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CAPITAL PUNISHMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON JUDICIARY OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

H. R. 349 and H. R. 4498

JANUARY 28 AND 30; FEBRUARY 1, 2, 4, 8, 11, AND 13, 1926

DEPOSITORY 

WASHINGTON
GOVERNMENT PRINTING OFFICE

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SIXTY-NINTH CONGRESS

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WILLIAM C. HAMMER.

CAPITAL PUNISHMENT

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Thursday, January 28, 1926.

The subcommittee met at 10.30 o'clock a. m., Hon. Clarence McLeod (chairman of the subcommittee) presiding.

Mr. McLEOD. The committee will come to order.

(The subcommittee thereupon proceeded to the consideration of H. R. 4498, which is as follows:)

[H. R. 4498, Sixty-ninth Congress, first session]

A BILL To abolish capital punishment in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 801 and 808 of the Code of Law for the District of Columbia be amended so as to read as follows:

"Sec. 801. That the punishment of murder in the first degree shall be life imprisonment. The punishment of murder in the second degree shall be imprisonment for life or for a term of not less than twenty years.

"Sec. 808. That whoever has carnal knowledge of a female forcibly and against her will or carnally knows and abuses a female child under sixteen years of age shall imprisoned for life or for not less than fifteen years."

Sec. 2. Capital punishment shall not hereafter be inflicted for any crime in the District of Columbia.

Sec. 3. All acts or parts of acts inconsistent with this act are hereby repealed.

Sec. 4. This act shall be effective immediately upon its enactment.

Mr. McLEOD. I believe Congressman Rathbone has a statement he desires to make, and we will now be glad to hear him.

STATEMENT OF HON. HENRY R. RATHBONE, REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RATHBONE. I am strongly inclined at the present time—although my mind is entirely open to light and I desire further information and to hear further arguments—to favor the abolition of capital punishment in the District of Columbia. I believe that it has been shown that the certainty of punishment, rather than its severity, is what counts for the most as a deterrent of crime. In my experience with the courts, although not to any great extent with the criminal branch, covering a period of 30 years, it has seemed to me that many persons who should have been convicted were acquitted because the prosecuting attorney will frequently state to the jury "It is hanging or acquittal." The feeling among the people, as reflected in the jury box, is usually very strong against the infliction of capital punishment. And when they are faced with that alternative they are apt to acquit people who should be punished.

Therefore, the law providing for capital punishment to a large extent defeats itself. Moreover, it is to a very great extent inoperative. I have not the exact figures, but I am inclined to think that it is not in one case in a hundred of homicide that the death penalty is inflicted. It shows plainly that jurors will not impose it unless under very extraordinary circumstances. This view is corroborated and supported by all history of criminal law and criminal statistics going back to the most ancient times. We will find, for instance, that the law of Draco, which was so severe that it was said to have been written in blood, in ancient Athens, and it became practically inoperative on account of its severity.

The same thing is true when we go to the more recent time in England, when in Blackstone's day and in the day of Lord Jeffreys, who was known as the "hanging judge," there were a great many crimes which we would now consider of the most trivial nature—I think such a thing as snaring a hare was punishable by death.

But the whole experience of mankind goes to show that these severe penalties are not practical and that they defeat their own purposes. I feel that it is in a certain sense degrading to the State to inflict capital punishment; I think it is in keeping with the steady march of progress for us to move away from that. I need not call attention to the very many great men and women of former times and of the present time who are in favor of the abolition of capital punishment. It is not just a mere flurry for the time being; it has been agitated for a great many years, and there is now a very strong world-wide movement among many of the most broad-minded and best informed people, those who have the cause of humanity largely at heart, everywhere in favor of the abolition of capital punishment.

These are but a hasty expression of some views which I would be glad to have an opportunity to expand further and which influence me at the present time and cause me to feel in favor of this bill.

Mr. McLEOD. In other words, Mr. Rathbone, you feel that we have advanced beyond the doctrine of "An eye for an eye and a tooth for a tooth?"

Mr. RATHBONE. Yes; I do, exactly; I think it is against the teachings of the New Testament.

Mr. McLEOD. You consider it legal murder?

Mr. RATHBONE. I would not want to apply the word "murder" to it. But I have said, what I believe, that in a certain sense it is degrading to the State or great Nation or to any community to inflict the penalty. If it were absolutely necessary and could be shown by statistics to be necessary for the preservation of civilization and society, then I would be for it, but from what cursory investigation I have made I am convinced that the facts and statistics do not in any way substantiate the statement that it is a deterrent crime, and the showing made in such States as Michigan, Wisconsin, and others where it has already been abolished is very favorable when compared with those States where it has been retained. That is my offhand impression, which I think will be verified upon investigation.

Mr. McLEOD. Michigan abolished capital punishment in 1847. Do you care to make a statement, Mr. Houston?

Mr. HOUSTON. No; but I would like to ask Mr. Rathbone this: You spoke about the disposition of juries and that because they

were opposed to capital punishment they therefore would return a verdict of less than capital punishment. In my State, no man who has conscientious scruples against finding a verdict of guilty in cases where the punishment is death, is not permitted to sit upon the jury.

Mr. HAMMER. That is so in all States, is it not?

Mr. HOUSTON. He is examined on his voir dire, and if he makes that statement he is not permitted to sit on the jury, nor if he has formerly expressed an opinion as to the innocence or guilt of the prisoner at the bar.

Mr. RATHBONE. That is the only question, I think.

Mr. HOUSTON. That is the only question. If he tells the court that notwithstanding the fact that he has formerly expressed an opinion that he can reach a fair and just verdict he is permitted to sit upon the jury.

Mr. HAMMER. In the discretion of the judge as to whether he is competent to sit as a juror?

Mr. HOUSTON. Yes. I let a man go by on that, and I came pretty nearly losing the case.

Mr. HAMMER. The great trouble is that if there is a sentiment in the community against capital punishment, I do not care whether the juror says that he can give a fair and impartial trial—he may think he can, but often he does not know what he can do.

Mr. RATHBONE. If that stares him in the face, he is not going to carry that out. There is absolutely no sense in enacting laws that go directly in the opposite direction from public opinion.

Mr. HAMMER. There has not been a man executed in my county since 1878; we electrocute them, but do not hang them.

Mr. HOUSTON. A jury in a capital case may recommend, and they often in first degree murder recommend mercy.

Mr. HAMMER. That is left to the Governor in my State.

Mr. HOUSTON. In the State of Delaware the court can fix the penalty.

Mr. RATHBONE. It is a travesty upon justice, where the law is perfectly plain and where if the man is guilty at all he is guilty of murder in the first degree and under the law should be executed, to see such men time and time again convicted of manslaughter or something of that kind, which could not have any application to the facts of the case whatever, and although what the prosecuting attorneys says, "It is hang or nothing" is true, the juries will not follow it.

Mr. HAMMER. But in nearly all cases the jury can find excuses. In my State malice aforethought is required for murder and premeditation is first degree, no matter how short the premeditation is, but malice is presumed where deadly weapons are used unless the contrary is shown. Third degree is what we call manslaughter; so we have murder in two degrees and manslaughter.

We used to have the pillory and the whipping post, and there was great opposition to abolishing the whipping post in my State as well as elsewhere, no doubt.

Mr. HOUSTON. We still have it.

Mr. HAMMER. It is a relic of barbarism.

Mr. HOUSTON. Although we are located near Baltimore, Washington, and Philadelphia, we seldom have pickpockets or anything of that kind. White men do not like to be whipped, and the result is it keeps thieves and pickpockets out of our community.

Mr. RATHBONE. The gentleman does not wish to be understood that any human being likes it.

An unfortunate situation exists at the present time. For instance, in our State, as in every other State where they have a parole board, the parole board never let a man sentenced for life serve out his sentence. What is the consequence? I know of two cases right now of sentence for life that after serving 10 or 15 years they were allowed to go free.

Mr. HAMMER. Just one suggestion. So many people meet you with this idea, that the prisoners have music, candy, cigarettes, baseball, and all kinds of things, instead of punishment. I will tell you what I have thought, that it is punishment to be behind iron bars and away from the singing birds and fresh air, sunshine, green fields, and the great outdoors.

Mr. RATHBONE. Just let me add one thing further, and that is the awful situation which has been known to arise, which is certainly possible, and that is the conviction and execution of an innocent person. While there is life there is hope; while there is life there is an opportunity to undo the wrong, to a certain extent, where a man has been convicted and imprisoned without just cause. But when you have executed him there is no reparation that the State can make, and I do not think that I could conceive of a more terrible position that I could be placed in or a more dreadful thing that could happen to me than to be on a jury convicting a man of first degree murder, where I know the penalty is hanging, have him executed, and then have it be shown beyond a reasonable doubt that he was an innocent man, as has happened many times.

Mr. HAMMER. Not often.

Mr. RATHBONE. I hope and pray that that may never occur to me.

Mr. McLEOD. There have been cases.

Mr. HAMMER. Oh, some. I used to tell the jury that they found the fact and the law did the executing.

Mr. HOUSTON. I found, as prosecuting attorney, that one gets used to it, and prosecuting never worried me one minute. I would not prosecute any man unless I was convinced of his guilt.

Mr. GILBERT. Let me suggest to the gentleman from Illinois that that should address itself to the tribunal, and capital punishment should very seldom be invoked. But, nevertheless, there are cases where there is no doubt as to the guilt, and the crime is so heinous that no other punishment will satisfy society. For instance, in Kentucky day before yesterday a negro man happened to be in dispute with a colaborer over a trivial matter. He goes over to his home and attempts to collect a debt and proceeds, when he is unable to do so, to shoot the man's wife and his two little children, and then confesses the crime. In such instances, where there can be no doubt as to the guilt of the person of a crime that is so heinous, public feeling will be outraged if any but the severest punishment is inflicted. Those cases are rare, but yet there should be that safeguard retained that when they do arise that this punishment may be inflicted.

