was younger he was brighter. He thinks that perhaps he has dulled his mind somewhat by drinking. But I am not at all positive that we have any light to throw on that, because the boy was so extensively tutored between the time he was four and fourteen years of age by this most ardent governess, that it was quite possible that she managed to instill in him a great deal of knowledge that helped him through his examinations, when he really had very little intelligence.

of his emotions and feelings, all I can say there is that I have frequently talked to him about it, and he feels, in the first place, that he never had anything in his life to call forth any emotions or feelings, had no necessity for it, especially for him to show any sympathies or to do anything for anyone else, and he believes he never did have any of it. The only instance that he can give of it was once when his governess had an entrain infection and he felt rather badly for her. Outside of that he thinks he has been always extremely dull in his feelings, he says.

One of the first times one finds out in conversation with him is that, indirectly, he wonders at his own callousness. He says the reason he has gone on in his career is because he has found nothing inside of himself to deter him from going on, and in the last few years he has been able to face his criminal imaginings and tendencies with equanimity.

He thinks he may have been somewhat hardened as things have gone on, but on the whole, as he looks at his own nature, he never did have, he says, much sympathy, emotion or deep affection for anyone.

case of the other boy, of course, has a great deal of interest for us. We can only learn of that through his own statements, again with such checking up in its bearings on his life career and criminalities and the fact that he has told it consistently from one person to another. It is not the sort of thing that anybody would imagine, I am inclined to believe, when he began, certainly before he was nine years of age, with very curious, abnormal criminalistic ideas, picturing himself as somebody in a jail yard, naked, abused, whipped, and all of the comforts he gets out of it is that the people looking through a jail yard fence sympathize with him. There is a wonderful criminal, great criminal, and people sympathize with him. Asked who sympathized with him, he says at first it was people in general and then later on it was mostly young girls who sympathized with him. To use his own expression, "I was abused". It was a very pleasant thought. Punishment inflicted in jail was pleasant. "I enjoyed being looked at through the bars, because I was a famous criminal."

I am not sure whether it is a matter of very great import, but I was much interested to go

into this question of where he could have gotten any pictures at all in his mind of a jail yard, and it suggested to my mind at once the jail yard and the fence around the house of correction as it was years ago -- it may be still, for all I know -- and found that he as a young child had been driven past that occasionally with his father on the way to his father's place of business.

Well, he tells us that after he had had these phantasies for some time, of actually being a suffering criminal, he began the idea of the phantasy life of being a criminal himself, and there is much elaboration of this with ideas derived from many sources, as some of his own experiences, as a in stealing at nine years old, and so on, in reading detective stories, but he insists that that was not the beginning of it, that he already had his inner life of this kind before he actually read anything, and he goes on and develops his imaginings with respect to his becoming this master criminal, about which much has been spoken already in this trial, always deriving great pleasure from the idea that he was the leader of confederates, or of one confederate, or

especially as being the one who knew how the thing was done.

Later on he used to say to himself, after he had done things, "Gee whiz, if our friends only knew we had done this." And then grew up the idea of being such a clever criminal that he could plan a crime and escape detection from the very cleverest of detectives, and he tells us that he was long working at the idea of a great crime, which would stir all the country and never be solved.

It was all for the sake of being somebody in his imaginative life. Nobody else, except perhaps his confederate, had known he had played any great part in it, but still it would be done and people ~~xxxx~~ would marvel at the skill of the person who had done it. He claims to have had these phantasies early in life, with very great vividness, so that he remembers them as well as he does the affairs in his daily life and his actual life, and that he has continued these imaginings right through the years.

You have already heard something about his other phantasies, of being a frontiersman, and

this photograph which we found, with this tremendously intense expression. It is not the fact that he has got a photograph taken in cowboy clothes, or anything of that sort. It is the expression on his face, with the changed expression on his face, which seems to me to be very obvious in this matter.

MR. CROWE: Have you got that photograph, doctor?

THE WITNESS: I have not.

MR. CROWE: Have you?

MR. WALTER BACHRACH: We can reproduce it for you, yes.

MR. CROWE: Have you got it here?

MR. WALTER BACHRACH: I have not got it here. We can have it for you tomorrow morning, if you like.

THE WITNESS: I would also speak of this matter of the formula of the teddy bear affair because he told that first to me in jail, and of course it is ridiculous to bring in such a matter except the fact that this boy in jail says, "I caught myself" -- that is the pathetic part of the situation, and the remarkable part of it from a pathological point of view. Tells me voluntarily "I caught myself last night saying 'you know Teddy'. That is the formula by which he would introduce to himself this phantasy

life because it was unnecessary for the narrator of his own phantasy to explain things, to be explicit or to make it consistent and logical. He could go ahead and make it any old thing provided he began with that formula, which he had from early ~~boy~~^{boy}hood days, and to my mind --

MR. CROWE: Doctor --

THE WITNESS: -- again, of course, this illustrates -- just a moment please, until I finish -- this illustrates how much of a child he really is still, although he is capable of such tremendously hard and vicious behavior.

MR. CROWE: I think you just said provided he started with the formula, "Now, you know Teddy", he could make up any kind of a story, is that correct?

THE WITNESS: That is his explanation of it.

MR. CROWE: Do you think he started his conversation with/Dr. White/with that formula?

THE WITNESS: I beg pardon?

MR. CROWE: Do you think he started his conversation with Dr. White with that formula?

MR. DARROW: I object to that question.

MR. CROWE: All right, let it go.

THE COURT: Very well, withdrawn.

THE WITNESS: To contrast these and to supplement them

and correlate them with his own known acts. With as I say of now actually playing without any doubt a double life over many years, very completely from the time he was nine years old or so, evidently first with secret association with a delinquent boy, and then his ~~secret~~ ^{secret} reading, and then had companions of both sexes and his criminalistic practices, all of these quite unknown to his governess, to his parents and to his friends. His mixing up of phantasy with real life evidently begins with this early shadowing of people, playing criminal and detective. Directing this burglary or burglar play which even his companions thought was childish, this burglary play having been kept up even in the last year or so, Leopold tells me. And of course he was caught shadowing and using a mask by some members of his own family. He remembers his sense of exhilaration and power in his early episodes of stealing, at nine years of age. He has indulged in a great deal of stealing, evidently, from Field's and from other shops, as well as from this fraternity house; I should judge a great deal of it, as I saw quite a batch of pocketbooks the other day among his letters. The gray trousers he has on

in jail here he tells me were taken from the country club. He just takes these things in the carrying out of his criminalistic ideas, and in a most eccentric and childish way. He always enjoys most the fact that he knows more about the details of the event than anyone else. To use his own statement "It just seems that I wanted to be a criminal", and that he has stated, very openly for the last two or three years. This idea of his, of course, is very remarkably carried out by his -- in most dangerous fashion, taking the reporters, which I believe has already come out in evidence, who he saw on the campus of the university of Chicago, down 63rd Street, or somewhere, and when they intended to back out, insisting on their going, and going from drug store to drug store, as if he ~~xx~~ did not know the place, until he struck the drug store to which the telephone ~~xx~~ message had been sent.

MR. CROWE: Q What do you say that indicates?

A I will tell you my conclusions later. Then I have the information from his family of the ~~affair~~ affair at the dinner table the night after the murder, in his

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own house, at which a guest was present, where Dick Loeb expatiated at great length upon the crime itself, and told the family the ways in which it must have been done, as if he were a very wise fellow, and could draw conclusions and inferences from what had been published in the newspapers. This appears to me also to be bearing directly on the matter of his phantased desire for knowing more about it than anyone else.

Q Tell the details of what he told the family that night?

A I couldn't tell you, because I don't remember them all; they but -- they told me that he gave the details of the affair, the events of the crime, that is all I know, as if he had read them from the newspapers, and knew what sort of things were done. That is all I know. I got it in a very general way, and I was satisfied with that. Then we have this insistence on his part that he is very comfortable in jail.

He seems to feel at home there. He says that he had a pleasant feeling when he ~~first~~ first came in and got a jail outfit; that he was a little glad of the jail clothes, of being in jail. His own self-

pity entered into the matter.

Q In other words, he makes an argument for a life sentence?

A "They gave me a ragged coat, and offered me a better one" -- giving an argument in favor of his phantasy in youth being pretty true, I should say. He refused to take the better coat. He was living out being subjected to worse conditions than the other prisoners were. He said, "I feel comfortable here. I am living out what I used to picture as a child." So it is of a good deal of interest to the student of abnormal psychology, the fact that under the influence of this inner mental life, this boy has been steadily going along the path of wrecking himself, as people with abnormal phantasies frequently do, people who are mentally diseased. It seems as if he is himself following out fate, the hand of fate, in these early imaginings of his own self-suffering. If I may come now to the whole matter of his emotional life; we find the extraordinary spectacle of this tremendous lack of sympathy for other people growing upon him. He seems incapable of viewing his criminal acts with anything like a natural feeling. If we may judge by the accounts given us separately by both

Leopole and Loeb, they were contemplating kidnaping members of their own families. They even spoke of kidnaping the little brother.

Q Did they tell you that?

A Both of them told me that.

Q Did they tell you whom they were going to kidnap?

A They didn't tell me who; they said they spoke of it, contemplated it. That is the expression I used. Comparing these features of his emotional life with his evidently normal intelligence and particularly with his high scholastic achievements, it appears clearly that there is a tremendous and abnormal disparity between his development along these two lines. We have the spectacle of a boy capable of entering college at fourteen years and three months, with almost no normal feelings or emotions concerning the most serious of all human behaviour. When I asked him about this case, he thinks it had already begun by the time he was ten years old, when he began his dual life, his persistent lying, his governess

thinking that he was a model boy, when he knew very well that he was not. His notorious unfeeling behaviour that we see here in the court room or in the jail, or as he discusses his present situation, seems to be ample illustration of the depth of his emotional displacement or defect.

"I never had remorse enough to make me want not to do it", he says of himself.

"What about the idea of sympathy?"

"It never entered into my head."

Q He is just a hardened criminal?

MR. DARROW: What Mr. Crowe calls a hardened criminal is anybody who has no emotions. That is a legal definition, and yours is a scientific one.

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THE WITNESS: (Continuing) Absence all along of normal remorse, revulsion, disgust, depression, fear, or even apprehension in planning, discussing or carrying out the gruesome details. I said to him, "Would you murder Walter Bachrach here, if that is the way you feel about such things and you have no response in your own breast for such things?" Well, if there was anything in it, such as enjoyment in the planning, enjoyment of the publicity, he thought he might be able to do it, because there was nothing in him to prevent it. As far as his own feelings are concerned, he would repeat such an affair. There is nothing that Loeb spoke of with any more confidence than the fact that he found nothing in his own nature that would prevent his doing such things again. In discussing it, he professes astonishment at his lack of feeling, the fact that he has felt nothing like ordinary sympathy, and he says that he would have supposed that he in the court room here would have cried at the testimony of the mother of the boy who was murdered, but he was astonished at himself, because he didn't feel anything. "I did not have any feeling. I

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"did not have much of any feeling about all this matter from the first. That is why I could do these things. There is nothing inside me to stop me. Of course, I am sorry about my folks but not as much as I ought to be."

Even now he tells with -- I don't know whether it is exactly amusement or in wonderment, that he said in his own family after the murder, "Just think of our own Tommy running around and things like that happening."

As evidence of this point too, we have his own account of his behavior directly after this murder, when for the next few evenings he went out in very normal fashion with girls to dances, and that he evidently felt just as usual; nobody discovered anything about him that seemed peculiar.

In attempting to explain the conditioning factors of his pathological mental development, one finds that the base, or one of the bases at least for his dual life, was this extensive tutoring of him as an average boy put through his paces in scholastic ways r the domination and guidance of a w who writes tremendously nice letters to him, even after she has left him; but she has the most curious lack of underst ng of a boy's real

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needs, and who very evidently kept him from many free and healthy contacts.

MR. CROWE: Now, doctor, are you characterizing the letter that was read here?

THE WITNESS: No, I have read a great many other letters.

MR. CROWE: I say are you characterizing the one that was read here yesterday, the one that Dr. White referred to?

THE WITNESS: Am I characterizing it?

MR. CROWE: Yes.

THE WITNESS: I think that is a heartfelt letter too. I think she had very deep feelings for him.

MR. CROWE: It did not indicate she was in , did it?

THE WITNESS: That she was insane?

MR. CROWE: Yes.

THE WITNESS: I don't know anything about her insanity.

MR. CROWE: That sounded like a nice motherly letter, didn't it?