Mr. RATHBONE. May I ask the gentleman from Kentucky, who is a very able lawyer and I have great respect for his judgment, do you recall the famous case of William H. Seward, who was Lincoln's Secretary of State, handled when he was a practicing lawyer? In substance it was that a negro committed the most revolting crime,

worse probably than the one you have detailed. Public sentiment was terribly against him, yet William H. Seward, with the courage of a real man, undertook his defense on the ground of his insanity, and fought the case through and saved the man's life for the time being. The man died a natural death, his brain was examined, and it was found to be so diseased that from that moment there was not a particle of question but what the man must have been hopelessly insane; and therefore, under no theory of the law, could he have been subject to capital punishment.

What does the gentlemen from Kentucky say there? Was not William Henry Seward right in defending that man? Was not the law right in taking his life, and was not, in that case, the refusal to inflict the death penalty absolutely in the interest of justice?

Mr. HOUSTON. You have every defense there. You have your jury of 12 men to pass upon it. Insanity is a good defense, a very frequent defense in this day and time.

Mr. GILBERT. The gentleman from Illinois is a great admirer, as I am also, of Lincoln. Ought his assassin have been put to death?

Mr. RATHBONE. Lincoln's assassin?

Mr. GILBERT. Yes.

Mr. RATHBONE. In the light that we now have, I would have been willing to stand by my principles, saying "No," and particularly in the case of some of them, like Mrs. Surrat. I did not intend to go into this, but I have made some study of it. Of course, that was a court-martial, you understand, and not a civil court that condemned and executed those assassins. You will also recall the facts that certain others that were later imprisoned for life were pardoned by the then President of the United States—Doctor Mudd and others—as accomplices after the fact. You state an extreme case, but I am willing to stand by my principles. You will recall this—I am not prepared to debate the whole case—my recollection is that John Wilkes Booth's father died insane; and perhaps after passions had cooled, we do not know but what it might have been found that there was a taint of insanity in the blood. I am not prepared to say as to that.

Mr. HOUSTON. There is one thing that should always be kept in mind. What we call the punishment of the guilty is not only the punishment of the guilty for the crime committed, but the very important part of that sentence, is that it serves as a deterrent to others who might do likewise.

Mr. RATHBONE. That is the only real justification; vengeance, I can not accept as a proper principle to debate.

Mr. HOUSTON. You can take the Philadelphia case of Marshall, which was one of brutal murder. What punishment can you meet out to a man of that kind, except that of death punishment?

Mr. RATHBONE. Life imprisonment.

Mr. HOUSTON. The trouble is he would not serve life imprisonment. He would stay in jail 10 or 15 years and when the crime is forgotten, all the facts are forgotten, appeal is made to the parole board, their sympathies are appealed to and he is turned loose.

Mr. RATHBONE. I do not think we have a right to assume that, in advance, public officers, are going to be neglectful of their duty and be too lenient. There may be cases where they have been, but we can not set ourselves up above them and say they have been alto-

gether wrong. We have to, as the best citizens, make every endeavor to put the right sort of men in office, and then believe in them and trust them; that is the only way I know how to handle it.

Mr. GILBERT. I was late in coming. Are there any other witnesses to appear?

Mr. HOUSTON. Just a moment. You speak of public sentiment. What was the general public sentiment in the Chicago case of Leopold and Loeb?

Mr. RATHBONE. I would not be able to gauge that. We have in Cook County some 3,000,000 people, and I would not be able to state about that. Let me give you a concrete illustration by referring to one of the most famous cases ever tried in Chicago, the Leutgart case. Leutgart was a sausage manufacturer. His wife disappeared and was never seen again. He was accused of having put her in a vat of chemicals, destroying all traces of the body, except a few bones. Now, I would like to ask the gentleman from Delaware, who is an able lawyer, this question: That was either first-degree murder or else the man was insane, was he not?

Mr. HOUSTON. Oh, absolutely.

Mr. RATHBONE. The first jury disagreed, and the second one sentenced him to life imprisonment, and he died in prison; in other words, the jury looked at it like this: "We feel pretty confident that he deliberately killed his wife, but we are going to give him a chance for the woman to turn up and prove his innocence later."

Mr. HOUSTON. I do not see how they were able to prove the case. Where was the corpus delicti?

Mr. RATHBONE. There were a few bones, and, as a matter of fact, there was a dispute among experts as to whether those bones were those of a human being or a hog.

Mr. HOUSTON. There is the element of doubt. The jury is always instructed to give the prisoner the benefit of the doubt.

Mr. McLEOD. I feel that no State and no Government has the right to take a life. I do not believe anyone has the right to take a life. I have always felt that human life tops all matters and things of value. When the Government or State take the life of an individual, they take from him his own opportunity to repent, if he has done wrong or committed a crime.

I have never been convinced and I have never seen any documents of any kind that show or have a tendency to show that capital punishment has in any way lessened crime. We have advocates who intend to appear here, such as the former warden of Sing Sing, who claims there were in his time something over seven executions that he felt were absolutely unwarranted, that they were innocent parties. In the event there was just one innocent person executed, that alone should, in my estimation, tend to warrant abolishing this form of execution throughout the country.

I believe that this Government has advanced to the stage that we have got to look ahead at least as far as most countries of Europe. Most of the important European countries of the present day have abolished capital punishment.

There is just one thing to do in this matter, and that is to hear those who are interested, and I know this committee is composed of men who can give this proposed legislation fair consideration.

Mr. RATHBONE. I believe it always has.

Mr. McLEOD. Yes; we all have our ideas, and I know we are ready to hear all angles of the bill discussed. I know I am ready to listen to reason, although I have my opinion and the judge has his opinion, which condition can not be prevented.

Mr. GILBERT. When are the witnesses to appear?

Mr. McLEOD. It was announced that some out-of-town people will not get here until the 1st of February, or between the 1st and 4th, is the notice we have had.

Mr. HOUSTON. I think in the meantime, Mr. Chairman, if you will permit a suggestion, we should make an effort to ascertain the wishes of the people of the District. Personally I would like to hear an expression of opinion, for instance, of the prosecuting attorney and have some of the judges who preside in the criminal courts express themselves upon this matter. It is something that concerns not only the world at large but the District of Columbia and the city of Washington in particular.

Mr. McLEOD. Do you make that in the form of a motion?

Mr. HOUSTON. I would like to make that in the form of a motion, Mr. Chairman.

Mr. RATHBONE. The gentleman from Delaware would not be understood as saying that the District of Columbia is anything radically different from other sections of the country?

Mr. HOUSTON. Oh, no.

Mr. RATHBONE. It is a fair sample of the United States.

Mr. HOUSTON. Do I understand that witnesses from other States are probably expected to be here?

Mr. McLEOD. You have heard the motion of Judge Houston—

Mr. GILBERT. Mr. Chairman, I am going to be away, and I will be gone two weeks, beginning Monday. I would like to ask the chairman to permit me to file a minority report, in the event the subcommittee should report the bill favorably, and then at least not to present it to the House until I get back.

Mr. RATHBONE. I join in a similar request on the opposite side, and ask the chair, in accordance with the desires of the gentleman from Kentucky, that he does not bring this matter before the full committee for final report until, say, two weeks have expired, so as to give everybody an opportunity to be heard.

Mr. McLEOD. Without objection, the motion of the gentleman from Delaware is agreed to. Is there anything further that the committee cares to discuss this morning? (After a pause.) If not, the committee will adjourn until February 1.

(Thereupon, at 1.30 o'clock p. m., the subcommittee adjourned to meet at the call of its chairman.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Saturday, January 30, 1926.

The subcommittee met at 10.30 o'clock a. m., Hon. Clarence J. McLeod (chairman) presiding.

Mr. McLEOD. The committee will be in order. Mr. Chief Justice McCoy, of the Supreme Court of the District of Columbia is present. Judge McCoy, may we have the benefit of your experience in regard to capital punishment?

**STATEMENT OF HON. WALTER I. McCOY, CHIEF JUSTICE
SUPREME COURT OF THE DISTRICT OF COLUMBIA**

Judge McCoy. Gentlemen, I got an intimation the other day that possibly some members of the court might be of assistance in the consideration the committee is giving to this subject. I am not certain I can be of any assistance, but I should like to be; and maybe if the chairman or somebody would ask me some questions it would help me get started and I could keep going.

Mr. McLEOD. How long have you been a justice in the District of Columbia?

Judge McCoy. Twelve years.

Mr. McLEOD. Have you ever formed an opinion in regard to capital punishment in the District of Columbia?

Judge McCoy. Never, definitely.

Mr. McLEOD. Have you had much experience in the cases you have presided at regarding capital punishment?

Judge McCoy. I have had a considerable number of cases in the courts, involving perhaps some of the considerations that bear on the subject generally, without ever having reached a definite conclusion. Sometimes I think this way and sometimes that way. I think largely it depends, as with other people, on the particular case in which the death penalty may be imposed. What I mean by that is this: Some cases seem very heinous and atrocious, and if you haven't any fixed opinion and are trying to make up your mind based on that particular case, you may, on the whole, be inclined to believe in capital punishment, and there may come another case where the circumstances are no so bad, and perhaps your mind will vacillate again, and you will go the other way. That is what I mean by saying I have no fixed opinion about it.

Of course, it is a dreadful thing to contemplate the taking of human life, and I have never been able to bring myself to say that I absolutely believe in it, nor, the practice of punishment of that kind having existed so long, am I prepared to say that I do not believe in it.

Mr. McLEOD. Is it your opinion that crime would be decreased in the event that capital punishment were abolished in the District of Columbia?

Judge McCoy. Of course, that is a most difficult question of all to answer, what deterrent effect the possibility of the death penalty may have. We do not know and can not know how many people have been deterred from murder because we just can not know it, in the nature of things. I have not any views about it fixed upon any observation of the administration of justice here in the District of Columbia.

Some people believe that it has a deterrent effect; others not. I never heard of but one case that seemed to be well authenticated which has any bearing upon that particular aspect of the case, and that is one case that occurred of murder in the State of Maine. In New Hampshire they have, or then had, capital punishment, and in Maine they did not; and it seems to be pretty well established that a person lured his victim into Maine out of New Hampshire, and there killed him. Now that is the only instance that I know of—assuming that it is a well-authenticated instance, I believe it is—where I have any knowledge or information that would help at all in telling what

estimate you put upon human nature. I do not believe the question can be answered at all.

Mr. HOUSTON. Well, Judge, of course capital punishment is the penalty in murder of the first degree?

Judge McCoy. Yes.

Mr. HOUSTON. Which is always, of course, a murder with the necessary ingredient of expressed malice; in other words, what we call a planned, cold-blooded murder.

Judge McCoy. There is one other case of first degree murder—two of them, in the District here, where deliberate and premeditated malice is not an ingredient—one of them is where there is a killing in the perpetration or attempt to perpetrate a crime, the penalty of which is imprisonment in the penitentiary; and the other is where anybody places an obstruction upon a railway, or removes any part of the railway, with the purpose of injuring anybody; if the injury results in death, that is murder in the first degree. But we do not have many of those cases.

Mr. HOUSTON. Do you have that same provision in reference to arson?

Judge McCoy. No—common-law arson.

Mr. HOUSTON. The thought I wished to bring out is this: Those degrees of murder where the penalty is death are murders or crimes which are premeditated and planned, deliberately, and therefore the person who contemplates murder in the first degree, he plans the murder, and he must take into consideration at the same time, when he deliberately plans to commit that crime, the consequence of the crime.

Judge McCoy. As a matter of human nature, that will be so.

Mr. HOUSTON. Therefore, he must have in mind when he is planning to murder somebody that if he is caught, the penalty is death. Now, of course, in most cases of murder that is the reason we have so many cases of circumstantial evidence, because the man deliberately planned to do it secretly, and therefore you are forced to resort to circumstantial evidence to prove the murder, showing that he does plan it and premeditates and plans it in secret to avoid the penalty.

So there is where I feel convinced that it does have an effect on the man who is premeditating; in other words, he takes into consideration what is going to be the result of this premeditated crime. The last case I tried was where a man drove 100 miles, and everything he did was to cover his tracks, to hide the fact he was going in there, and yet he deliberately planned and murdered him with a hammer, puncturing his skull, I think, 19 times with this hammer. He was a young man. The victim was his step-grandfather, and the purpose was to get the money which the old man carried, which amounted to about \$1,500.

Judge McCoy. One of the Senators—I have forgotten which one; I think it was Senator Overman—introduced a bill for electrocution instead of hanging, and wrote to the members of the court asking their views about the proposition.

We seldom venture to express our opinions about matters of legislation, because we conceive it to be none of our business, unless the committee asks us to do it. But in that particular instance, with the approval of the other members of the court, I wrote suggesting

the possibility of leaving the question of the imposition of the death penalty to the jury. We have that here in rape. If there is a conviction for rape, the jury may add to the verdict the words "with the death penalty." If they do not do that, they just bring in a verdict of guilty.

Mr. HOUSTON. Have you ever, Judge, known a jury to bring in such a verdict?

Judge McCoy. Yes; in one case here in the District there was a verdict of guilty of rape with the death penalty and the man was hanged.

Mr. McLEOD. How long ago was that?

Judge McCoy. I should say about 16 to 17 years.

Mr. McLEOD. In other words, it is very rare?

Judge McCoy. Yes.

Mr. HOUSTON. How has it been in reference to first-degree murder cases, not many verdicts?

Judge McCoy. Yes; we have had a considerable number of verdicts of first degree.

Mr. HOUSTON. Has the court any discretion at all when the verdict is guilty in the first degree, as to the penalty?

Judge McCoy. No; it follows. There is this to that perhaps, I can suggest to you as the result of my experience: We have three degrees of homicide: First-degree murder, second-degree murder, and manslaughter. It seldom happens in a case of homicide that we try where the indictment is for first-degree murder that we do not make a charge to the jury on second-degree murder and also on manslaughter; that is more frequently on the second degree—because not only the counsel for the defendant want it, but we think it is rather the duty of the court, where there is a possibility that the jury might take a view of the facts which would lead them to a verdict of second-degree murder, to lay the law before them and give them that opportunity; and it frequently happens where the evidence we believe would have warranted a first-degree verdict that they will bring in a second-degree verdict, or sometimes bring in a manslaughter verdict.

The reason I am calling attention to that is so that you may think of it from this point of view, that possibly the jury after all gives the best indication of the sentiment of the community, and they indicate that sentiment perhaps sometimes by bringing in a second-degree verdict where they might have brought in a first-degree or manslaughter verdict; and that is what I meant a moment ago when I said that perhaps your views about capital punishment may be colored by the heinousness and the atrocity of the crime which at the very moment you are thinking about.

Of course, there is the punishment end of it, which I think is the least weighty of the considerations that would affect my judgment—punishment is a thing that human beings should consider less than they do almost anything else.

Of course, there is the deterrent effect which the chairman spoke about a minute ago. That, as you suggest, is a matter of human nature; and then, of course, there is the matter of protection of the community from the perpetration of a similar crime by the same individual; and I think possibly there is something in that.

I will give you an illustration of the case that actually was tried in our court. Take one case of a colored man who was hanged here not

long ago, perhaps within a year. He had killed his wife under circumstances that were clearly those of murder in the first degree.

As you looked at the man and thought about it, it was perfectly easy to surmise if he had not been hanged but had gone to the penitentiary for life he would have been a well-behaved man there; or, as it frequently happens to be, a sentence for life, his sentence might have been commuted, and if he got out that possibly he would have been a law-abiding citizen.

There is another case of a young white fellow about two or three years ago, who was convicted of first-degree murder and hanged. He shot a grocery man up here on Seventh Street, killed him while attempting to rob his place. An alarm was sent out and the policeman down at the Union Station, having gotten the alarm, saw a young fellow who answered his description, started toward him, and the young fellow shot and killed him, and it was for that murder he was convicted. That boy had always been in crime. He was undertaking to get off on the defense of insanity, and the Government got witnesses from everywhere about him.

One of the witnesses, who was a pal of his and with whom he had served time for some kind of crime, told of their being up in Portland, Me., very early one morning in one of these little restaurants, a hole in the wall where you go in and get crackers and milk, or something of that kind. They made up their mind they would get breakfast and then rob the cashier. They finished their breakfast, and this young fellow got up and pulled out his pistol and said, "Well, I guess I will go over and croak the girl." This witness's confederate said, "For God's sake, why do you want to kill the young girl? You can get her money without killing her." And he probably would have gone over and killed her but for his friend.

He was in the penitentiary once for some crime, and the warden and his wife were interested in him because he was so young and had him to breakfast; had him to meals and that kind of thing. On one occasion he cut a piece of lead pipe from the plumbing and laid in wait for the warden and nearly beat him to death.

Now, you can ask yourself the question, "Was hanging in that case proper, or was it not?" If he had gone to the penitentiary, he might have killed somebody who had a right to live. That is what I mean by saying if you haven't a fixed view about it, your views will fluctuate, depending on things of that kind.

I hope I have said something that may help the committee. I will be glad to answer any questions.

Mr. HOUSTON. Judge, I would suggest this: The whole theory, as I understand it, of the assumption of the State to punish crime which, of course, is against the individual of the Government, is to prevent, for the protection of the Government, a repetition of crime. In other words, it is the defensive principle inherent not only in individuals but in collections of individuals, that gives the constitutional power to the State to protect itself from crime and the commission of crime that it assumes to punish; in other words, the principal thing after the murder or crime is committed, which is a thing of the past, it can not be cured, and the purpose of the Government is to so punish as to prevent the repetition of similar crimes in the future; is not that correct?

Judge McCoy. Oh, surely. One of the fundamental things in punishment or locking people up or hanging them either for that matter.

Mr. McLEOD. Do you believe, Judge, that there would be more crime in the District if capital punishment were abolished, or do you believe that has anything to do with the criminal?

Judge McCoy. I have not any opinion about it; I don't know.

Mr. McLEOD. Do you believe there is any fear in the commission of crime as to what the penalty might be?

Judge McCoy. I think maybe when a man commits his first offense he may do some little thinking about it; and then if he gets to committing other offenses, he thinks about punishment, because he thinks about escaping; and I suppose that comes in his mind in advance. But after one step, if you have those instincts, the other steps are pretty easy, and I don't imagine there is any thought about it that would deter the commission of a crime, but only how may I get away after this is done. I imagine the hardened criminal would think that way about it.

Mr. McLEOD. Do you believe the District is better off at the present time with capital punishment than without it?

Judge McCoy. I could not give an opinion on that that would be worth anything at all. I have none.

Mr. McLEOD. Have you ever heard of instances in the District whereby crime has been lessened where capital punishment exists?

Judge McCoy. No; I do not know of any such information. As I said before, the only instance that seems to be an authentic one is the one I gave you about New Hampshire and Maine. I never heard anything that leads definitely to the formation of an opinion.

Mr. McLEOD. Is it not a fact, Judge, that in the selection of a jury it is very difficult to get jurymen where the death penalty is reached, where the crime is first degree murder?

Judge McCoy. That varies. I have drawn juries in first degree when it seemed that almost every man in the District didn't believe in capital punishment; and then you will get another panel where you have only a small number. Right in this Wan case, which is to be tried, there were very few that were excused because they said they were conscientiously opposed to capital punishment.

Mr. McLEOD. Was that possibly due to the fact that he was not an American?