THE WITNESS: It sounded like a letter with a tremendous lack of respect of the individual.

MR. CROWE: Well, go ahead.

THE WITNESS: Plus motherless, yes.

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Her scholastic ambitions for him were tremendously out of tune with his lack of real abilities, and with the fact that he had no real ambition. I read a letter yesterday from her in which she endeavors to have him enter a career and study to be a constitutional lawyer; particularly wants him to take up constitutional law.

MR. CROWE: Doctor, may I interrupt again, please? You have not examined this woman?

THE WITNESS: I beg pardon?

MR. CROWE: You have not examined this nurse?

THE WITNESS: This woman, this governess?

MR. CROWE: Yes.

THE WITNESS: I have never seen her.

MR. CROWE: So you don't know whether she is insane or not.

THE WITNESS: I don't know anything about her except her letters. The letters as one reads them through are simply pathetic on account of her desire for his getting along well, but with the most absurd misunderstanding as I say of a boy's nature, of a boy's needs, and his special lack of real abilities and ambition.

It appears somewhat explanatory of why this

boy might well have fallen back for real satisfactions

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upon the abnormal features of his inner mental life.

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And then we have the matter of this secret reading; one has gone into that with him at some length, and asked him what books in particular influenced him, and we have the number of detective stories, the one of Anthony Trent, and one name of which he cannot remember; and he particularly and vividly remembers such affairs as the breaking out of jail in the Count of Monte Cristo. Things of that sort had a very great fascination for him.

All through it seems that his nature has very little outlet for what he really, in an abnormal fashion, craved, that is, a life of excitement and adventure. And we have the fact that he got apparently very real satisfaction from his physical sensations, his heart beatings, his feelings of excitement, which he felt particularly in his criminalistic acts.

THE COURT: We will suspend now until tomorrow morning at 10:30 o'clock.

Whereupon an adjournment was here taken to 10:30 o'clock A.M. Tuesday August 5th, 1924.

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Tuesday, August 5th, 1934.

10:30 o'clock A.M.

Court convened at 10:30 o'clock A.M. Tuesday, August 5th, 1934, pursuant to adjournment heretofore taken.

Present: Same as before.

D R . W I L L I A M J . H E A L Y ,

resumed the stand for further direct examination by Mr. Darrow, and testified as follows:

MR. DARROW: Q Let me ask you, Doctor, what was Dick's attitude toward that compact?

MR. CROWE: Wait. By Dick do you mean the defendant Richard Loeb?

MR. DARROW: Yes. That ought to be plain by this time, whether I call him Dickie or Dick.

MR. CROWE: And about the Teddies and Babes too.

MR. OW: No. Babe would not ^{be} the defendant Richard Loeb, whom you are desirous of having big enough and old enough to hang. If it is necessary to have a stipulation that Dickie or Dick means the defendant

Richard Loeb, whom the state is going to hang, and that Babe means the defendant Nathan Leopold, Jr., toward whom the State has the same attitude, I am willing to have it stipulated.

MR. CROWE: And as to the kiddies also?

MR. DARROW: The only kiddie I have heard of was the one you said toddled along the sidewalk, who was fourteen years old and who was killed. I suppose you want these boys to toddle up on the scaffold.

THE WITNESS: A This childish and absurd compact of theirs was entered into apparently for the sake of carrying out some of the childish notions which each had, and was unwillingly apparently assented to in both instances, to a certain degree anyhow. I think it is fair to say that as far as this compact is concerned, I have no doubt that those who heard us talk about it in secret think it is a great deal worse than it really is.

MR. DARROW: For the time being, we will leave it as it is.

MR. DARROW: Q I suppose you are familiar with such things, anyhow, as a psychiatrist?

A I beg your pardon?

Q You are familiar with all such things as a psychiatrist?

A Yes sir.

Q With all sorts of people?

A Yes.

Q All right. Now, do you remember where you were last night?

A Yes.

Q Well, just proceed from there.

A I was speaking of the conditioning features or factors of Loeb's pathological mental development. The next point in that is the fact that he began to drink at fifteen years of age, a feature of his life which I think has had considerable bearing upon it.

Then the next fact, that has already been brought out, namely, that at fourteen years and three months he went into college and within a few months began to associate with a very fast crowd of young men who were a good many years older than he was himself. He was in a peculiar position then, because he had been so carefully looked after during his previous years, and had had so few chances for self-development. So he went into a new situation, and took up very readily with the worst features of it,

and did not attempt to protect himself or react as many a normal boy would.

Then, when he got into college life, of course, he had been pushed ahead very fast, and he found himself not doing very well, really not getting very good marks, and he began to lie about them, in order to keep up his reputation as being a very advanced student for his age. He was in a situation then that was decidedly unfortunate for him.

Now, if you please, I should like to come to conclusions regarding him, Loeb's, mentality.

Q All right, doctor, just proceed with those.

A I would state in the first place that on account of Loeb's abnormal inner mental life, particularly on account of his twisted emotions, twisted placing of his emotions, as evidenced by his pathological desire for sympathy, which is demonstrated for years, and particularly as this seems to be related to his early phantasy life, all in abnormal contrast to his great lack of sympathy for others, and then his pathological absence of ordinary feeling about his own misconduct and even about his own peculiar situation in that misconduct, and at the present time; and by his

pathological pleasure in the planning and in the commission of crime even with all its terrible details; and then on account of his abnormal inner mental life as regards his phantasies evidencing the pathological peculiarities even from the early days of childhood and on account of these being carried over into the every day life and action more and more as he grew up; on account of his pathological split personality showing a fairly normal intelligence, although if we may judge by his general conduct he seems to have demonstrated defective judgment as over against the twisted emotional life; so that while he shows adaptability and good manners and great desires for friendship and sympathy, he has a pathological conduct which is diametrically the opposite and by every common sense calculation likely to utterly destroy all the wonderful chances that life held out for him; his personality seemed so split that he seems to have had no conception of making his life conduct of normal pattern, no desire to make his life follow normal lines so that he could even conceive the idea of settling down in ordinary family life and continuing as a criminal; and on account of the fact that it is un-

thinkable that a boy with lovable qualities that endeared him to fine people of both sexes both inside and outside his family circle could have so carefully planned and executed such a monstrous deed unless he were mentally abnormal, abnormal in the imaginings and ideas that led up to the planning and abnormal as to the better feelings which would naturally have prevented such ideas even if they had been entertained from being carried into action. On account of all these I am forced to conclude that Richard Loeb has a thoroughly diseased mental life. In my opinion, he is a case of abnormal split personality with obsessive thought and life and his acts can be seen to be directly dependent upon and to be made possible by the diseased elements of his mental life, namely, by his abnormal thought and life and abnormal displaced emotional life.

MR. DARROW: Q (Continuing) I just want to interject this: have you observed the defendants in the courtroom, their actions and conduct?

A Many times.

Q Does that have any effect either to change or confirm your opinion?

A Confirms it.

Q You are very familiar with court rooms in Boston, and here, and the observation of boys and men placed on trial?

A Yes.

Q I do not recall whether you had gone into the combination of these two --

A I had, but I should like to reinforce the statement in regard to the association of these two boys, by merely a word, that again it seems a most remarkable affair, because of these two strangely constituted human individuals coming together. The development of their ideas of criminality, the planning and carrying out of their deeds, seems to be only possible because each of them had already abnormal characteristics, and they came together in this chance fashion, and carried out for what their station in life were abnormal crimes. I think I omitted one topic, the relation of Loeb's mental life to the crime itself.

To my mind the crime itself is the direct

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result of diseased motivation in Loeb's mental life. The planning and commission was only possible because he was abnormal mentally, with a pathological split personality. It was a direct outcome of his twisted emotional life, his phantasylife continued in pathological fashion over many years, the abnormal lack of integration of his personality, and finally, the coincidence of his coming together with another abnormal personality.

Q You have been employed to make an examination, and to testify if we decided to have you, and you have been paid or expect to be paid in full?

A Yes.

Q State the terms of employment?

A I had a very specific understanding with Mr. Walter Bachrach when he came down to Boston with Dr. Hulbert, in the first place, that we should make a study of this case with the co-operation of the family; that we should try to get all of the facts and make a report in the same fashion that we do regularly for the court; and that the study should be an attempt to get particularly at the educational and psychological values that must be inherent in such

a situation as this. Another stipulation was that there were to be no extraordinary fees paid in the fashion that has become notorious in certain other cases. That applies to all of us who were on this side. In the next place I suggested, although it was not a direct stipulation, that since the state had announced its psychiatrists, who were men we very much respected, after we had obtained the facts, we should try to give them directly to those men and attempt to get a joint report.

Q Did you try to do that?

A I did. After I came here we had a conference, Dr. White, Dr. Glueck, Dr. Hamill and myself, on a couple of occasions, and we made an approach to you, and you said you were willing to have us make the attempt.

Q But nothing has come of that?

A The approach was made. I think Dr. White went to see Dr. Singer, and Dr. Hamill and I went to see Dr. Patrick, and offered them all of our material.

Q Did you make any arrangements to testify before you made your examination?

A No. It was distinctly understood that I should

not have to testify unless it was necessary to bring out the facts. I had hoped not to do so.

Q And what compensation was agreed upon for your making the investigation?

A \$250.00 a day.

Q And any further compensation in case of testimony?

A None whatever.

Q Has there any amount been fixed as to per diem or otherwise in case of testimony?

A No.

Q Is there any arrangement beyond the \$250.00 a day?

A No, that is all.

Q And do you expect any more or would you take any more?

A No. The distinct understanding is that nobody is to receive any more than that for any part of the work.

Q And that applies to you people who are from out of town, doesn't it?

A Yes.

MR. DARRON: That is all.

MR. CROWE: No, doctor --

MR. D W: Will you excuse me just a minute?

(Mr. Darrow then left the inner rail
to confer with Jacob Loeb).

MR. DARROW: All right.

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CROSS EXAMINATION

BY MR. CROWE.

MR. CROWE: Q Now, doctor, as I understand, you want it understood that when Mr. Bachrach wanted to employ you in this case that you insisted very emphatically that you should not be overpaid, is that correct?

A No.

Q Well, if they insisted on paying you more than \$250.00 a day, you would not have taken the employment, would you?

A No, not if the others did not get it.

Q Well, the other gentlemen were in the same frame of mind that you were, as you understand it, that is, they insisted that none of you should be overpaid?

A I think that was so.

Q And the lawyers are in the same frame of mind, aren't they?

A I don't know anything about them.

Q Doctor, you talk about a childish pact, that is the pact that you related to the court yesterday so the audience generally could not hear it. In that pact these boys agreed to practice forms of perversion, didn't they?

A A childish form, yes, but not what as generally the public would understand, I think by that.

Q Doctor, do you know any children who make those agreements and enter into those pacts that are not criminals and perverts?

A Yes, I have known of them.

Q You have?

A Yes.

Q So you regard perversion not as a crime but as a childish act?

A This is not, you know -- as I said, it is a childish form of perversion. There are different kinds of perversion. But, as far as that goes, there are many children, very innocent children of fine people who get into many things of that sort.

Q Now, doctor, wait a minute.

MR. DARROW: I insist on letting him finish his answers.

MR. CROWE: All right.

MR. D W: Go ahead and finish your answer, doctor.

A Many children who have been very nice children and grown up in very nice ways have at one time done things like that.

MR. CROWE: Q How many different forms of perversion did you state yesterday that Leopold practiced on Loeb?

MR. BASHRACH: If the Court please, if there is any purpose in having the thing done quietly in the court room, the effect is altogether lost if the prosecutor can cross examine openly about that thing and give those things to the public.

MR. CROWE: Oh no. No, your Honor. I have no desire to bring this out and give it to the public, but when a doctor says that boys who agree to practice forms of perversion are merely doing childish things, I disagree with him.

MR. DARROW: Well, he spoke about different forms of perversion, as you know.

THE COURT: The cross examination of this doctor along that line will take the same form as his direct.

It will be done quietly and without any heralding to the world.

MR. CROWE: All right.

THE COURT: No good can come from it.

(Whereupon the following examination was continued out of the hearing of the public generally):

MR. CROWE: Q Didn't you testify yesterday that Leopold -- I don't know the exact expression he used -- but indulged in some form of cunninglingualism?

A No, that is not the term at all. You have got the wrong term. Did you mean malpractice?

Q Malpractice?

A I said that according to both of their stories they experimented with it, but did not practice it. They gave it up after once experimenting with it, once or twice.