Judge McCoy. I think not. Of course, you do not like to suspect a jury that is examined on the voir dire under oath of not being perfectly frank always. But you may say this: That there is always the notion in the back of a man's head that he would prefer not to sit in a case where if he brings in a verdict of murder the death penalty follows, and therefore he may say: "I have scruples against the imposition of the death penalty."

Mr. HOUSTON. I was going to ask you that very question. I saw in a manslaughter case one day that was started on Friday afternoon 27 young men who being examined on voir dire stated they had conscientious scruples, and I was convinced absolutely in my own mind that those men took that oath simply because they didn't want to be tied up on that jury possibly over Sunday into the next week; in other words, wanted to get home.

Judge McCoy. I am glad you mentioned that, because it is an interesting fact, for whatever reason there may be about it, that the young men are the ones who are more numerously opposed to capital punishment than the older ones.

Mr. HOUSTON. Yes.

Mr. McLEOD. As an individual, Judge, not in your official capacity, would you like to see capital punishment abolished in the District?

Judge McCoy. That would involve a question of opinion, and I have not any about it at all. I will say this, I am always sorry to see a man hang, just from the horror of death.

Mr. McLEOD. A moment ago you stated that in some cases it appears that every person in the District of Columbia is opposed to capital punishment, for the reason that it is difficult to select a jury.

Judge McCoy. That is an exaggerated statement, of course.

Mr. McLEOD. That, therefore, would be a matter of prejudice, we might call it, in reference to the individual or in reference to the crime—some crimes it is easier to pick a jury; some individuals would be easier to select a jury for; is not that correct? For instance, in the case of a woman it is difficult, is it not, to select a jury for capital punishment?

Judge McCoy. I never presided at the trial of more than one case where a woman was the defendant. In my recollection of that case, we didn't have any considerable difficulty because of capital punishment. We got a jury rather quickly. And a very considerable number of the 12 were men who were on the regular panel. We frequently exhaust the regular panel, and frequently have to send out and get talesmen. But we had several of my regular jurymen on that panel.

Mr. McLEOD. Judge, in your individual capacity, would you have any objection to sitting as a juror in a capital-punishment case on account of conscientious scruples?

Judge McCoy. Conscientious scruples—no.

Mr. McLEOD. Would you have any objection?

Judge McCoy. As I look at it now, if I were summoned as a juror?

Mr. McLEOD. If you were summoned as a juror.

Judge McCoy. I would prefer not to be called. I imagine anybody would. But I could on this particular point qualify as a juror.

Mr. HAMMER. You mean by that notwithstanding you have preference not to serve, you could hear the evidence and decide according to the evidence?

Judge McCoy. Yes; the legislature has said what the penalty shall be; that is all there is to it, from my point of view; unless a juror can absolutely say that on his conscience, he can not do it.

Mr. HOUSTON. With him it is merely a question of ascertaining the facts from the evidence presented?

Judge McCoy. He has not anything to do with the penalty?

Mr. McLEOD. As a judge for 12 years, do you feel from your great amount of experience that it is possible in the circumstantial evidence cases to make a mistake in conviction?

Judge McCoy. That is a very difficult question. I have known cases where mistakes were made where we had what was supposed to be very good evidence. Circumstantial evidence is often more

convincing—what we popularly know as circumstantial evidence is more convincing than direct evidence.

Mr. McLEOD. Qualifying it as to any kind of evidence, is it possible in your mind?

Judge McCoy. A jury may go wrong on the facts; yes.

Mr. McLEOD. Judge, in your mind, don't you believe that it would be sufficient grounds to abolish a penalty such as capital punishment, if it be possible to have one mistake case in the execution within a period of 20 or 25 years; would that warrant the abolishment of capital punishment if it could be shown that there was one mistake in that 20 or 25 years? Does the human life bear that much value?

Judge McCoy. That would be pretty hard to say, it would depend upon your estimate of how many human lives may go out by the act of somebody who would be put out. You would have to weigh that possibility against the other possibility, and I don't know just where you would draw the line.

Mr. McLEOD. In the District of Columbia during the past 20 years there have been practically how many executions?

Judge McCoy. I don't know exactly.

Mr. McLEOD. There haven't been very many, I don't believe.

Judge McCoy. Not so very many. I came to Congress as a Member of the House in 1911, 15 years ago—I don't believe there have been more than four or five executions since I have been in Washington.

Mr. McLEOD. One innocent in the face of four or five, or even six, that were well warranted; would not that warrant the abolishment of capital punishment? That is a small ratio.

Judge McCoy. Well, if you could be certain that that ratio was to be maintained right along in the future, possibly the answer would have to be—if one man out of six executed was an innocent man, you could be sure that that was going to happen in the future, I would be inclined to say yes.

Mr. McLEOD. If it were a case of one in twenty, one innocent life in a case of twenty, what would you answer?

Judge McCoy. If you could be certain for the future it would be that, I think I would say "yes" again. But I don't know how you can ascertain that.

Mr. HOUSTON. Judge, in your experience have you ever known or have you ever had the suspicion that an innocent man was convicted of murder in the first degree?

Judge McCoy. No.

Mr. HOUSTON. Is not the whole theory of the jury system a requirement that the verdict of the jury shall be unanimous?

Judge McCoy. And beyond a reasonable doubt.

Mr. HOUSTON. And beyond a reasonable doubt, for the protection of the accused. And then, in addition to that, they are safeguarded by the authority of the Executive to pardon, on sufficient proof before him to convince him that there has been a mistake.

Judge McCoy. Yes; there is that element, of course, always in the case.

Mr. McLEOD. Just recently, last fall, in Michigan, there was a murder committed, the murder of a man whose name was Zombrowski, a Pole, a wealthy road-house owner; and the supposed

slayer was sentenced to prison for life, convicted of first-degree murder. That was a year ago last fall. Just last fall another man came in—I forget his name—and he confessed to the crime and Zombrowski was pardoned by the governor. Of course, Michigan abolished capital punishment in 1847. But that is just one case. Would it have been possible in your opinion, or in your judgment, Judge, at least, so far as hearsay evidence goes, that we all understand that there have been innocent men executed during the past?

Judge McCoy. Yes, sir.

Mr. McLEOD. I don't qualify just when in the past, but that is to be understood that it may happen in the future.

Judge McCoy. Yes.

Mr. McLEOD. Of course, that is a matter of opinion as to whether or not, as you say, that would warrant a certain abolishment of capital punishment.

Mr. HAMMER. How long have you lived in the District?

Judge McCoy. Since 1911.

Mr. HAMMER. Where did you live before that?

Judge McCoy. New Jersey.

Mr. HAMMER. Were you born in New Jersey?

Judge McCoy. No; I was born in New York.

Mr. HAMMER. Were you ever a judge before you came here?

Judge McCoy. No.

Mr. HAMMER. Were you a prosecuting officer?

Judge McCoy. No.

Mr. HAMMER. I don't want to press the objection that you said you sometimes had a bad case and sometimes again you might be doubtful about it. I have found a great many that way, even judges, and the more experience they have the more doubt they have about it. It was my experience that it is not usual that you will find a great judge who has had long experience and who is noted for his justice that has fixed and decided notions on these questions as well as on some other questions, because he is in the habit of weighing matters and trying to be impartial, and it is hard for him to arrive at a definite conclusion.

For instance, like the Munsey case in my State recently, where a colored man committed an outrageous assault upon a deaf and dumb girl about 16 years old. He was electrocuted, and no one made any effort to have his sentence commuted to life imprisonment. It was an unusual case. One of the great troubles about the executive authority or pardon board having the authority to commute the sentence is that for poor people it is so expensive to reach the governor and pardoning board.

I never did attach much importance, Judge, to the possibility of mistake being a reason for abolishing any law, because we are going to have mistakes in murders of all kinds occasionally, until human life and humanity become perfect.

Judge McCoy. Even a judge makes mistakes.

Mr. HAMMER. But you can appeal from that. What I wanted to ask you was, in the District of Columbia what capital offenses are there?

Judge McCoy. Just murder in the first degree, murder with purpose, deliberation, and premeditation, by the use of poison, or perpetrating or intending to perpetrate felony.

Mr. HAMMER. Oh, you have that?

Judge McCoy. Yes.

Mr. HAMMER. Well, it is at least manslaughter to commit homicide in violation of any law, is it not, for the pointing of a pistol is against the law in some States, even if unloaded?

Judge McCoy. Yes.

Mr. HAMMER. If that pistol happens to kill and is an accident, that is manslaughter, because the pointing of the pistol was an unlawful act when the killing occurred. Does not the law of the District provide for this kind of killing?

Judge McCoy. Here if you are engaged in the assault on a man, it would be murder in the first degree; but if the pistol went off accidentally because of being used innocently—

Mr. HAMMER. But is it not against the law to point a pistol whether loaded or unloaded?

Mr. McLEOD. That is considered an assault, the pointing of a pistol.

Mr. HAMMER. No; if the man is killed it is manslaughter in most States.

Mr. HOUSTON. I think the general division is this: A man takes life in the commission of a felony and it is murder; in the commission of a misdemeanor, it is manslaughter.

Mr. HAMMER. Well, that may be the division here; it is not in New York and not in my State or North Carolina or Tennessee.

Judge McCoy. The statutes are different.

Mr. HAMMER. We have statutory cases in most instances, first and second; and then another called manslaughter, and engaged in an unlawful act and committing a homicide; killing a person, a human being, when engaged in an unlawful act is at least manslaughter under the law of most States. It is in my State.

Here is what I wanted to ask you about: In the Southern States—I don't know so much about the other States—we have laws against lynching in which the penalty is 15 years, in my State. Lynching is nothing in the world but premeditated murder. Now, why do we have these laws that are not less than murder? Simply because of public sentiment they can convict and sentence for 15 or 20 years for lynching when they could not convict for murder. What else can it be? Of course, lynching is playing out in the Southern States. There are very few public men and officials now in any State in the Union who would justify lynching. I know Members of Congress that do justify it, or did, and they should be ashamed of it. They were fine gentlemen and all that. But, as a rule, public men and men of intelligence in all parts of the country do not attempt to justify lynching under any circumstances, because it is murder in the first degree; that is all it is, and can not be made anything else, unless made so by statute. But the truth is they do not indict for murder. They indict them for lynching, and frequently defendants are acquitted; most usually they have been. We have lynchings in Illinois sometimes and in other Northern States as well as the South.

Have you any capital offense for burglary, arson, or rape?

Judge McCoy. The jury in a rape case may add the death penalty.

Mr. HAMMER. How about arson and burning a dwelling house with some one in it?

Judge McCoy. If somebody should set fire to a house and commit arson and somebody should be killed, that would be murder in the first degree.

Mr. HAMMER. The crime of arson is not a capital offense in the District?

Judge McCoy. No.

Mr. HAMMER. In a great many States it is not; in most States burglary is not a capital offense; while the punishment for burglary in my State is a capital offense. We have arson and burglary and rape and murder in the first degree as the capital offenses. Eighteen were electrocuted, I believe, during Governor Morisson's administration of four years in our State.

You speak about veniremen or talesmen being drawn from the box or summoned from the bystanders. If the defendant requests special venire, don't you grant it?

Judge McCoy. No.

Mr. HAMMER. Don't you think it would be an improvement on your procedure if you did have special veniremen drawn from the box instead of from bystanders, unless both sides agree to it?

Judge McCoy. There is a little ambiguity in the law as to whether or not when the regular panel is drawn out we should draw from the bystanders or jurybox. We have been interpreting to mean that we should draw from the jurybox, and that is what is done.

Mr. HAMMER. It depends on whether you have professional jurors?

Judge McCoy. We don't have any professional jurors.

Mr. HAMMER. We have additional panels, but many States have a special venire, but agreed upon by the judge—usually agreed upon by both sides and then he fixes it; and then it is drawn from the box, and unless both sides agree for it to be summoned by the sheriff. That procedure, of course, I am not tied to it, but I have been accustomed to it, and the fairness of it impresses me more than the other method.

Judge McCoy. We have 104 petit jurors always in service in our court.

Mr. HAMMER. We have 18 grand jurors in our State courts. You have the same for the Federal courts; not less than 12 and not more than 16—each judge fixes the number.

Judge McCoy. We draw 23 for the grand jury.

Mr. HAMMER. Twenty-one is what the Federal statute provides—a maximum of 21 and a minimum of 16, is my recollection. You are, no doubt, correct; I may be mistaken or the District of Columbia may have a different number.

Judge McCoy. In the petty jury we have 104 sitting all the time, because we run four juries.

Mr. HAMMER. Is your grand jury for six months?

Judge McCoy. No; just three months. There are four grand jury terms a year. Then we send those petit jurors around to the different cases, and in particular cases we draw from the other cases the jurors, and sometimes out of 104 we can get 12 to serve. And then if we do not get them we draw from the box another jury. There must be 1,000 names before the drawing. So we don't get professional jurors.

Mr. HOUSTON. Capital cases are tried in my State by a separate court, what we call oyer and terminer.

Judge McCoy. They have one in New York, oyer and terminer.

Mr. McLEOD. Judge McCoy, do you agree with Judge Hammer's statement when he said that the man who sits as a juror or acts as a trial lawyer for a great length of time that he becomes more doubtful as to what good is brought about by capital punishment or whether or not it should be abolished. Do you agree with him that the more experience you have the more you are in doubt?

Mr. HAMMER. I did not say that was universal.

Judge McCoy. I did not interpret that as universal.

Mr. HAMMER. I didn't say that exactly. I know several old judges who are that way.

Mr. McLEOD. Judge, didn't you say that capital punishment is good and sometimes not?

Mr. HAMMER. I do sometimes; and sometimes a little more pronounced.

Mr. McLEOD. Sometimes strong; and sometimes cases were not so strong.

Judge McCoy. We frankly try not to formulate a decided opinion about that kind of thing, because we are administering the law, and if you get to be partisan in your own mind on that sort of thing, you can not tell what is going to be the effect on your action.

Mr. HAMMER. One other question. Don't you think the certainty of punishment has more to do with deterring and preventing crime than the severity of it?

Judge McCoy. I would guess so. Unfortunately, we don't get certainty.

Mr. HAMMER. Is it not an absolute fact that judges as a rule rely upon the certainty of doing justice and punishing those who are guilty and turning loose those who are innocent as having a better effect upon the public? For instance, you take a bill of indictment and say, "Here, you are guilty until you prove yourself innocent." If a citizen who comes into court has that idea of the court, you are never going to have good order and law-abiding citizenship. The public must have confidence in the court, and increasing confidence in the court. I am talking about the public as a rule.

Judge McCoy. I think it is almost more important than that; the public should believe that justice is administered according to law than that it should be administered according to law. I think confidence in courts is one of the greatest things in the world to have, if you can get it.

Mr. HAMMER. Don't you think this now: While I am not opposed to the uplifting and the leniency that is going on in the country, yet this supplying sweets, ice cream, and dainties to the convicts, allowing them to play baseball and make rules to govern themselves and having their own way of doing everything is going too far, do you not think? I am not saying there ought not to be an improvement; there should be an improvement. But don't you think one of the troubles and tendencies of the times is that if you send a man down to Atlanta or one of the other penitentiaries and he feels like he can not be corrected, but is going to be fed well, going to have baseball clubs, and going to have other games at the penitentiary, have a big time—we have in North Carolina 25 convicts out in a camp by themselves

without a single guard, trying it out—don't you think that is going to extremes in this matter, and don't you think it has a tendency to commit crime?

Mr. GILBERT. Nobody else would dare to criticize your State for doing that but yourself.

Mr. HAMMER. I am not talking about my State.

Judge McCoy. You ought to get them to take you down to Lorton. The superintendent will treat you finely and you will see a great experiment; and I should like to have a talk with you after you see it.

Mr. HAMMER. Is it not an experiment—I don't expect you to answer my question, because you are a judge and it probably would not be proper for you to answer the question.

Judge McCoy. When we sentence, our duty is done. When you ask me what my observation has been of Lorton, where that sort of thing is tried that you have been speaking about, I can say that I have the highest opinion, based on my observation of Lorton; that is to say I will be perfectly frank about expressing an opinion—

Mr. HAMMER. I probably ought not to have asked you that question.

Judge McCoy. I think that these people are all human beings. I suppose there are very few, if any, cases of total depravity. The Salvation Army says, "A man may be down, but he is never out." And so it is with these people. You can take them and get them on the right side and give them a chance, a bit of human fellowship and advice, etc., which they have never had before in the world, even in a penitentiary, and I venture to say that the experiment down at Lorton—and there may be experiments like it in other parts of the country—will be justified by the results on the human side of it, and that probably these people will come out better than ever before.

You take it right here in the District of Columbia—I feel rather strongly about this feature of it—something this committee might have to do with: We have alley conditions in the city here that are a disgrace. When I was a Member of Congress I happened to go through the alleys of the District with good women who were interested in changing those conditions. I will tell you, Judge Hammer, that I have seen right over in here [indicating]—I can not be sure of the place exactly now—a house where human beings lived of a sort that if you had kept your hogs in it down in your country they would have run you out of your State because you would be such a bad farmer. That is not an exaggeration. That is the whole truth. What I am getting at is this: If people are brought up under those conditions, what are you going to expect in the way of crime? It is bound to come.

Suppose one of these men or women, brought up under these surroundings, gets into a place where they have a humane superintendent of the penitentiary, jail, or reformatory who shows that man or woman something that they never saw before in the way of human interest. Do not those surroundings of cleanliness and all that sort of thing count? It may be that you will save a human being by doing that kind of thing.

That is what they do down at Lorton, and it is a wonderful institution. I go down and see it once in a while just because I am so much enamored of it as an experiment in penology. They have plenty of discipline. But it is work; they are made to work. They do all their own work; they build all their own buildings.

Mr. HAMMER. What is Lorton?

Judge McCoy. Lorton is the place where the people are sent from the District of Columbia when they have not been guilty of too heinous crimes; to which from penitentiaries like Leavenworth, Atlanta, and other places they may be transferred for the purpose of making this experiment. It is really a wonderful place down there, something the Congress may be proud of.

Mr. HOUSTON. Do you draw any distinction between the grades of crime in the effort to rehabilitate the criminal, you might say? Of course, we take, for instance, the crime of manslaughter—homicide without malice. Plenty of men, of course, are guilty of homicide without any intention, probably by mistake or accident a man may commit murder in the second degree, in hot blood, absolutely out of control and under the force of his passions. There is a chance there for reform.

But a man who deliberately plans cold-blooded murder is of such a state of mind and disposition that he will deliberately take human life. Is there not small chance of reform in that case?

Judge McCoy. He would not go to Lorton. They would not send a heinous case like that to Lorton.

Mr. HOUSTON. There is one other question I wanted to ask you: You spoke of a man who was convicted of murder, and who cut a pipe and waylaid or attempted to waylay or was about to slay the warden of the penitentiary?

Judge McCoy. Yes.

Mr. HOUSTON. Did I understand you to say that you sometimes thought that was one of the things you had doubt about, whether he should have been executed or not?

Judge McCoy. I say there is a case where you might possibly guess that, if he had not been executed, an innocent life might have been put out by him on some occasion later.

Mr. HOUSTON. Don't you think a man is criminally insane who would do that?

Judge McCoy. It took six weeks to try the case.

Mr. HOUSTON. Did he put up a case of insanity?

Judge McCoy. Oh, absolutely; it required six weeks, as I say.

Mr. HOUSTON. And they decided it was not insanity? Did they try it with the plea of not guilty or separately?