Q Didn't you testify yesterday that on several occasions at least Leopold -- and when you say "malpractice" you mean that Leopold had Loeb's penis in his mouth, and after once or twice he did not find the same satisfaction in that as he did in the other forms of perversion?

A Yes.

Q And you think that that is a childish pact?

A No, no, hundreds of children, sir, have done it.

Q Aren't you ashamed of yourself, doctor, to testify on that matter?

A No, I should say not. I have known of very nice children of very nice families who have gotten through with things of that sort.

(Whereupon the following examination was continued in open court):

Q Now, doctor, did you talk to the defendant Leopold, about the details of this murder?

A I don't think I did.

Q Did you know of any reason for your not doing so?

A No, I supposed that I knew enough of the details.

Q Do you know of anybody who could have given you better information as to how this crime was committed and executed than the two boys?

A No sir.

Q And in making up your mind as to a mental condition you were anxious to get the best information

available?

A Yes.

MR. BACHRACH: Speak a little louder. We don't hear you.

MR. CROWE: Q You had ample opportunity to talk to these boys?

A Yes.

Q And they were willing to answer all your questions?

A I think so.

Q Don't you think that the most important matter in their life from your viewpoint is the crime itself?

A It was not the most important thing for me to know .

Q It was not?

A No, because I thought I knew it already.

Q From hearsay and from newspaper accounts?

A I think -- It is, I think in the Bowman-Mulbert report.

Q That is hearsay, isn't it?

MR. DARROW: We object to that. It is the statement of the boys themselves, which we will offer.

MR. CROWE: A statement purporting to be made by the boys themselves to somebody else who made it to

you, and you regard that as hearsay, don't you, doctor?

MR. DARROW: We object to how he regards it. Oh, I don't care. I withdraw the objection.

MR. CROWE: Q You did not avail yourself of the best opportunity of getting possession of the facts concerning this murder.

MR. DARROW: To that I object. He has said he did not talk to the boys about it and whether it is the best opportunity is a conclusion.

MR. CROWE: Q Don't you think that the manner in which they would relate the details of this murder might have helped you?

A I heard them relate enough of such things to thoroughly make up my mind as to how they felt about such things and that is what ---

Q Answer the question, don't you think the manner in which they would relate to you the details of this murder might have helped you in arriving at a conclusion as to their mental condition?

A It might have done somewhat but I thought I had enough already.

Q Do you know who actually killed the Franks boy?

A I don't know it, no.

Q Do you know in whose mind the crime originated of your own knowledge?

A I am afraid without looking at my notes I don't know who of the boys stated he had actually planned it. I think Loeb did.

Q Did either one of the boys state to you who actually planned it?

A I would have to go over my notes to see that.

Q Will you do so?

A It will take me half an hour to do that.

MR. CROWE: All right, do so.

MR. BACHRACH: I suggest we take a few minutes recess.

THE COURT: Could you not go on with something else and then take the recess and let the doctor look over his notes?

MR. BACHRACH: Suppose we take the recess now?

MR. CROWE: I would like to have you look at the same time and find out if either one of them have told you who actually committed the murder.

THE COURT: We will take a few minutes recess.

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

Court convened pursuant to recess heretofore taken.

D R. W I L L I A M J. H E A L Y,
resumed the stand for further cross examination by
Mr. Crowe, and testified as follows:

MR. CROWE: Q Have you your notes showing where either one of the defendants told you in whose brain this crime originated?

A No, not originated. They both spoke of having been interested in planning it.

Q Did you ask either one of these defendants who originated the crime?

A No.

Q Have you any notes showing that you asked that question?

A No.

Q You did not ask either one of them who actually murdered the Franks Boy?

A No, apparently not.

Q Were you told by any person prior to talking to the defendants that each defendant insisted that the

other originated the crime and committed the murder and not to go into those matters?

A Indeed I was not.

Q It might be a mitigating circumstance for one if the other had originated the crime and actually committed the murder, might it not?

A I don't know.

MR. DARROW: Objection. There is no division here as to who committed the murder. If he wants to say who struck the blow, I shall not object.

MR. CROWE: Q Well, who struck the blow?

MR. WALTER BACHRACH: I object to the mitigating circumstances That is for the Court.

THE COURT: Answer the question.

A I don't know.

MR. CROWE: Q Nobody told you to stay away from those two questions, did they?

A They did not.

Q Do you know whether any of the other alienists asked either of the defendants those two questions?

A I do not. Mr. Crowe, I might say that it was all very well known and I did not need to go into it but took up my time with other matters.

Q Had you read their confessions?

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A Yes, in the newspapers.

Q And isn't it a fact that in the Leopold confession he says that the blows on the head were struck by Loeb and Loeb says that the blows were struck by Leopold in his confession?

A I don't remember.

Q Where did you see the statements?

A It must have been in the Boston newspapers.

Q They are not as reliable as the Chicago newspapers?

MR. DARROW: What?

MR. CROWE: Q Before you came to Chicago did you know the details of this crime as well as you know them now?

A Yes. I got them from the interview with Dr. Bowman when he returned and from his report.

Q You had been engaged in court work for many years?

A Yes, but not from the standpoint of either side.

Q But you have engaged in court work many years?

A Yes.

Q And you have heard a great many criminal cases?

A Well, I would call most of them delinquent cases since I am connected with the juvenile court.

Q Criminal cases, boys brought in for violating the criminal law. You have heard a good many of those?

A Yes.

Q Supposing after knowing the details of this murder as you do that you had found that the perpetrators were two young men of excellent habits, morally decent and religious and had never committed any childish crime you would have been surprised, would you not?

A I should.

Q And wouldn't you come to the conclusion if a moral decent clean living man had committed a crime of this sort, would you not be of the opinion that he had suddenly gone insane?

A I should not be of any opinion at all but I should think it would be worth while looking into.

Q Wouldn't you expect to find something had suddenly snapped to cause him to do something so thoroughly out of line with his previous conduct?

A I should certainly look for that.

Q And if you found that the person who had committed this murder, or the persons who had committed it had

prior to that time been cheats at cards, fire bugs, thieves and perverts you would not be surprised, would you?

A Yes.

Q In what respect would you be surprised?

A Because I think it is such a much more remarkable crime than any of the foregoing.

Q Crime is progressive, is it not?

A Not always.

Q Well, generally.

A Not generally.

Q What do you mean by an habitual criminal?

A I mean an individual who goes on committing crime.

Q And his crimes become more violent and aggravated as he goes along don't they?

A No.

Q Isn't ~~xxx~~ that generally the case?

A No.

Q They do not start with murder, do they, and end up with petty larceny?

A I don't know of any connection between the two.

Q How is that?

A I don't know of any connection between the two.

I never saw a case like that.

Q Do you know of a case where a study of a man's history showed he started out as a murderer and ended up as a petty thief?

A No.

Q You do know of a great many cases where a man started out committing petty larceny and ended up with murder?

A I don't think that I know of a great many cases of that kind.

Q Well, you know of some?

A Yes.

Q Now, does the fact I said "petty larceny" cause you to say that you don't know of a great many of those cases?

A The only point is this. When you speak of habitual criminals, it is a fact that habitual criminals are very apt to keep along in their careers of the same type of criminality over many years.

Q You expected to find the person or persons who committed this crime to be hardened in a life of crime, didn't you?

A I didn't expect anything.

Q Well, you were not surprised when you found that

this was not the first crime but it culminated a number of crimes, were you?

A No.

Q You don't attach much importance to the Teddy Bear episode, do you, the fact that one of these defendants as a boy had a teddy bear and took it to bed occasionally and talked to it?

A Partly.

Q You don't attach much importance to that, do you?

A To that, as a child taking it to bed?

Q Yes.

A I did not know that anybody did. That is not the point that we brought out.

Q You don't attach much importance to the fact that as a child his parents bought him a cowboy suit and had his picture taken in it because he looked so cute, you don't attach much importance to that, do you?

A No, and that is not the point we brought out at all.

Q Have you got that picture?

A Have I? No.

MR. CROWE: Have you got that picture? (Addressing

MR. WALTER BACHRACH: Yes (handing photograph to Mr. Crowe).

MR. CROWE: Have you got the original?

MR. WALTER BACHRACH: No.

MR. CROWE: Can you get the original?

(The response, if made, was inaudible to the reporter)

MR. CROWE: Q That is not an original photograph (handing photograph to the witness), is it?

A It does not look like it, no.

Q Did you see the original?

A Yes.

Q And this one is enlarged many times?

A I don't know, two or three times, perhaps.

Q Now, the thing that impressed you there is that he has got a stern look on his face?

A A very intense expression.

Q Artists touch up pictures, don't they?

A Not like that, I think.

Q I know, but they do touch up pictures, isn't that true?

A They do touch up pictures, yes.

Q What is there in that that alarms you?

A Nothing. I didn't pay any attention to that.

Q That was taken at the same time, is that correct?

A I don't know.

Q Now, if a boy had a conical uniform on, and was dressed up as a clown, you would expect him to have a whimsical or humorous expression on his face, would you not?

A He might have.

Q Don't you think the photographer would tell him to laugh or smile?

A He might or he might not.

Q And if he were taking the part of a bold, bad man, he would be told to assume a serious expression or frown, is that not true?

A I don't know whether he would or not. I didn't assume that at all.

Q Then you have not had any experience with photographers?

A In the first place, I don't know whether it was taken by a professional photographer.

Q Are you of the opinion that both of these defendants are insane?

MR. BENJAMIN C. BACHRACH: Objection. That is no part of this inquiry.

THE COURT: Sustained.

MR. CROWE: Q What is insanity?

MR. BACHRACH: Objection.

THE COURT: He may answer.

A Insanity is legal irresponsibility according to our modern use of the term.

MR. CROWE: Q Let me read you this definition and see what you think of it.

MR. WALTER BACHRACH: I object to reading from any authorities on the ground that they cannot be used in cross examination.

MR. CROWE: I want to test this man's qualifications.

THE COURT: You may read.

MR. CROWE: Q "Insanity is a disorder of the mind, due to disease of the brain, manifesting itself by a more or less prolonged departure from the individual's usual manner of thinking, feeling and acting." Is that a good definition of insanity?

A Not in modern terms, no. If you will allow me to explain, I think we can get this matter straight.

Q No, I asked you if that is a good definition?

A Not in modern terms.

Q Do you know whose definition of insanity that is?

A It looks as if it might be from Dr. White's book.

Q And the fact that Dr. White swore under oath he did not define insanity, and did not use the term insanity, has no effect on you when you say you think that is Dr. White's definition?

MR. B. C. BACHRACH: Objected to as argumentative.

THE COURT: Let him answer.

A Within the past few years we have been endeavoring to make --

MR. CROWE: Q No. Dr. White testified he never defined insanity. You say that is his definition. I will show you the book and ask you if it is not his definition?

A In 1909.

MR. CROWE: I move to strike that out.

MR. DARROW: I object, and ask that the witness be permitted to finish his answer. Do you claim that a definition in 1909 is good today?

THE COURT: The best evidence of Dr. White's definition is the book itself, aside from Dr. Healy's opinion. If you have Dr. White's book there, and that is the definition in the book, then the book itself

is the best evidence.

(At the request of State's Attorney Crowe, Dr. White's book, "Outline of Insanity" was marked People's Exhibit 1, of August 5th, for identification).

MR. CROWE: Q Does the condition that you found the minds of these two defendants in, come within the definition just read to you?

MR. B. C. BACHRACH: Objection.

THE COURT: Sustained. We do not care about Dr. Healy's comparison, but his opinion and conclusion may be examined into.

MR. CROWE: Q I will ask you whether or not you would consider this a good definition: "It is now generally conceded that insanity is a disease of the brain, of that mass of matter through and by which that mysterious power, the mind, acts. There the mind is supposed to be enthroned, acting through separate and distinct organs. These organs may become diseased, one or more or all, and in the degree and to the extent, of such disease is insanity measured. A disease of all the organs causes total insanity, while of one or more partial insanity only. There is,

it seems, a general intellectual mania, a partial intellectual mania, and a moral mania which is also divided into general and partial."

Do you consider that a good definition of insanity?

A No.

Q How would you correct that to make it a good definition?

A Strike it all out.

(At this retort of the witness the court room burst into laughter).

MR. CROWE: Q You say you consider as vital or as important in this case the fact that the defendants can subordinate their emotions to their intellects?

A I consider that important to the understanding of the crime.

Q And that is one of the factors that you consider in arriving at your conclusion?

A That they are not mentally normal.

Q Do you consider it peculiar that a banker subordinates his emotions to his intellect, in his desire to accommodate friends by loaning them money on insufficient security?