Judge McCoy. He pleaded not guilty. But you can try it separately.

Mr. HOUSTON. The prisoner has a right, so far as I know, to try the question of insanity alone—he can if he chooses?

Judge McCoy. Yes.

Mr. HOUSTON. But he can always enter the plea?

Judge McCoy. Yes.

Mr. HOUSTON. I think that boy ought to have been put in the criminal insane department.

Judge McCoy. Some of the alienists say we are all that way.

Mr. HOUSTON. I know they say we are all that way in a degree; that there is a streak of insanity in everybody.

Judge McCoy. This question of mentality in crime, I hope you may live to see it solved; I don't expect to.

Mr. McLEOD. We will now be glad to hear Judge O'Toole.

STATEMENT OF HON. MARY O'TOOLE, JUDGE, MUNICIPAL COURT, DISTRICT OF COLUMBIA

Mr. McLEOD. What is your full name?

Judge O'TOOLE. Mary O'Toole.

Mr. McLEOD. You are a judge in the District of Columbia?

Judge O'TOOLE. A judge of the municipal court.

Mr. McLEOD. You have been a judge for how long?

Judge O'TOOLE. About five years.

Mr. McLEOD. Were you a trial lawyer in the District of Columbia, for how long?

Judge O'TOOLE. Since 1913 in the District of Columbia; all my business life has been spent in law offices and courts.

Mr. McLEOD. Have you had much experience in the line of capital crimes?

Judge O'TOOLE. No; practically none at all in criminal law, except incidental in a law office. Our court has jurisdiction solely of civil causes up to \$1,000.

Mr. McLEOD. Have you an opinion of capital punishment in the District of Columbia?

Judge O'TOOLE. Yes; I have an opinion, generally speaking, about capital punishment in the country, whether the District of Columbia or not. When I was but a young girl in the State of New York three young men were executed there for murder. Of course, they were guilty; there was no doubt of that. But it arrested my attention sufficiently so that I read up a great deal on the question of capital punishment; and ever since then I have been more or less formulating ideas and following up the question; and I really have a very definite idea on the subject.

Mr. McLEOD. Do you think any good is brought about by capital punishment?

Judge O'TOOLE. No; I do not think any good is brought about; on the contrary, I think much that is bad comes from it; and in the cases of the young men, the effect on young people reading the newspapers of those executions was most horrifying, and I have no doubt suggested murder and crime generally to people.

Mr. McLEOD. You feel that the State, then, creates a bad example by committing legal homicide, where it is trying to punish others for illegal homicide?

Judge O'TOOLE. I think no society has a right to do what it condemns in the individual.

Mr. McLEOD. That it sets a bad example?

Judge O'TOOLE. Yes; there is no more deliberate murder, certainly, than in executing a human being.

Mr. HOUSTON. Judge, I hope you will not think I am digressing: What do you think of the powers of the State to draft men, the youth of the country, for war?

Judge O'TOOLE. Oh, absolutely, that must be done.

Mr. HOUSTON. And send them into war in the face of what is known to be certain death?

Judge O'TOOLE. The State has a right to defend itself and has a right to execute people to protect itself. It is the spirit of the people and the age. But I think we are progressing from that.

Take it in England, where not so very long ago many crimes were punished by death that we do not punish by death at all. There are several things that we name as crimes that England does not call a crime at all.

Mr. HOUSTON. Is it not a fact that England has the best record in respect to noncrime of any country?

Judge O'TOOLE. I do not know as to that. I have heard claims made that the certainty and swiftness of its justice has a powerful effect. They certainly "railroad" their murderers to the gallows; there is no doubt about that. But if our country was as small as England I dare say conditions would be somewhat similar. We find the feeling to-day that they pardon people and let the murderers get away without punishment; I do not believe in not punishing.

It is the principle of the thing that appeals to me from the point of view of the community and society.

These cases you have been speaking about have been very interesting and I have appreciated the discussion on the question of penology, etc.

Take the case of one murderer we have had here in the District. Certainly he did not have a mind capable of premeditating the killing of anybody. He murdered an old lady in order to take her money, and he was not thinking about escaping punishment. He didn't have a mind sufficient to think about what would happen to him.

The same way with the Henry boy who killed two men. He was not thinking about punishment, and, as a matter of fact, I do not believe many people premeditate murder. Their whole idea is that they are going to escape punishment, not whether it is the death penalty or life imprisonment. They are laying their plans to escape punishment. We are all taking chances every day.

Mr. McLEOD. Is it not a fact that within the past 200 years, while England formerly had 243 felonies that in the past 100 years they have brought it down to 4?

Judge O'TOOLE. I don't know. I know they still have many crimes punishable by death. But I think it is more than four, though perhaps you are right. I have not looked up the figures very recently on it.

But I know that the Duke of Monaco made an experiment by doing away with capital punishment, and in 20 years they had 5 murders, while right over the border in Italy where at the same time they had capital punishment they had 60 murders in three months, and the people are as closely associated as are the people of New York and Pennsylvania—an imaginary line between those two countries.

Mr. McLEOD. You recall the case of the minor being convicted of murder and sentenced to death and later was sentenced to life imprisonment on the ground of insanity.

Judge O'TOOLE. Was not that the case of the Henry boy?

Mr. McLEOD. I don't know.

Judge O'TOOLE. I think it was.

Mr. McLEOD. In that case were there not petitions circulated throughout the country?

Judge O'TOOLE. Yes, sir.

Mr. McLEOD. Do you know approximately how many thousand signatures were on that petition?

Judge O'TOOLE. No; I don't. I was appealed to at the time. But that does not appeal to me at all, the question of having petitions circulated to have that boy or have any particular murderer rescued from the gallows as long as it is the law of the land.

Mr. McLEOD. I am trying to show the sentiment of the country.

Judge O'TOOLE. You can get people to sign petitions; and women, I think, generally are opposed to capital punishment.

I remember I was sitting in the Juvenile Court at the time as a substitute for Judge Sellers who was away, and Miss Kelley came over from New York. She came in and talked to me. Miss Kelley said, "He was not fit to go before his God." "Don't you suppose his Heavenly Father will realize that and have a greater sympathy for him?" She saw she was mixed a little, and said, "I never thought of that." She had gotten so stirred up because she thought the boy was not mentally capable of thinking.

Mr. McLEOD. Was that a clear case where execution was not in order?

Judge O'TOOLE. I think so.

Mr. HOUSTON. In that case the State was remiss in permitting such a boy to be at large?

Judge O'TOOLE. I suppose it is remiss. I suppose we are progressing under examinations to find out the condition of children in school. If we put that test in the schools, we will discover the ones who are mentally deficient. That boy came into the city and killed two men and left their families bereft.

Mr. McLEOD. But, whatever the defense was, he was convicted and sentenced to die?

Judge O'TOOLE. He was convicted and sentenced to die, and would have been hanged if it had not been for the efforts made in his behalf.

Mr. McLEOD. You agreed it would have been a mistake to execute that boy?

Judge O'TOOLE. From the point of view of mentality. But he was a danger to society.

Mr. McLEOD. We ought to protect society from those who are such a danger to it.

Judge O'TOOLE. As a principle we should not permit such persons to be at large.

Mr. McLEOD. Therefore, juries do go amiss.

Judge O'TOOLE. A jury would not have any means of knowing the mentality of that boy. But, even so, there is the law. He had murdered two men. It was for the jury to convict, unless they found him insane. They could not find him that; he was not insane.

Mr. HAMMER. It is a fact—I don't suppose you would want to say so—that the tendency of the times in the more intelligent States and communities to do away with the severity of punishment, as civilization advances; that is your idea?

Judge O'TOOLE. Yes.

Mr. HAMMER. But you also have the idea that the further we get away from Great Britain or England's method of punishment—I mean severity of punishment—the better it is. But the nearer we get back to England's certainty of punishment that is the solution more than anything else.

Judge O'TOOLE. Yes.

Mr. HAMMER. That it is better that we diminish the number of severe punishments not too rapidly, probably; you can not do it so fast as some of the most intelligent people think you ought to. But it is right that we shall do it as quickly as we can.

Take, for instance, the western frontier during the pioneer days. The courts were ineffective, so the cowboys thought, and they instituted what they called the "lynch law." Then it prevailed in the South for the unnamable crime, which has now disappeared in my country to a great extent, especially in the Middle West. But wherever you find lynching, the members of the mob usually use as an excuse that the courts have quit hanging people, and the truth is that every one of them are engaged in murder, and not one of them would expect to be hanged or electrocuted for doing the very thing they condemn the courts for not doing. The most inconsistent thing in the world is a mob which undertakes to execute because the law don't do justice. And yet the principal advocates and the strongest advocates of capital punishment are the people who are the most lawless. I don't mean this applies to the best people in the country; there just as good people who advocate it as any. But the most strenuous advocates are the mob.

Judge O'TOOLE. That comes right back to my suggestion that the spirit of the people—

Mr. HAMMER. I don't want to be misunderstood about that, because the majority of the people in my country probably and probably the majority of those in Congress are opposed to the abolishment of capital punishment. I am talking about the fact that those who are loudest in their advocacy of lynching and hanging are often the most lawless.

Mr. HOUSTON. Why don't you name the Ku Klux Klan, if that is what you mean?

Mr. HAMMER. I didn't have that in mind.

Judge O'TOOLE. I didn't either.

Mr. HOUSTON. Have you ever been in a mob, Judge Hammer?

Mr. HAMMER. Yes, sir; I tried to disperse a mob once, when I was prosecuting attorney. I secured the conviction of the first white man ever convicted of lynching, and got a sentence of 15 years. And there was not a lynching in my State for seven and a half years afterwards, either, and it is about gone in my State, not due to my efforts, however.

Mr. McLEOD. Judge, do you believe that there would be more crime in the District of Columbia if capital punishment was abolished?

Judge O'TOOLE. I do not.

Mr. McLEOD. Do you think it would help to do away with crime by having capital punishment?

Judge O'TOOLE. No.

Mr. HAMMER. Speaking of the Ku Klux, I have never known the Ku Klux in my country to engage in a "lynching bee" by themselves as Ku Klux; I don't think the Ku Klux had anything to do with that one way or the other.

Mr. McLEOD. We appreciate very much your coming, Judge O'Toole. We will next hear Mr. Murphy.

STATEMENT OF M. J. MURPHY, PRISONERS' RELIEF SOCIETY, WASHINGTON, D. C.

Mr. MURPHY. I am here representing E. E. Dudding, of the Prisoners' Relief Society, who, I think, filed a statement with the committee, and wishes to supplement it with this letter.

Mr. McLEOD. Would you like to have this letter read into the record?

Mr. MURPHY. I do not think it is necessary to read it; just put it in the record.

Mr. McLEOD. Without objection—

Mr. HOUSTON. The chair might read that for the information of the committee.

Mr. McLEOD. Are you going to discuss it?

(The letter thereupon read by Mr. Murphy is as follows:)

PRISONERS RELIEF SOCIETY,
Washington, D. C., January 30, 1926.

The CHAIRMAN DISTRICT COMMITTEE,
Washington, District of Columbia.

MY DEAR SIR: For the benefit of your committee making a survey of the question of abolition of capital punishment in the District, we wish to say:

But few men who receive a death sentence are ever released from prison. In 12 years our society has handled perhaps 100,000 men and women released from prison on parole and full time. Ninety per cent of the convicts of the country serve full time except time off for good time.

During the 12 years we have handled 8 men released who had been sentenced to death and got their sentence commuted to life. Three of the fellows 20 years; one served 24 years; two served 28 years, one served 30 years, and Bill Cross served 32 solid years in prison. Cross is now working for the Washington Evening Star and has been since his release, some six years ago.

Twenty years of eternal silence and perpetual shame and not a black mark stood against a single man. A man that serves 20 years in a penitentiary pays in full for any crime he could commit; if his prison conduct has been so good that he has not violated a single rule I think he should be given a "chance." All hurting and no healing is bad. A man that would not be willing to give a man a chance after 20 years of perfect prison record has in his bosom the spirit of Nero.

I think it would be a good idea for your committee to call before you old Bill Cross; it's been so long to him since he was sent to prison that he really does not remember what his original sentence was.

Yours truly,

E. E. DUDDING.

Mr. HAMMER. Mr. Dudding is a man we would like to have here.

Mr. MURPHY. I might say that Mr. Dudding feels that his health is such that it would not permit his coming. He has some kind of trouble. Mr. Dudding has gotten out several thousand pamphlets. This [exhibiting pamphlet to the committee] is a reprint of an article from Heart's International-Cosmopolitan Magazine of August, 1925, entitled "The man you and I killed," by Boyden Sparkes. Mr. Dudding considers that is the best story yet published in the interest of the abolishment of capital punishment. It is a very vivid description of the electrocution of Antonio Viandante, an Italian, who was convicted of murder and who it says had served two years, I think, in an insane asylum prior to the execution. Mr. Dudding would like, if possible, to have this brief description included in the hearings.

Mr. McLEOD. Is there any objection to including the article in the record?

Mr. HAMMER. Let us see how long it is.

Mr. HOUSTON. Is this fiction or facts?

Mr. HAMMER. I suppose it is an actual case.

Mr. McLEOD. It is an actual case in New York.

Mr. HAMMER. I see Mr. Dudding gives his approval of the article.

Mr. McLEOD. It is a reprint from the Cosmopolitan?

Mr. MURPHY. Yes.

Mr. HOUSTON. We might take this, each one of us, and if we feel afterwards it should be made a part of the record, it can be introduced.

Mr. HAMMER. I don't think there should be any objection to that.

Mr. McLEOD. To what, Judge?

Mr. HAMMER. I mean to his suggestion, and that is equivalent to objecting to it for the present. I think we better agree to that. I have no doubt it will go in.

Mr. HOUSTON. I was not making objection.

Mr. McLEOD. I just thought it might go in for the benefit of other members of the subcommittee, Judge. It is not very lengthy.

Mr. HOUSTON. If there are plenty of these for distribution we could see it as members of the committee.

Mr. McLEOD. Mr. Murphy has asked that this reprint beginning on the second page at "Warden Lawes" and ending on the last page with the words "behind me" be inserted.

Mr. REID. Is that all right.

Mr. HAMMER. It looks so.

Mr. REID. All right; no objection.

Mr. McLEOD. It appeared in the Metropolitan Magazine, and there would probably be no objection to printing it in the record. It starts out by stating: "I found the Warden's invitation in my mail one morning recently," and goes on to speak of the execution.

Mr. REID. What is the objection to the whole thing going in?

Mr. HAMMER. No objection. But we haven't read it and don't know what it contains, and I think we ought to have time to think about it.

Mr. HOUSTON. I simply said to the chairman that I didn't feel qualified to vote upon it going in until I had an opportunity to read it.

Mr. REID. We ought all to read it. The point I was suggesting is that if it was in the Cosmopolitan it ought to be good enough to go in, the whole thing. Have it admitted subject to objection.

Mr. McLEOD. Do you make that as a motion?

Mr. REID. Yes, I move that subject to being stricken out after we have read it. I take it that we have a very important matter before us and that we ought to make as good a record as we can. Our record will probably be sent all over the world. Every member gets requests for data of this kind, and it could be used for that purpose.

Mr. HOUSTON. I should make no captious objection unless this be a story, part fiction; if it is part fact or all fact, or even opinion, I have no objection. But if it is mere fiction I do not think it ought to be in the record.

Mr. REID. Fiction would look peculiar in the record.

Mr. HOUSTON. That is what I say.

Mr. REID. Have you invited Judge Crowe of Chicago? There are two sides to this question. Judge Crowe is state's attorney of Cook County; and I think we should also hear the district attorney

from New York and these larger places where they have a crime every minute. I think those places ought to be represented before this committee.

Mr. McLEOD. Is there any objection?

Mr. REID. I think the Chair ought to get busy and get the proper representation of the different interests.

Mr. HAMMER. Usually the proponents on each side are interested enough themselves to flood the committee with statements.

Mr. REID. These people have a different purpose. It is almost a religion to them; it is something they are directly interested in, and I think you ought to hear from the District Attorney of New York.

Mr. McLEOD. You make that in the form of a motion?

Mr. REID. Yes; and also the State's attorney of Cook County, Ill.

Mr. HOUSTON. Philadelphia is not far away, nor Baltimore. These larger cities close by are probably interested. We want the practical side of it.

Mr. REID. That is all.

Mr. McLEOD. It has been moved and seconded that these people who have been referred to be invited to be heard before this committee. Is there objection? It is so ordered.

Mr. HOUSTON. I think we might say to Mr. Dudding that if he feels able at any time during the hearings of the committee that it is our wish we would like him to appear before us.

Mr. MURPHY. He is afraid his health would make it dangerous for him to come.

Mr. McLEOD. Would he care to send any representative? We would like to know, for the reason that next week's program is being made up.

Mr. MURPHY. I think not. I understood he had presented a statement, and this supplements that.

Mr. REID. Nobody thinks hanging is a pleasant occupation or pleasant to those who are hanged.

Mr. MURPHY. Mr. Dudding's idea is that judges and legislators should be compelled to witness executions.

(The pamphlet submitted by Mr. Murphy on behalf of Mr. Dudding, taken under advisement as to insertion in the record, is attached to the record at this point:)

THE MAN YOU AND I KILLED

(By Boyden Sparkes)

[From Hearst's International-Cosmopolitan Magazine, August, 1925]

I found the warden's invitation in my mail one morning recently. It read: "In accordance with section 507 of the Penal Code you are hereby invited to be present as a witness at the execution by electricity of Antonio Viandante, which will occur at this prison on Thursday.

"The hour of 11 p. m. has been designated by me for such execution and you will arrange to be at my office in this prison not later than 10.45 o'clock p. m.

"I would thank you to treat this communication as confidential and advise me immediately upon its receipt of your acceptance or otherwise, so that I may make my arrangements accordingly.

To this grisly R. S. V. P. I immediately sent a telegram of acceptance.

"You're to go right in to the warden's quarters," we were told on that Thursday night, at Sing Sing, and were then admitted to a bleak but short passageway that brought us into a double parlor with old-fashioned mantels of white Italian

marble. Seated in deeply capacious, thickly upholstered chairs were half a dozen men. We met the warden, Lewis E. Lawes, a mild-mannered, round-featured person, who happens to be one of the most energetic opponents of capital punishment. Among his cronies there with him was Father Cachin, a Roman Catholic priest who had been seeing condemned men die for more than 12 years. Then there was the prison physician, Dr. Amos Squire, the superintendent of State prisons, and finally a few reporters.

It was a quarter of 11. Antonio Viandante was within half an hour of the judgment seat, but Father Cachin, in clothes like our own, continued to sit there. I had begun to wonder when the priest would don his vestments and go to the condemned, when the man next to me whispered:

"This fellow—the one to-night—said he's kill Father Cachin if he came near him. Said he didn't want any religious consolation. They think may be he's faking insanity. Tried to hang himself in his cell last night, using a spring taken from his bed. A deathhouse guard saw him in time. Tore the skin on one side of his throat, though. He's a big bird and they're looking for trouble."

Warden Lawes, who had gone out, had returned then and I asked him about Antonio Viandante.

"He killed his wife at Manlius, N. Y. He was once a police sergeant in Italy and then spent two years in an insane asylum there. Delusions, I'm told. He has been here for about a year and has been pronounced sane by alienist.

I asked another there if the condemned men were given any drugs before being taken to the chair.

"No," he said, "we never dope them. The theory is that they are entitled to be in the full possession of their faculties when it happens."