A Peculiar?

Q Or abnormal?

A I think from a moral standpoint it is peculiar, yes.

Q Do you think it peculiar that a judge on the bench, who is naturally tenderhearted and sympathetic, in the discharge of his duty, subordinates his emotions and let his intellect and sense of right govern, in condemning culprits to penal institutions?

A No, indeed.

Q You do not consider that abnormal?

A No.

Q But you do consider it abnormal in a banker to repress his emotions and let his intellect run his business?

A I don't know he is letting his intellect. That is your judgment, not mine. I should say he is not showing very good sense.

Q Now, doctor, did you take into consideration in arriving at your conclusion in this case the fact that after having carefully planned the crime, every precaution was taken to avoid detection, is that abnormal?

A I don't think that is a sign of abnormality, no.

Q That is what you would expect from any criminal?

A I would not say that.

Q But generally you would expect to find that?

A With the so-called professional criminal, yes.

Q Or an habitual criminal?

A No, I would not say that of an habitual criminal, either.

Q What is the difference between the professional criminal and an habitual criminal?

A Habitual criminals sometimes commit crimes from mere impulse, and take very little precaution in regard to covering up their tracks.

Q Which is the more abnormal, the crime by the professional or habitual criminal?

A I could not tell you until I studied the criminal himself.

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 as a result of their intellectual attainments?

A It is a result of their intellectual attainments, in my opinion.

Q And 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 upon 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 after having written the letters the defendants destroyed the remaining sheets of paper by burning them and attempted to destroy or lose the typewriter by throwing it in 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 plan to commit a perfect crime.

Q Is it phantasy or intellect that is operating?

A It is intellect.

Q And after learning from the Rent-A-Car people that in order to get a car they would have to give references, one a Chicago reference, have to give an address where an identification card could be mailed, have to give a bank reference, was it

phantasy or intellect -- now, intellect is sometimes commonly referred to as good horse sense, isn't it?

A I think it is 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 in committing the crime at all, you see, but having started on it they used their intellects.

Q Having found out they had to answer these requirements from the Rent-a-Car people, was it intellect or phantasy that caused --

A Intellect.

Q Wait a minute, doctor. (Continuing) -- 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, and the name of Louis Mason as a Chicago reference, was it child-like 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 child-like 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 not childish phantasy?

A No.

Q Was it intellect or childish ~~jk~~ fancy working 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 fancy 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 of 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 is one case and normal intellect is another case planned and carried out every detail of this murder?

A I think so.

Q And the phantasy is something like the teddy bear, merely an alibi to escape the just consequences of that act, is that true?

A Of course I don't believe it is true.

Q Was it intellect or phantasy which caused Leopold when he was questioned by Captain Wolf the Sunday following the murder to lie to him and withhold information concerning this crime?

A It was their intellect, or his intellect, rather.

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 in by the State's Attorney to lie to him 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 hard for me to say whether there was or was not, or whether it was all very largely an intellectual process.

Q Doctor, don't you think that fear entered largely into it?

A After having observed the boys, I am not quite sure about that.

Q Assume for the purpose of this question the evidence has or will show that Loeb --- Loeb is the master criminal here, isn't he?

A He is the fellow that had that idea in his head for many years.

Q And he was the fellow that was going to be the greatest criminal of his age and was quite proud of his crime?

A. Yes.

Q Assume for the purpose of the question, when in the custody of the State's Attorney, the State's Attorney told him, in response to a question as to why he was being held, "Because Leopold is the owner of those glasses" he should exclaim, "my God, is that possible" exhibit fear, blanch, almost faint and call for a glass of water -- assuming those facts, would you say that fear operated with the intellect in this matter?

A Assuming those facts, that he did actually blanch and almost faint, I should say then that he did.

Q Assuming that later on, when he had been in custody a matter of thirty hours more, he again asked the State's Attorney why it was he was being held, that "You have no evidence on me; you don't even ask me questions in reference to this crime; why are you holding me", and the State's Attorney answered him "because you said you were with Leopold all day on the day of the murder; we have been directing our energy in fastening the crime on Leopold; we now have, in addition to his glasses, the fact that you have both lied about being out in Lincoln

Park, having the red car with you; we know that the chisel was thrown from your red car; we know that you had a portable typewriter", and he fainted, and while he was either conscious, before he fainted or recovery, he cried and said, "My God, my God, give me a glass of water; this is terrible; I will tell you all" -- was that fear operating in connection with this master intellect or what was it; or a childish phantasy?

A Assuming that to be as you stated, I should judge that fear did show then.

Q And should it further appear, doctor, or assume it has appeared that while they were endeavoring to get the Ten Thousand Dollars and telephoning to the drug store to see whether Franks had gone over there with the Ten Thousand Dollars as directed in the ransom letter and after making two attempts to get Franks at the drug store and failing, they saw on the news stand at the corner a headline, "Body found", and Loeb said to Leopold, "We had better quit, the jig is up", or words to that effect, did that indicate childish phantasy or a combination of fear and caution?

A The letter, to me.

Q And if Leopold acted upon that advice would that indicate childish phantasy or a combination of fear and caution?

A The letter, in my opinion.

Q So, doctor, all the facts concerning the commission of the crime itself, the minute, careful, premeditated manner in which this murder was planned, the cautious, cunning, methods adopted by both of the defendants to protect their liberty, all of those were guided entirely by either fear and caution or intellect, were they not?

A Yes.

Q And these are the details that you did not attempt to get first hand from the two defendants?

A They were not new to me. I assumed every one in the first place to be true as you state them.

Q But I gave you some here that you said you had not heard about?

A All on the same point.

Q Exhibiting fear and caution?

A Yes.

Q And intellect?

A Yes.

Q Doctor, in the planning of the crime itself and the steps taken to protect themselves from detection, the only method in which they differ in this particular case from the average case of a criminal is that these men showed a little higher grade of intellect, than the average criminal shows?

A No.

Q Isn't there anything in their acts here which exhibits a higher grade of intellect than you would ordinarily find in criminals?

A Yes.

Q And what is it?

A Their ability to plan.

Q Isn't that the question I just asked you? I asked you as to the planning of this crime, the manner in which it was planned, the manner in which they planned to cover up after committing it, doesn't that differ from the way in which the ordinary criminal acts, inasmuch as it shows more intellect?

A You mean in the planning of it? In that way, yes, but there are other elements.

Q And the covering up afterwards?

A That is caution, that shows more intellect.

Q And shows about the same degree of fear and caution that the average criminal shows?

A I don't know about the average criminal. I think it showed a great deal of caution.

Q Haven't you a great deal of experience with the average criminal?

A With the adult criminal, no, but with boys, yes.

Q In other words, you don't examine as a rule persons over what age?

A I try not to see boys over ~~sz~~ eighteen or nineteen.

Q Are ~~yz~~ not the details of this crime, that is, the method of planning it and the covering up, the fear and caution exhibited, about the same as you find in other boys of eighteen who commit crimes except that there is a higher degree of intellect here?

A Yes, and so much so that I have never seen or heard of anything like it at all.

Q You do not get in your court very many college graduates whose parents are millionaires, do you?

A We certainly do not.

Q And that would account for the fact that this is an unusual type to you?

A Yes.

MR. DARROW: What has millionaires got to do with it?

MR. CROWE: Mr. Darrow has suggested to ask you what the millionaire has to do with it. That accounts for the environment, does it not, tutors and the schools they went to, and the method of raising them?

A Not at all, in my opinion.

Q The fact that these defendants at an early age began to lie, is that uncommon in the criminals under eighteen that you have examined?

A In the first place, I don't think it is fair to call them criminals, because they don't come under that head in the criminal law.

Q Now wait a minute. That they do not come under that head is due to the fact that they are not responsible under the law, they are insane?

A No, it is the juvenile court procedure.

Q You are not testifying in the juvenile court. You understand that this is the criminal court of Cook County?

A Certainly, but you are speaking about those whom I see.

Q Hasn't it been your experience that people with

criminal tendencies, do you not find that at an early age they begin to lie?

A That is pretty difficult for me to say. I don't know that that is always true by any manner of means.

Q Are you not criminals as you find them liars or are they truthful persons?

A I have seen many of them very truthful.

Q What is the general rule?

A I would not like to answer that.

Q Did you ever hear it said that any person who will lie will steal or any person who will steal will lie?

A I have heard many things that are not true.

Q You never heard that?

A No.

Q And you don't think that is true?

A I am sure it is not.

Q That a person who will steal will lie?

A I am sure it is not true.

MR. DARRON: If you say it the other way that anybody who will lie will steal there are a lot of thieves.

MR. CROWE: Q Now, doctor, as a practical proposi-

tion -- just forget for the moment if you can that you are a learned alienist and let us talk in terms of our common experience as men -- do you think that any considerable percentage of the thieves who are brought into our court immediately plead guilty and tell all the truth about the transaction or do you think a large majority of them lie as long as they can about it?

A The vast majority of them that come to our notice tell the truth.

Q I am talking about the criminal court?

A I don't know.

Q Have you an opinion as to why the vast majority of the children who come to your court tell the truth?

A They come to our office and they come to our court because of the attitude taken by the judge of the juvenile court and in our office when we see the individuals with their parents and try to help them to go through the situation --

Q The purpose of your court is to help and not to punish?

A Punishment is a help. Helping does not preclude punishment.

Q But the practical purpose of your court is to help

young fellows back to the right road?

A Exactly.

Q You and your associates let that be understood to the boy and the parents when they come in?

A Yes.

Q So that the element of fear, or fear of punishment, does not enter into your work?

A Very slightly.

Q The purpose of this court is somewhat different, is it not?

A I don't know.

Q Don't you think one of the purposes of this court is to protect society against murder and crimes of violence?

A So is the purpose of the juvenile court, to protect society.

Q You would not expect that we parole murderers on their promise of being good boys thereafter?

MR. D OW: Objection. That is not the purpose of the criminal court any more than it is the juvenile court.

MR. CR : I am asking the doctor what his opinion is.

A No, of course not.

Q You expect, when murderers get in here, that they are guilty and , that they be punished, do you not?

A Yes.

Q And that is true of robbers, burglars and others who get in here, is it not?

A I suppose some of them are put on probation, aren't they?

Q The majority are punished, especially if it is their second attempt. You would not expect a large percentage of truthful murderers and burglars to walk through the court here, would you?

A I don't know whether I would or not. It depends on the attitude you take toward them.

Q The fact that these boys lied, cheated at cards, stole and built bonfires with other people's property; those are the elements you principally take into consideration in arriving at your conclusion that they are not no ?

A No.

Q They are some of them?

A They do enter in.

Q The others that you take into consideration are the fact that they have been very highly educated, the fact that they have gone to good schools, and have come from sheltered homes where all their wants were lied;

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those are two other elements?

A Two among many.

Q What influence has their education, and the ease with which they have lived, or the indulgence of their wealthy parents, had, or how much does that enter into your conclusion?

A Very little.

Q If they were boys coming from the Valley, where the last 18 year old boy that we hanged came from, of poor parents, it would not make any difference?

MR. DARROW: Objected to, first, as something he knows nothing about; and, second, because there was never any 18 year old boy hanged. He could not make a comparison. It would not show the boy deserved it, anyhow.

MR. OR : Q t if anything does it indicate to you that when Loeb f that Leopold was being trapped and his guilt uncovered, he confessed?

A I don't believe I can answer that.

Q You as I am asking these questions for the purpose of having you answer them, do you not?

A I don't know what it means.

Q It has no significance to you whatever?

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A I am not of its significance. I never thought of it before. I should have to consider it at considerable length to know what the motives were back of it.

Q Has it any significance to you as to his mental condition?

A You mean, as to whether he was confused, and so forth?

Q Mental condition, whatever that means to you.

MR. D : I object. If he means mental condition at the time, that is one thing.

MR. ORCNE: At the time.

A I am totally unable to answer that unless I know the circumstances, and could yze them, just the as I attempt to yze other phenomena.

MR. OR : Q Why did you not inquire of Loeb when you were making this e nation, as to how he happened to confess?

A I didn't think it of any importance. I w have been perfectly willing.

Q For the reason, you did not think it d be important to know if the crime had originated in his brain or in Leopold's?

A They both so assured me that they were engaged in

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the putting of it together, but I thought it very little difference whether they did it both together or not. Leopold told me, I find among the notes I looked up this morning, that he enjoyed a great deal the elements of planning that Loeb did.

Q Would the fact, after Loeb put up his mind to confess, that he insisted very strenuously, that the crime originated in Leopold, and that Leopold was the person who struck the boy, stuck the gag in the mouth, and did the other things that caused death, have any significance to you?

A I think not, for those circumstances, as drawing a conclusion about the essential elements that led up to the crime.

Q Does not that indicate to you that he was trying to avoid some of the graver consequences that might follow?

A For the impulse of the moment, I presume he was.

Q And if he persisted in that from one o'clock Saturday morning until ten o'clock the following morning, when he fell into the hands of his lawyers, that would not be for the impulse of the moment, would it?

A For the impulse of the situation.

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Q Is there a difference between them?

A Or we might say, r the compulsion of the situation. I think a man r those circumstances is in a pretty difficult position.

Q Does it not indicate, seeing that the crime already had been uncovered, that he was trying to make it as easy for himself as possible?

A At that time, but he certainly has not with us since then in that or in other matters.

Q Well, of course, as a matter of law it does not make any difference as to who ac ly did the killing, and it does not e any difference, as a matter of law, as to who originated the crime?

A That is what I suppose.

Q So if they had been so informed that would account for his o in atti , dn't it?

A I don't . It might have done.

Q It might?

A It might have done, yes.

Q Well, don't you think that is the reason they o d their atti ?

A I don't even whether he was acquainted with

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that fact before or not. I should think he naturally should have been.

THE COURT: It is close to adjourning time now. We will suspend now until two o'clock.

Whereupon a recess was here
taken to 2 o'clock P.M. same
day, August 5th, 1924.

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Tuesday, August 5, 1924.

3:00 o'clock P.M.

Court convened at 3:00 o'clock P.M. Tuesday, August 5th, 1924, pursuant to adjournment heretofore taken.

Present: Same as before.

D R . W I L L I A M J . H E A L Y ,

re d the stand for further cross e nation by Mr. Crowe as follows:

MR. CR : Q Now, doctor, in talking about the defe t Loeb you gave three or four e les of acts which showed his criminalistic tendencies. I believe the first act was that some little boy next door buried some money and Loeb f it, dug it up and off with it?

A Yes.

Q How old was he when that ended?

A He states he was about 9 years old.

Q And what did the other boy bury?

A Money.

A I don't know that he remembers exactly, but my recollection is that it was a dollar or two.

Q In a boy of nine is that unusual and abnormal?

A I think it is rather unusual.

Q Is it abnormal?

A Not necessarily. Proof of abnormal mentality.

you mean?

Q Yes.

A No, not necessarily.

Q So that standing by itself would not mean anything?

A No.

Q Now the next one was that he had a bonfire.

A No, there were other things.

Q Or he t something?

A No.

Q What was the next?

A The next thing that he told me about was entering a window and getting some sort of a vase.

Q Did he tell whose house he burglarized?

A A neighbor's house.

Q Did he tell you whose?

A No.

Q Did he tell you when?

A Soon afterwards, as he remembers it.

Q When he was about --

A Nine or ten.

Q (Continuing) -- nine or ten?

A Yes.

Q Well, outside of indicating that he was inclined to be a burglar, what else did that indicate to you?

MR. D W: I object to that question. It does not follow that it indicates that, if it does.

MR. CROWE:

Q What did it indicate in itself, that act?

A That he was already following out some of the trends of his ideas, prompted by his imaginations that he has told me about.

Q That he had started on a criminal career?

A Yes.

Q That is not an unusual thing in a man who eventually commits murder, is it?

A I could not say that it was usual or unusual. Many people who commit murders have never done another act but of the way previously.

Q You are referring to crimes of passion?

A Yes.

Q Where people have been decent citizens, and their

passions are inflamed by something, and in real hot blood they kill?

A Yes.

Q You do not regard this as a crime of passion?

A No.

Q It is a cold-blooded proposition, premeditated and planned?

A Yes.

Q So for the purpose of comparison is the inception of his criminal career any different than you would expect to find in other criminals?

A Entirely different.

Q Those two acts?

A Which two acts?

Q The one about the pot of gold, and burglarizing the neighbors' houses? You would expect to find acts of that sort in a great many criminals when they were young would they not?

A I don't have any great expectations of any kind with regard to criminals. They are so totally different, I find, as I examine them, that I have ceased to have any expectations about them whatever.

Q You are really not surprised at finding anything

in the makeup of criminals, are you, you find so many different things?

A We find so many different things of normality and abnormality.

Q What is "normal"?

A You are speaking, now, in the mental life?

Q Yes.

A According to the general rules of understanding of such things, I should think it would be pretty self-evident.

Q You tell me.

A A person who does not show any signs of mental disease.

Q In other words, it is what you find in a majority of the people?

A Yes.

Q Is not everybody somewhat abnormal?

A Are you asking that as a question? I refuse to answer yes, I don't know whether they are or not.

Q Generally speaking.

A I don't know.

Q The way that you arrive at a definition of what is normal is what you expect the majority of people to

do, isn't it?

A Yes.

Q What is normal in China is not normal in Chicago outside of Chinatown, is it?

A In some ways it is not, but I think mental disease runs pretty much the same sort of course and there are as many of the same symptoms among the Chinese as amongst Americans.

Q Is there any actual normal man?

A I suppose there is.

Q Is there?

A I think so.

Q Have you ever met one?

A I think so.

Q Whom?

A A great many people.

Q Who is actually normal in every respect and that you can use as a standard by which to judge other people's actions as to whether they are normal?

MR. DARROW: We object. That is a purely theoretical question as to who is normal.

MR. CROWE: We have listened to so much theory the last three or four days that you have brought in that I would not expect you to object. Now I have been

dealing with facts.

MR. DARROW: Suppose he said he had ---

MR. CROWE: Well, let us find out.

THE COURT: Answer it if you can, doctor.

A That is a pretty difficult question to answer.

I thought you were alleging just now that the majority of people were normal.

MR. CROWE: Q Is there any one man whose actions are to be taken as a standard in every respect by which to judge others?

A I think a great many men are.

Q In every respect?

A Yes, in every respect, as exhibiting normal mentality.

Q A person's personality has a great deal to do with his actions, has it not?

A Yes.

Q A perfectly normal man under one set of circumstances might get very indignant and angry and another person would pass it off with a laugh?

A Yes.

Q And they are both normal?

A Yes.

Q So that normal people do not act in the same way under the same circumstances?

A Not always.

Q Is there any one person whose acts you could use as a standard in every set of circumstances?

A No.

Q You say that normal people do not act in the same way under the same given set of circumstances?

A Yes.

Q One man may get very angry at a thing and another man be totally indifferent?

A Yes.

Q And another man would be amused at it?

A Yes.

Q Is there any one person who you can use as a standard to judge how normal people ought to act under a given set of circumstances?

A How every other person would act?

Q Yes.

A I thought we decided that all people act differently or may act differently under different circumstances.

Q Then, in other words, there is not any one standard by which you can judge a normal person?

A You mean in regard to mental disease?

Q I don't know, doctor. You are a doctor, I am not.

A You are speaking about personality, the reaction of personality. You are now invading the field of mental disease and that is a totally different thing.

Q Is a normal person mentally diseased or mentally sane?

A A normal person is mentally sane.

Q What is the next act indicating a criminal tendency on the part of Loeb?

A I think, as I remember, I would not be quite sure of it, was stealing from shops about town.

Q That is in line with his desire to become a burglar?

A No, this is just stealing from shops, that is not burglary.

Q You make a distinction between stealing and burglary?

A Yes, indeed, naturally.

Q What did he steal?

A He named quite a number of different articles that he took from Field's and Scott's and other places about town. Just what those were, I don't believe I

can remember off hand.

Q You were in the juvenile court in Chicago, were you not, about that time?

A Which time?

Q About the time in which he was doing these petty stealings?

A No, I don't know. Yes, approximately. I left here seven years ago.

Q Supposing he had been brought in each time he was caught stealing, how many times would he have to be brought into court before he would have been sent to St. Charles?

A I could not say. I noticed that a good many of them were brought in a good many times.

Q They are eventually sent out to St. Charles when it is apparent they are confirmed thieves, aren't they?

A A good many of them, not all of them.

Q Well, those that are not sent to St. Charles are sent to an insane asylum?

A No.

Q Or they are sent to some institution?

A No.

Q What is done with them? Turned loose on the

street again?

A Most of them are worked with under probation, I believe, or used to be.

Q That is, when they come in the first three or four times, is it not?

A Yes, a good many times.

Q Well, you don't --

A Looking over the juvenile court records I find a good many of them have been six or seven times.

Q And placed on probation?

A Yes, frequently, when there is some well known cause of environment, so that the Judge can feel that that condition might be altered, and frequently they do do better after that length of time.

Q How many times would Loeb have to be brought into the criminal court before you would send him, if you were the judge, to St. Charles or some other institution?

A That I cannot answer.

Q As to whether or not --

A That I could not answer. That is a poser to me. I don't know what I should have done.

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Q You know more about them mentally, you say, than anybody else?

A Beg pardon?

Q You know more about them mentally than we do?

A I didn't say so.

Q Well, do you think you do?

A I don't know what you know about him mentally, so I cannot say.

Q When did he have the bonfire?

A You mean burning up the shacks and so on?

Q Yes.

A That I could not tell you, exactly when.

Q Did you ask him?

A Well, it is since his association with Leopold, certainly.

Q When did that begin?

A That began about four years ago.

Q Whose shacks did they burn up?

A I do not know.

Q What time of the day and time of the year was it?

A I don't know anything about it.

Q If it happened on a moon night, would it make as deep an impression on you as if it happened at some

other time?

A No. If they were bruning up people's barns, actually committing deliberate arson for the enjoyment of it, I should say yes.

Q How many did they tell you they burned up?

A They didn't tell me how many.

Q So your last answer does not clear the situation up even in your own mind, if they were burning up people's shacks? As a matter of fact, they only told you about burning one shack, is not that true?

A No.

Q How many did they say they burned up?

A They said buildings or barns or something of that sort.

Q No, can you tell?

A How many?

Q Yes.

A Exactly, no.

Q Can you tell me exactly what they said, whether it is outhouses, shacks or buildings?

A No.

Q And you did not inquire?

A No.

Q If they had burned one shack up on a Halloween

night or on election night, it would not mean anything to you except that they were perfectly normal boys, busting out with boyish --

A No, I have already answered that, that if they deliberately committed arson, and then as they told me they did, sent afterwards and mingled with the crowd in order to enjoy the talk as to how it was committed, my idea about it would be totally different, and it is.

Q You have not any suspicion that when they were telling you these things, that they were trying to fool you, have you?

A I don't see why they should feel in such matters.

Q When they were talking to the State's Attorney, before they had seen any lawyer, they were maintaining their innocence?

A Well, naturally.

Q You believe that they have sufficient intellect to understand that they were in a pretty bad hole by the time you got them, talked to them; they were in a pretty tight hole?

A Yes, of course they have.

Q And they have sufficient mentality to want to get

out, like other people who get caught violating the law, haven't they?

A Yes.

Q They would like to beat this case if they could, wouldn't they?

A I don't know. I am not so sure about that. I think in a way they would but --

Q Do you think they want to hand?

A Beg pardon?

Q Do you think they want to hang?

A I don't really know whether they do or don't.

Q Well, does the fact that when Loeb found that the authorities had sufficient evidence against Leopold to charge him with the murder, the fact that he confessed and blamed the crime itself and the originating of the crime upon Leopold, throw any light on that subject to you as to whether he wants to hand or whether he wanted to unload on his former king and pal, Leopold?

A I think that under these circumstances there would come to the front the natural instinct of self-preservation.

Q And that is further confirmed by the proposition

that before they confessed and when they were being questioned by the State's Attorney, they built up an alibi and denied all connection with and participation in this crime?

A That is what I should expect them to do, certainly. It would be a part of the picture of one of their perfect crimes, as well as a part of the idea that they would naturally like to preserve themselves as much as possible under the situation.

Q Then when they found out that they were not quite the master criminals that they thought, and the law had them in a firm grasp, you would naturally expect them to react and begin to build up a defense, would you not?

A I should think they might.

Q And in order to build up that defense, these two men, who you and Doctor White say have lied to everybody in the world, even the king lying to the slave and the slave lying to the king, and both lying to the officers of the law, -- do you

not think that they were liable to lie to you?

A I should think they would lie in the manner that they did, making themselves out to be a great deal worse than anyone suspected they were before. I wouldn't expect them to, no.

Q What possible defense is there in this case, to prevent a hanging, unless by what they told you they would create a doubt in his honor's mind as to whether their minds were sound?

MR. DARROW: That is objected to because it does not follow that there is no other defense to prevent a hanging. Everybody is not so blood-thirsty.

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THE COURT: Sustained.

MR. OR : Q What defense have these boys, except the story told by the alienists based on what they told you?

A I don't know anything about it.

Q A minute ago you were teaching me law, and showing me the difference between burglary and larceny. You have been in court a long while, have you not?

A Yes.

Q When it is going to hurt your defense, you know nothing about it.

MR. D OW: I object.

THE C : Strike it out.

MR. OR : Q Do you understand what defense is being put in here?

A Mitigation, is that it?

Q Do you think that if these boys had not told you about a phantasy life, a Teddy bear, a desire to steal, burn, cheat at cards and lie, but had told you that they had lived the life of no healthy boys, that you would be on the stand now?

Q Do you think that Mr. Darrow or Mr. Bachrach would call you as a witness?

A No, but as I said before, we endeavored to get across to you every fact that we had, and not go on the stand.

Q You would not expect to be a witness if they had told you they had lived a perfectly normal life, would you?

MR. DARROW: Objection.

THE COURT: Sustained.

MR. OR : Q Don't you think that in order to prepare the defense that is now being put in, they might have been educated by some other alienist or some lawyer so that they could give you a great work on which you could base your conclusion?

A No, indeed.

Q Do you think that they would refrain from doing that because it was morally wrong to lie to a doctor?

A I don't think that they would.

Q Did they do that to them to hesitate to lie to you?

A I don't think they did lie. I think they started out and told their life story in an endeavor, for one

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thing, particularly in the case of Leopold, and partly also in the case of Loeb, to really understand themselves.

Q They were not sitting in preparing a defense, then, but they were sitting in a clinic, to find out really what was the matter with them.

A We endeavored to make it exactly that. I told you before we endeavored to make it exactly the conditions as obtain when we are studying cases for the juvenile court.

Q When Leopold began to plan with Loeb this murder, and they stole the typewriter, what was acting then, his intellect or his emotions?

A His intellect, but always accompanied by some emotional life, as it always is.

Q What was the emotion that operated with his intellect?

A The desire to act this part of a superior individual, to fall in line with each other, to get from each other what each wanted, -- very natural desires and feelings in the matter.

Q This morning you said it was the intellect that acted.

A I am telling you now that intellect is always accompanied by emotion. It is intellect but also emotion.

Q You did not say that this morning.

A I am willing to put it in now.

Q You want to supplement it now by saying, also the emotions?

A Always emotion is working, with every bit of intellect.

Q Which was in control, the intellect or the emotions at the time they planned to steal the typewriter, so that they could write letters that could not be traced back to them?

A I think that intellect was the predominating thing there probably.

Q And when they rented the room in the Morrison Hotel, intellect was still the captain of the guard?

A Predominating, yes sir.

Q And when they lied over at the Rent-a-Car people, intellect was still walking in front?

A Yes.

Q And so on through all of the details of this murder?

A Yes sir.

Q And it was not the intellect of a boy of eight or nine, it was the intellect in one case of a super-man and the other of an average college man?

A In some ways it was the intellect of a very young boy in regard to matters of judgment about the whole thing.

Q Give me one specific example of what they did that would show the judgment of a very small boy?

A The fact that they did any of it at all.

Q Can you tell me of some young boy that you know under nine or ten years of age that can plan a murder of this sort with its wealth of detail and then plan in so many ways to cover it up?

A Oh, no, I said in regard to his judgment about doing it at all. --

Q In other words --

A (Continuing) ~ under their life conditions with all that life had to offer to them, I should think it is evidence of pretty weak judgment on their part to have engaged in it at all.

Q In other words, when they decided to commit a murder, at that very moment they had the intellect of a little child?

A I think in regard to judgment and detail the intellect works in different departments.

Q Were they little boys when they decided to commit the murder?

A Absolutely.

Q And the little boy was sent out to play and the superman, the super-intellect came in as all the details were worked out?

A That is not very far from being the truth, it seems to me.

Q It was pretty convenient for these boys to have so many personalities?

A I think we all have, no different from any of the rest of us.

Q And they can call one into action at one time and chase him away and call the superman in the next moment ---

A I am afraid we all frequently do that sort of thing.

Q And then call in Mr. Emotion, how old is he in this case? Have you estimated the age of the emotion here?

A I think the emotion in the case of these boys, particularly of Loeb is a question not so much of being on any particular level but as being misplaced.

That is what I endeavored to give at great length previously.

Q Now, we originally had a personality -- a split -- what was that expression?

A Split personality.

Q And as I understand it, there are two in this combination, emotion and intellect, is that right?

A Yes.

Q Dr. White estimated the junior ^{no} $\frac{I}{K}$ at four or five years of age and the senior member, the superman -- you wont place any estimate on the junior member of this firm, will you?

A No.

Q And you bring into the firm a third member, that is, the intellect, the junior five years of age working in connection with the big brother of nineteen or twenty?

A Oh, no, I don't. I did not say anything of the sort.

Q What connection or influence in this firm of the manyers onalities did this boy Richard Rubel have?

MR. DARROW: I object to the question in that form.

THE COURT: Mr. Darrow objects to the term "firm".
Leave that out.

MR. CROWE: Q Did you know that these two boys had another very close friend that they chummed with constantly?

A I don't think they chummed with him constantly. I heard they went with him occasionally.

Q They had a habit of each week dining three days a week at least with one another, first at one house and then at another and then at a third, they went to dances together, played bridge together, went with the same boys and girls and Rubel was a party to the quarrel concerning which the letter that was shown to you was written. That makes them chums, doesn't it, pals, makes him a pal?

A I guess he was, superficially.

Q Now, these two boys here with their split personalities and working in conjunction together, led each other into a crime, what connection do you think Rubel had with them?

A I have not the slightest idea that he had any

whatever.

Q Do you think we ought to have him examined to see whether he is a dangerous criminal or a boy nursing a harmless phantasy?

A I know if he were my son I should certainly want to see under what influences he had been and what effect upon his mind if any association with these boys had had.

Q Doctor, you have frequently used the word "abnormal" in speaking of the mental condition of Leopold and Loeb. What do you mean by "abnormal" as applied to their mental condition?

A Not normal.

Q Describe it a little more?

A I think the term is pretty obvious. You mean in these specific cases, these two boys?

Q Yes, these are the only two cases I am interested in?

A You are interested in the boys?

Q What do you mean by abnormal as applied to their mental condition?

A Shall I refer to my notes and go all over the same subject again?

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Q Will it take you that long to answer it?

A Because I have outlined the different points.

Q Can you give me a definition of abnormal that would cover this case?

A Yes, I think I should be take it up point by point as I did previously. I think it is abnormal for them, or for Leopold, it is abnormal for him to have developed such a notion of his superiority as that he thinks of himself as being a man or a boy who has the right to live above all law and order.

Q Now, what is tremendously abnormal, as you used it, what do you mean by the expression "tremendously abnormal"?

A What anybody means by tremendously, very greatly.

Q What do you mean by it?

A Very greatly.

Q Is a person with a tremendously abnormal inner mental life sane?

A As I said before, the question of sanity is one of legal definition, according to what we have been working for in recent years, and I am unable to answer that question, it is a question for a judge

and a jury, he might or might not be.

Q You know what the word "sane" means?

MR. BACHRACH: I object.

THE WITNESS: I thought we had been all over that.

I know what the word "sane" means.

MR. CROWE: Q You say you know what the word "sane" means. What does it mean?

A Legal responsibility.

Q Would you call a person with a tremendously abnormal inner mental life sane?

A No.

MR. BACHRACH: I object, if the Court please.

MR. CROWE: Well, he has answered the question.

THE WITNESS: No, it is not answered.

THE COURT: The objection is sustained.

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MR. O : Just a moment, your Honor. I insist the witness has already answered the question, and his answer is that a person who is tremendously abnormal -- let us get the expression here -- who has a tremendously abnormal mental inner life is not sane. He defined a person who was sane as one who was legally responsible. We have now got to the point in this hearing where it appears to the court if the defense here is insanity there is only one thing to do under the law and that is to call a jury.

MR. BENJAMIN BACHRACH: Every little while we get to that place.

MR. : Certainly.

THE COURT: The motion is denied. This court does not care what definition Dr. White gives of insanity, what Dr. Healy gives of insanity, what any other doctor give of insanity. There is only one definition that the court will follow and that is the definition that the supreme court of this State has said what is legal in insanity. This court will follow that and pay no attention to what the alienists say about insanity. This court is only dealing with the legal

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insanity and I will follow the rule that our supreme court has laid down for me.

The motion is denied. Proceed.

MR. CROWE: Q Doctor, is Nathan Leopold, Jr. able to distinguish right from wrong?

MR. B.C. Bachrach: I object, if the court please, on the ground that it is not germane to this issue at all.

THE COURT: Oh, he may answer.

A Indirectly, I think he is. He can tell you what is right and what is wrong.

MR. C : Q Has he the power of choice?

A I don't think he has the complete and normal power of choice.

Q Has he any power of choice?

A Yes, I think that people who are mentally diseased, even so they have been declared in , frequently have some power of choice left.

Q What do you mean by the word "insane"?

MR. B.C. BAC OH: I object.

MR. CR : He just used it.

C : The court has ruled it does not make any

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difference what the doctor thinks about insanity, what he declares to be insanity. This court will be guided by the rule laid down by the supreme court. They have told me what legal insanity is.

MR. OR : Q Doctor, on May 21, 1924, did Nathan Leopold, Jr. know that the things he did in connection with the murder of y Franks were wrong?

A Oh, he could have told you very well that it was wrong, according to the ordinary definitions.

Q On that date, knowing that the murder of Robert Franks was wrong, did Nathan Leopold have the power of choosing between doing it and not doing it.

A I think he had some power of choice, but not complete.

Q. No, did he have sufficient power to refrain from committing that murder?

MR. B.C.BAG H: I object, if the court please, on the ground that it comes within the legal definition of sanity, and that has no place at this hearing.

THE COURT: Sustained.

MR. C : I did not get the ruling, your Honor.

C : Sustained. This is not an inquiry as to

the insanity of these boys. These boys are presumed to be sane. They have pleaded guilty. They have assumed the responsibility for that which they did and the only reason for this hearing is to see whether or not there is anything in mitigation of punishment. We are not going to inquire into the sanity of those boys. That is not in question. Those boys are sane so far as this court is concerned now.

MR. CROWE: I am at a loss, your Honor, to understand all this expert testimony from alienists, if that is not the defense here.

THE COURT: I cannot help that.

MR. CROWE: They have been testifying --

THE COURT: The Supreme Court has said that it is not discretionary with me but it is mandatory upon me to hear anything that the defense may introduce in the way of mitigation of punishment. There is no question about that. The court has ruled that three or four times and I am not going to change my ruling now, and that is the only thing

We are here for now, is to determine whether or not the defense will introduce anything here that the court may think is in mitigation of punishment. It is my duty to hear it, then give it such weight as the court thinks it is entitled to, and after that to pass judgment.

MR. CROWE: If the Court please, it is very warm, especially down in the hole here --

THE COURT: All right. We will take a little recess. A few minutes recess, gentlemen.

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

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Court convened pursuant to short
recess heretofore taken.

D R . W I L L I A M J . H E A L Y ,
resumed the stand for further cross examination by
Mr. Crowe, and testified as follows:

MR. CROWE: Q You did not ask Leopole how he
came to confess, did you?

A No.

Q Do you know under what circumstances he made
his confession?

A No.

Q Assume for the purpose of the question that after
he had been in custody from Thursday at three o'clock
or thereabouts during which at odd times he was ques-
tioned, up until Friday evening, during which time
he constantly denied his guilt and offered an alibi;
that Friday evening the ownership of the Underwood
typewriter was fastened on him, and the fact that
he had not used his red car from one o'clock the
day of the murder until ten thirty that night, that

it was in his garage, and that at ten thirty it was taken out, and about one o'clock the bloody chisel thrown from it; that after these facts were made plain to him, he still persisted for half an hour or so in maintaining his innocence; that he then sent for the State's Attorney and asked him whether he could put a hypothetical question to him; that he then addressed a hypothetical question to the State's Attorney, the substance of it was, assuming that a person whose family were as rich and influential as his had committed this crime, did the State's Attorney think he could beat the case? That the State's Attorney then told him that he was going to give him an opportunity to try it out; that he then asked the State's Attorney what he meant by that expression, and the State's Attorney told him that he meant that he intended to place a charge of murder against him; that he then with a smile stated, "While you have some few circumstances that point to me, you haven't a sufficient evidence to bring me into court, and you won't"; that the State's Attorney then told him that Richard Loeb was confessing; that he then registered sur-

prise, and said that he didn't believe it; that the State's Attorney then called his attention to several facts in connection with the crime and asked him where else he could have gotten them if Loeb had not given him the information; that he then said, "Well, I am surprised that Dick is talking; I thought he would stand till hell froze over", or some equivalent expression, "but Dick is talking I will tell you the truth about the matter." That he then stated that the crime originated in Loeb, that Loeb had struck the blows and used the gag that caused the death. Later, in the presence of Loeb, he reiterated that, and argued at length to demonstrate that his story was true, and that Loeb was lying when he blamed Leopold; that as a result they became very angry at each other, and refused to eat with one another, or to have anything to do with one another, and maintained that attitude until the following Monday, when they were turned over to their lawyers and the sheriff. What was working then in Leopold, intellect or emotion?

A Certain kinds of emotion.

Q Intellect at all?

A Possibly as long as he was talking at all.

Q Caution?

A Fear and caution, yes.

Q And a desire to escape some of the consequences of this murder?

A Working out the instincts of self preservation, certainly.

Q Does that make any difference in the conclusions you have stated?

A Not the slightest.

Q What do you mean by the word psychosis?

A Mental disease.

Q Do you follow the classification of mental disease used by the American Psychiatric Association?

A More or less.

Q Do you remember the change that was made in the name at the last revision of that classification?

A I could not repeat it, but I have read it.

Q Was not psychosis used in place of insanity which was eliminated?

A I think very likely it was because that is the sort of thing I am drawing attention to all the time. I think it was.

Q So that now the old or ancient term, as Mr. Dar-

row terms it, of insanity is now termed psychosis?
Is that right?

A In medical parlance it is, with a new meaning given to insanity.

Q You made a report of the result of your examination of these defendants, shortly after you finished the examination and you gave it to the lawyers?

A The first examination made two reports, and the first report was an individual report. I made this first report on each individual shortly after the first examination, and then we all entered into a joint report.

Q In your first or second report did you state as one of your conclusions that these defendants were suffering from psychosis?

A I should have to look it up to see. Very likely I did since it is equivalent to mental disease I might have done so.

Q Will you look it up, doctor?

A Yes. These are the individual reports, the joint report I have not a copy of, the lawyers have it. Yes, I said of Leopold that he was suffering from psychosis and Loeb -- you wish to know about Loeb?

MR. CROWE: No.

Q Now, yesterday or sometime in your direct examination didn't you state in reference to Leopold that he could and did distinguish between what was phantasy and reality?

A I don't know that I did say that, no, I don't remember saying that, did I?

Q Well, Loeb. Probably I am mistaken, when he was lying on the couch, was that Loeb?

A Leopold who during the last year had the appearance of voluntarily going into dreamland.

Q Then it is Leopold, I am correct in that?

A Yes.

Q Who used to lie on the couch last year or so and indulge in his phantasy?

A Yes.

Q You stated at that time that he could and did distinguish then between the phantasy and the reality?

A I don't remember making any such statement.

Q Well, could he?

A I think he could.

Q Now, as a matter of fact, an insane person cannot

distinguish between what is reality and what is phantasy , can he?

A I thought we were not discussing insane people.

Q Well, I am asking you now.

MR. BACHRACH: I object.

THE COURT: Objection sustained.

MR. CROWE: Q Well, a person who has psychosis -- it is merely a difference in words, in some places they call it insanity and in some psychosis, over on the west side we say he is bughouse and some places they say he is nutty, use any term you want to cover that condition, that kind of person cannot distinguish between phantasy and reality, can he?

A There are very many different kinds of mental disease or psychosis.

Q Can you answer that question?

A If you will wait, please, I will answer it. In some they can and in some they undoubtedly cannot, and where to draw the line is an extremely difficult matter.

Q What other doctors have you consulted with in this matter that have been employed by the defense?

A Dr. White, Dr. Glueck, Dr. Hamill, Dr. Hall.

Q Dr. Hickson?

A No.

Q Dr. Hulbert?

A I have not consulted with him. I have read his report merely.

Q Dr. Bowman?

A I have consulted with him, he came back to Boston and spent most of a day with me.

Q Dr. Meymann?

A No.

Q Dr. Sanger Brown?

A No.

Q Now, doctor, you testified that Leopold told you that for twelve years he had made an extensive study of birds, ornithology, and he had a very wonderful collection of exhibits, something over three thousand, and had made valuable contributions to the literature of ornithology and delivered an interesting as well as an instructive lecture to the students at Cambridge?

A I did not say that.

Q Well, he did as a matter of fact deliver one down there? Now that shows a persistency of purpose, does it not?

A Yes, indeed.

Q Intellect is working all the time on that?

A Yes, and also his emotional life giving him a tremendous drive in that way.

Q And that is not a phantasy?

A No, indeed. It might add reality to his phantasy of being superior.

Q Were there any birds in his kingdom that he told you about, his phantasy?

MR. BACHRACH: We object to the question because he does not really expect to have an answer, seriously.

MR. CROWE: I insist that when I ask a question I do expect to have it answered as seriously as any of the questions that counsel for the defense have asked in the last two or three days.

MR. BACHRACH: I insist, if the court please --

MR. CROWE: I don't think any of it is very serious.

MR. BACHRACH: That is what I thought. It did not appear that there was any kingdom.

THE COURT: If you can answer it, doctor, go ahead and save time.

THE WITNESS Please say it again, Mr. Crowe. Do you mean in his phantasy life?

MR. CROWE: Yes.

THE WITNESS: I did not hear of any.

Q Do you believe that the study of ornithology and the teaching and writing books, all that was reality?

A yes sir.

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Q An every day honest-to-God work?

A Yes.

Q He showed a deep interest in showing pictures and specimens of rare birds, didn't he?

A I don't know about the pictures; I have seen the birds.

Q Well, about the specimens?

A Yes.

Q That is an indication of intense interest, is it not?

A Yes, indeed.

Q And it has been abiding and continuous for twelve years?

A Yes, it is one of his characteristics, is his persistency.

Q Is that the interest you would expect in a child of four or five, as Dr. White described the emotional Mr. Leopold?

A Well, I am not discussing Dr. White's opinion in that matter, but it is exactly the type of mental effort that would affect a person of his paranoidal tendencies.

Q But you would not expect the interest that he exhibited in ornithology in any child of five years of age, would you, doctor?

2m A He already exhibited it, by the way, at five years of age.

Q Then it is perfectly natural and normal in a child that y ?

A To start collecting anything?

Q Yes.

A Yes, indeed, ly.

Q What is your rstanding or definition of the word "responsibility" as you have used it?

A As I have used it?

Q Yes.

A Where?

Q Haven't you used it in your testimony, "re si- bility"?

A I don't remember using it at all.

Q Well, what do you rs by the word "responsi- bility"? t does it mean?

A "Responsibility" is too much for me to answer, what is responsibility and what is not. It is a matter that I have pondered on for many years; and how to define responsibility or how to adjudge anybody responsi- ble is something that is beyond me to do. I think it

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would take the Creator himself to be able to do it.

Q You don't use the word "responsibility"?

A I don't ever recall doing it. I certainly never do in court work.

Q Have you used the words "legal responsibility"?

A Yes.

Q What does that mean?

A My understanding of that is that it is what a judge or a jury have pronounced upon an individual, whether he should be under the law held to his deeds one way or the other.

Q Do you agree with your colleague, Dr. White, that it is a fiction?

MR. BENJAMIN BACHRACH: I object.

A It is a fiction?

MR. BENJAMIN BACHRACH: H: And ask that the answer be stricken out, if it has been answered before my objection.

MR. CR : Q t is it?

THE COURT: t is the question?

(Question read)

THE COURT: Oh, yes, objection sustained.

MR. : That is all.

MR. D OW: Just a very few questions, doctor.

REDIRECT EXAMINATION

BY MR. DARROW.

MR. DARROW: Q You were shown this book of Dr. White, Outlines of Psychiatry, published in 1909? Has there been a good deal done in psychiatry since 1909?

A An immense deal.

Q And in definitions?

A Particularly in classifications and definitions, both from the standpoint of law and of medicine.

Q I want to show you the parts that counsel calls your attention to, which they have marked as the definition of insanity, on page 10 and 13, and then I want to call your attention to the summing up on the page I have marked, at the end of it. In summing up on the chapter that the State read, does he not say, "As I have intimated all along, a perfect definition of insanity is impossible, because our knowledge of the subject to be defined is not complete."

A That is what I read in there.

Q Do you see any difference in his statement in this book and the later books?

A His later books? He has later editions of this.

Q He has?

A Yes.

Q How many?

A I could not tell you.

MR. DARROW: (Addressing Dr. Krohn) I presume you could not find a later one?

DR. KROHN: I bought one. That is enough.

MR. DARROW: Q Is the idea of planning in any way inconsistent with a diseased mentality?

A No, indeed.

Q Is the idea of planning for a defense after an act is committed in any way inconsistent with a diseased mentality?

A No.

Q Is planning common in people committed to insane institutions?

A Planning of any sort?

Q Yes.

MR. CROWE: Are you talking about legal or mental insanity?

MR. DARROW: Neither. I was talking about patients committed to insane asylums.

MR. CROWE: Diseased minds?

MR. DARROW: Yes.

MR. CROWE: Insane asylum commitments are a legal process.

MR. DARROW: That does not mean that they have legal insanity or medical insanity.

Q Is it frequently encountered in patients?

A In patients with mental disease, in hospitals for mental disease?

Q Yes.

A One sees very many illustrations of it, but I do not know that all patients have it.

Q Have you seen it?

A Yes.

Q Is it unusual with people who have paranoiac tendencies?

A No, very common.

Q Is emotion for self-defense, the preservation of

life, common to people suffering from mental diseases?

A Yes, indeed.

Q It is common to everyone, is it not?

A There are some exceptions in mental disease, where there is a tremendous suicidal impulse.

Q But outside of suicide?

A Yes.

Q How did the intellect and the emotion act together, state it briefly, in the conception and carrying out of the Franks homicide?

MR. CROWE: I object. The doctor said he did not ask anything about the inception of the crime.

MR. DARROW: Well, he understood the crime; it had been stated to him, and he knew the details of it, and he did not think it was necessary to ask about it.

THE COURT: He may answer if he can.

MR. DARROW: Q State briefly the connection between the emotional and the intellectual part of it, if you can separate them, in both the conception and the planning, and the carrying out of it?

A It seems of course very clear in the first place -- or, I might say in general that there must be emo-

tional life connected with the whole situation, as there is with all intellectual life; the ideas themselves as ideas in general carry always an emotional context. Though I donot know in whose brain in the first place or in whose mind, the conception of the Franks case really first developed -- and I think that is the answer I gave Mr. Crowe -- still it is very clear that the carrying out of it, the development of the idea and the carrying out of it, were accompanied by a very considerable amount of emotional life. The boys have insisted to me, both of them, that they had a very great deal of pleasure in going over the details, of thinking how fine they would feel when they did something that nobody could find out, when they alone knew about it.

Q Which is the driving part of h conduct, the emotional or intellectual?

A Undoubtedly the emotional is the main driver of human conduct.

Q What part did it have as to Loeb and Leopold equally, if you can state, in the conception and

carrying out of this?

A Equally?

Q I do not mean equally, but take them separately if you wish.

A What part did it have?

Q Yes, the emotional and the intellectual.

A I think it was a tremendous driving force in Loeb's mind, because of his continued imaginings of the master criminal phantasies; that he had developed this for so many years, until it had a hold of him that made it difficult for him to get away from it; and in connection with that he obtained a great deal of pleasure either in the planning, or strangely enough in the commission of the crime itself. In fact, he very definitely states that. In the case of Leopold, also, he obtained, he states, a good deal of emotional pleasure, a good deal of pleasure, from the actual planning, from the joining in with his comrade, being one in association with him in the commission of this crime. Now, on the contrary, it is evident that he did

not get any direct pleasure from the commission of it.

Q Given the emotional drive to action, as you have stated it, and to action in this case, is there anything inconsistent in the details being carried on by the mental side?

A No, indeed. The mental side goes on working, sometimes with a great deal more fervor, and with a great deal more detail, when there is a good deal of emotion connected with it.

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RE INATION

BY STATE'S ATTORNEY OR

MR. : Q When there was danger of detection, emotion was urging him to go on. You referred to it as a drive. Is that not correct?

A Emotional drive is the phrase we used.

Q And that was urging them on?

A Yes.

MR. DARROW: Did the doctor finish his answer?

THE WITNESS: Yes.

MR. CROWE: Q Well, have you finished, doctor?

A Yes.

Q You say it was emotion that was driving him on, an emotional drive making him commit this crime, is that right?

A Part of it. That is part of the reason for his committing the crime.

Q What else?

A There were the intellectual components also.

Q The intellect is the thing that stopped them when there was danger of being caught, isn't it?

A I should think there is a great deal of emotion

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there, a tremendous amount of it, namely, fear.

Q Well, in other words, emotion and intellect are so mixed up here you cannot separate them.

A Oh, no, of course you can't.

Q That is right, is it not?

A Yes.

(Mr. Darrow here had the question and answer repeated to him.)

MR. DARROW: Q That is correct is it, doctor?

A Yes.

MR. DARROW: All right.

MR. OR : Q Well, in order to excuse the crime emotion drives him on, and the emotion is only that of a five year old child, and when you try to take the other end then intellect steps in, the supe , and he is so mixed up with emotion that you c t separate them, is that so, doctor?

A When you want to excuse the crime?

Q Yes.

A I am not attempting to excuse the crime.

Q I am sorry, doctor, that I mi rstood the purpose of all your testimony. There have been times when I

3m thought you were testifying in aggravation and not in mitigation, and I am glad that you agree with me.

MR. DARROW: That is, you mean in doing something worse than hanging when you speak of aggravation?

A I am not arguing for anything. I am trying to get the facts before the court.

MR. : That is all, doctor.

(The witness was then excused.)

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D R. B E R N A R D G L U E C K

a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENJAMIN BACHRACH.

Q Will you please state your name?

A Bernard Glueck.

Q Where do you live?

A New York.

Q New York City?

A New York City.

Q How old are you?

A 41

Q And your profession?

A Physician.

MR. BACHRACH: Now, so I won't be interrupting the witness from time to time, I would now like to object, as I did in the case of Dr. [redacted], to any of this testimony being received in evidence, for the reasons that I then assigned and argued at length before your honor.

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THE COURT: The motion is denied. The objection is overruled. You may proceed doctor.

MR. BENJAMIN BACHRACH: Q Your profession is that of a physician, you say?

A Yes, sir.

Q Have you specialized in any particular branch of that profession?

A In the study and treatment of mental disorders.

Q When and where were you graduated?

A The medical department of Georgetown University, in 1909.

Q And how soon thereafter did you take up the study of mental disorders?

A Several months after graduation.

Q Did you make any special preparation for that part of the profession that you have specialized in?

A I studied such subject matters in this field as are offered to the average medical student, and then I applied for an internship at the government hospital for the insane at Washington, D.C., and was appointed in the fall of that year.

Q In 1909?

A Yes, sir.

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Q And did you act as intern in that hospital?

A I went through all the grades of medical officer in that hospital, remaining there from 1909 until 1916, the major part of which time I was in charge of the original part of that institution.

Q What hospital was that?

A It was then the government hospital for the insane, Washington, D.C. now known as St. Elizabeth Hospital, the same hospital Dr. White came from.

Q During that time what was the average number of patients treated at that hospital during the time you were there?

A At the hospital as a whole we had a population of approximately three thousand at that time. I had under my immediate care probably some six hundred patients.

Q During the time you were connected with that hospital, did you hold any other positions?

A I lectured occasionally at one or other of the universities in Washington. At one time I was president of the Society for Medical Jurisprudence. In 1912 I believe it was while on the staff of the

government hospital, I was loaned to the United States Public Health Service to go to New York and examine arriving immigrants for mental and nervous disorders. Then I returned to the hospitals. During that period I also spent several months in Europe studying at clinics in Munich and Berlin.

In July of 1916 I was called to New York State to take charge of the Psychiatric Clinic at Sing Sing Prison just established at that time by the Rockefeller Foundation, and at the request of the State of New York.

I was in charge of that enterprise for two years examining all the prisoners received at Sing Sing during that period. I left to enter the Army during the war and spent most of my time in the examination of officers for overseas duty.

After the demobilization early in 1919 I was appointed director of the Mental Hygiene Department of the New York School of Social Work. I was also associate neurologist at the College of Physicians and Surgeons at Columbia University and later on for a short period I had to ~~maxx~~ separate myself from these various duties and I held the appointment

of professor of Psychiatry at the New York Post Graduate School and Hospital.

In the fall of 1921 the Commonwealth Fund launched a very extensive and nationwide enterprise in the prevention of delinquency, and I was appointed in charge of one division of that enterprise, the Bureau of Children's Guidance in New York City. I continued both the work at the New York School and the directorship of the Bureau until several months when I resigned to enter into private practice.

Q Were you an officer in the army when you were abroad?

A I was a captain, but I was not abroad, I was on this side.

Q Are you now connected with any institutions of learnings?

A I teach at the College of Physicians and Surgeons from time to time, at the New York School of Social Research. I lecture occasionally at the Chicago University, Smith College and various institutions.

Q How many years now have you practiced psychiatry?

A About fifteen years.

Q Do you regard yourself as qualified to examine

a given person touching his mental condition?

MR. CROWE: We will admit it.

MR. BACHRACH: He says he admits it, and I will proceed.

MR. CROWE: That is that he regards himself as such.

MR. BACHRACH: That is all I asked him, and that is all any of us can say.

Q Have you written any books on the subject of psychiatry or nervous diseases?

A I have published the results of my researches from time to time. In 1916 I collected some of the more important papers into a volume entitled, "Studies in Forensic Psychiatry". I translated a book on the "Neurotic Constitution" and have prepared from time to time articles on the subject.

Q Were you employed in this case to make an examination and study of the defendants, Nathan F. Leopold Jr. and Richard Loeb?

A Yes.

Q What person made the specific arrangement with you?

A Mr. Walter Bachrach came to see me one Saturday

afternoon, together with Dr. Hulbert, and wanted to know whether I would be interested in associating myself with Drs. Healy and White and some others.

MR. CROWE: Just a moment, he hired you, did he?

THE WITNESS: Yes.

MR. BACHRACH: Q Under what condition? You do not have to give the whole conversation, but what were the conditions?

MR. CROWE: Oh, no, it is clearly hearsay, conversation between a lawyer and a doctor --

MR. BACHRACH: Q To do what?

A He asked me under what conditions --

MR. CROWE: I object. This is a matter for cross examination, if it is proper at all.

THE COURT: That is true. Well, you were engaged?

THE WITNESS: I was engaged by Mr. Walter Bachrach.

MR. BACHRACH: Q To do what?

A I think I should in justice to myself --

MR. CROWE: I object, your Honor.

THE COURT: Go ahead, tell us, doctor.

MR. CROWE: Why should he enter into a defense of himself now?

THE WITNESS: No, not a defense.

MR. BACHRACH: Wait a minute, let me take care of you.

THE COURT: Q Were you engaged to do this work?

A I was engaged to come here and study these two boys.

Q And did you?

A I did.

Q Now, go ahead and tell us.

MR. BACHRACH: Q Were you engaged to report to the defense truthfully what you discovered as to their mental condition?

MR. CROWE: I object to that.

THE COURT: Let him tell.

MR. CROWE: I insist that he has not testified, and there is no occasion at this time for him to defend himself.

THE COURT: He may answer, did you, doctor?

THE WITNESS: I did.

THE COURT: Now, let us get down to his findings, if we can.

MR. BACHRACH: Q Did you make an examination and study of the mental condition of Richard Loeb and of Nathan F. Leopold, Jr., the defendants here?

A I did.

Q Did that examination consist of conversations with each of these young men and members of their families, and an examination of other matters?

A It consisted of all that, and a study of various documents such as letters, note books, and with Leopold, particularly, his college notebooks, conversations with acquaintances and relatives, a careful study of the Bowman-Hulbert report.

Q I assume that the conditions under which you examined these defendants were the same conditions under which the other psychiatrists examined them, Dr. White and Dr. Healy?

MR. CROWE: I will admit that all the doctors got every facility that could possibly be rendered to them to examine these men, much better facilities than other defendants have gotten.

MR. BACHRACH: Q And it was under the same conditions that they examined them, that you examined them?

A I think so.

Q Will you state now the substance of the conversations you had with Richard Loeb, what he told you touching all the matters he was questioned about

by you?

A Well, I started out as I do ordinarily in the examination of patients to acquaint myself with the patients attitude with respect to himself, with respect to the conditions surrounding him, with respect to the various features of his developmental history. I endeavored to get an idea in a general way of the workings of the defendants' intelligence.

I endeavored to get an idea of the reliability of their statements.

I endeavored to get an idea of the emotional content, the emotional state of the defendants of any special features with respect to their emotional life.

I endeavored to discover if there were any deviations from normal thinking and feeling in the nature of definite symptoms of mental disorder.

I endeavored to get as complete a history as I could of their developmental period, the early period of life and subsequent activities and then formulate some opinion with respect to these various features.

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Q Let me interrupt you right there, doctor. Having stated what you attempted to do, I ask you once more to tell what conversation you had with Richard Loeb, and what he told you on all the matters you asked him about.

A I will first say a few words with respect to my general impression.

Q I would rather not have it that way. I would rather have you answer the questions that I put to you, doctor. We will get the impressions later.

A I started out to go over with him his developmental--

Q What did he tell you?

A Wait a minute. I am coming to it. I started out to go over with him his developmental history, and the first questions I put to him related to his attitude toward his own family, particularly early in life. He told me in this connection that as a younger brother he frequently had the feeling that he was not wanted at home, that his people were not as close to him as they seemed to be to others in the family; that he had told his mother at one time that he wanted to run away from home. He particularly felt that his older brothers were not as close to him as he thought they might be. I asked him whether he felt

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in their actual behavior they showed indications of that sort of an attitude toward him. He was not certain about that except that he had this feeling. I then took up his attitude with respect to his governess, whose influence he was between the ages of four and eleven, endeavoring to discover what his attitudes were toward her. He said that he was very closely attached to her, and that she too was very closely attached to him; that she tried in every possible way to push him ahead, to give him opportunities for his development, but that he chafed under this influence. He told me that he felt something was str about it, it didn't seem right, and then he d, "When she left, when I was about 14, I sort of broke loose." As far as I could gather, from his statements with reference to his attitude toward this nurse, he felt himself different from other boys in the sense that he was not given the same opportunity for free and natural contact with other boys; and I had the impression from the way he spoke with respect to himself at that period of life, that he felt inferior to other boys. I then took up with him his attitude with respect to these early delinquencies, which

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are recorded in the record, and it was extremely interesting to me, in describing his first delinquency, which I look upon now as a purely childhood prank, stealing the change from the boy next door, that he had a curious sense of bodily sensation in connection with this incident, in the nature of a quickening of his heartbeat, a feeling of exhilaration and well being; and the curiously interesting phase of this was that in connection with other delinquent acts later in life, he seemed to experience the same sort of bodily sensation, of a general nature of exhilaration and well being.

He also had a similar type of reaction in connection with the excitement that went with playing cards, also in connection with some of his amorous conquests. It was interesting that this boy recognized that early this particular peculiar accompaniment, bodily accompaniment of these delinquent acts.

MR. JAMIE BAG O'H: Q What else did he tell you?

A I took up with him then another significant point in his developmental history, which to me seemed to be at any rate unusual, and that is his entrance to college at an age of fourteen years and three months. He appar-

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ently was very much elated, pleased over this fact, and as far as I can judge from his description of the situation at that time he felt himself rather buoyed up by that event, but as soon as he got in and as soon as he came to associate with others in the university, he began to feel that he could not live up socially in ordinary relations to the boys with whom he came in contact at that time. These were, according to his statements, all the way from four to seven years older. So that I had the impression from his description of that particular experience, that particular event, that he felt himself again, as in his earlier life, in a peculiarly inferior position with respect to his classmates. I then took up another important event, it seemed to me, from the record of the case and from his own story of his development, and that is the association with Leopold. I was trying to determine what precisely made this association attractive to him, and as far as I could determine from his statement it was that he had the privilege to plan secretly with a superior mind these various delinquent plans that he received from Leopold, whom he recognized to be the superior intelligence, recognition, and

5m in connection with this relationship.

I then took up the more --

MR. B.C.BACHRACH: If the court please, we have got to a good place for adjourning time.

THE COURT: We will suspend now until to-morrow at 10:30.

Whereupon an adj nt was here
taken to 10:30 o'clock A.M. until
Wednesday, August 6th, 1934.

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