A door opened and a uniformed guard, putting his head into the room, addressed the warden: "They're ready." Then we started.

We passed a building someone identified as the prison laundry and turned its corner into an alleyway, the other side of which was formed by the wall of a one-story brick structure. It was the death house.

Just inside the door and to the right were half a dozen wooden benches with backs shoulder high, suggestive of church pews. Into these filed the witnesses, scuffing their feet as awkwardly as so many schoolboys in spite of obvious efforts to be quiet. Aside from the benches there were only two other articles of furniture in the chamber. One was a white enamel table mounted on wheels, such as is used in hospitals to convey patients to and from the operating room. The other was the electric chair, an armchair, if you please. It stood throne-like about 6 feet from the rear wall, a black and sinister spiral of heavily insulated wire projecting over the high back.

The witnesses confronted this chair. To their left was an aperture in the wall that led into a narrow chamber, displaying the utensils of a morgue. Another aperture in that wall, an archway abreast of the chair, gave access to an alcove that housed the rest of the lethal engine of which the chair was a part.

The wall behind the chair and the wall against which the ends of our benches were pushed did not meet in a right angle. Instead they merged into a blunt corner where a door had been built. On the lintel was tacked a white strip of cardboard, lettered in black, "Silence."

For us it was just a door, but for the creatures on its other side it was the portal of eternity.

Half a dozen blue uniformed men, each of them a heavyweight, were ranged about the room.

One of the guards stepped quietly to the door in the corner, almost stealthily placed his hand on the knob, and put his ear and his nose against the crack. He was listening for some sound on the other side. The other guards, as if in a drill, stepped closer to the chair, in a semicircle that embraced that door. It was 9 minutes past 11.

The man with his hand on the door knob seemed to stiffen. He moved one foot well back of him, hesitated and threw the door wide. Five men came in. The center man was Antonio Viandante.

He walked with a queer shuffle that was born of his effort to keep from stepping out of the loose felt slippers on his feet. With each step his right leg showed bare past his knee. The trouser sheathing had been slit. His dark coat was unbuttoned and no cravat relieved the white of his soft-collared shirt. His black hair had been cropped with clippers so that the white line of an old scar showed parallel with his eyebrows an inch back in the hair roots.

With his third step toward the chair Antonio Viandante sensed the presence of our staring group there in the pewlike benches. He had half turned from us;

but the black glance that came to us over his thick shoulder out of angry eyes was not one I shall forget. For him we represented society; we were his jury, his tormentors; we were the owners of that electric chair, and he hated us.

Then, with curious docility, he turned his back to the chair, reached with his left hand for the arm rest and sat down as calmly as he might have eased himself into a barber's chair.

Two guards literally leaped at the wide strap harness with which it was rigged. A slender, unobtrusive man, bald on top of his head, who had been talking with Doctor Squire, turned and with a sidewise glance at the relaxed figure being strapped into place, walked into the near-by alcove. He was John Hurlburt, electrician at Auburn Prison. For his single thrust of a lever back of the scenes in this drama the people of New York paid him \$150. Perhaps as he stepped into the alcove he was thinking of what that money would buy, and then again, perhaps he was thinking of Antonio Viandante.

The two men working at the straps were tugging at the band of leather that crossed that broad, deep chest. Viandante's dark eyes observed their hands as closely as if he hoped to carry an account of their work into . . .

There was now less than one minute of life left to him. The guards worked with a frenzied speed. They grasped the straps for his head. Antonio Viandante lifted his chin a trifle. I thought he was going to speak, but a black band was drawn across his eyes. His head was pulled against the back of the chair. Another strap was fastened about his chin. Only his dry lips could be seen.

One of the uniformed men was fitting a helmet to his skull. Then, with skilled fingers, he fixed the end of the spiral of insulated wire that had been protruding over the top of the chair. This guard leaped to a place 6 feet from the chair. All of them fell back a few feet as men run from an impending explosion.

Doctor Squire took up a position before and to the right of Viandante. He turned his head toward that mysterious alcove. In his right hand lifted above his head was a yellow pencil; with his left he was "fingering a watch whose little ticks are like horrible hammer blows."

Doctor Squire swung his pencil baton down to his side. There was a metallic crash, not loud, from the alcove. The man in the chair simultaneously seemed to try to escape his bonds. His torso was straining against the straps. A force stronger than his love of life was hurling itself in a maelstrom through his veins, his nerves, his brain.

An indefinable sound contended in my ears with the drone of the dynamo that was pulling up the roots of Antonio Viandante's soul. It seemed as if some one was moaning tensely through tight lips. The lips protruding between those leather bands were changing color. They became deeply red—then purple. A few bubbles formed in their juncture. There was another sound, a sputtering. I saw a wisp of greenish smoke rising from the calf of the bare leg. Above the knee where it was gripped by an electrode the white flesh was swelling as yeast dough rises in the heat of a hearth.

Doctor Squire signaled with his head to the man in the alcove. Antonio Viandante sank down into the chair as if with relief. A thick-waisted guard with reddish hair stepped to the side of the chair and pressed a towel to the wet lips. Doctor Squire shook out the coils of a stethoscope, fitted it to his ears, and applied the cup to the chest of the man in the chair. He listened for an interval and then beckoned to three visiting doctors waiting on the benches. They went to the chair and listened. As they raised their heads they appeared satisfied of something, but Doctor Squire again took up a post before the chair and signaled with his arm. Antonio Viandante seemed to respond, throwing himself against his bonds.

Abruptly his hands relaxed. Then the knees slowly fell apart. The posture was that of a tired workman riding in a street car. The reddish-haired guard with the towel was patting the darkened lips once more. Doctor Squire applied the cup of his stethoscope, raised his head in our direction, and said: "I pronounce this man dead."

As we rose from our seats two of the guards, who had slipped out of their blue coats and into white duck ones, were unfastening the straps of the chair. Another had rolled out the wheeled table.

The two white coated figures each slipped a hand under an armpit and a knee of what had been Antonio Viandante and lifted it from the seat. It was a heavy load and the guards grunted as they raised their burden so that the drooping fold of spine and thighs would clear the table top. They let go and the body straightened out like a half empty hot water bottle. Then the door of the death house closed behind me.

At the warden's house a long table was set with glittering silver and glass and spotless linen. In the center was a large vase of Chinese vermilion carnations. They had been grown by another murderer, one whose sentence had been life instead of death.

Two soft-stepping waiters, the only convicts out of their cells, served coffee, cold meats, and bread.

Across from me a man helped himself vigorously to slices of boiled ham. Another man next to the warden, a man with a solid array of gold teeth, was talking between mouthfuls.

"Yes, sir," he said portentously, "if he'd 'a' taken my advice he wouldn't 'a' been here to-night. I was talking to him half an hour before he did it. I said to him, 'If you're going to live with her don't be fighting with her; otherwise get away and forget her.'

"Just half an hour later he'd done it. Chased her into the butcher shop of that other fellow, who was in bed sick. It was the worst murder I ever heard of. He drove a butcher knife into her neck and right on down into her stomach. Cut through her backbone. Then he stuck that other fellow."

The speaker waited until the trusty had refilled his coffee cup and then resumed: "He was a jolly guy most of the time, too, and a good shoemaker. I told him——"

The man next to me whispered: "That's a deputy sheriff from Onondaga County."

The deputy, having swallowed his mouthful of ham, finished: "I told him to stay away from her; if he'd 'a' taken my advice——"

We interrupted him to say good night to the warden.

STATEMENT OF FRANK A. HARRISON, WASHINGTON, D. C.

Mr. McLEOD. What is your name?

Mr. HARRISON. Frank A. Harrison.

Mr. McLEOD. Who do you represent?

Mr. HARRISON. I represent the work I am doing on behalf of prisoners. I was a Christian Science practitioner, and engaged in that work before I came in contact with the "underworld," so-called, of New York City.

As to two of the prisoners, one of whom was hanged, referred to here this morning, I happen to know from contact with them, and I could give you some information.

John McHenry was the young man mentioned by Judge McCoy; and Perrigo. Perrigo was sentenced to life imprisonment, though he was to have been executed here in Washington. In my work with these criminals, I have come in contact with a number of murderers, of course. I have now a letter from one in Leavenworth, a life prisoner, saved from execution by a technicality. May I say that each of these murderers I have come in contact with I found had no fear of execution of the law. At the time they committed these crimes they were in a state of what they call "seeing red," where they cared for neither God nor man.

I know their condition, because I have been guilty of the same condition twice in my life, and but for the grace of God would have been executed.

These prisoners told me they knew the form of the law, it having no value to them, the possibility of escape from hanging through technicalities or condition of absolute disregard of the gallows, willing to be hung.

I know from them and my own former condition that the law that "Thou shalt not kill," the Old Testament law, and that "Vengeance is mine, saith the Lord," has no more weight with the potential murderer than the chatter of the magpie.

The cure, in my opinion, for the stopping of killing or murder is for society to set the example, first, by not killing, as execution is to me and to them only murder sanctioned by the laws of men, denied by the laws of God, according to the Old Testament and the New Testament.

The eleventh commandment of Christ says, "Thou shalt love thy neighbor as thyself," but the eleventh commandment of the Master is love to your brother man.

Those have got to be taught as practical laws to the youth of to-day, and to be recognized as higher laws than those men make, otherwise killing will go on.

The example of the adult to the child and to the boy that the parent or the adult shall not kill, shall not steal, shall not profiteer—are the examples I see that the criminals need—the example of even a square, clean, honest score on golf, instead of the example of a lie, the example of clean language and square, honest treatment among adults to the children is the need, the obligation of the adult to childhood of to-day.

Mr. McLEOD. You mean to practice what they preach?

Mr. HARRISON. Absolutely, not through the example of the theoretical theologian, but the honest man as he goes through life.

I have nothing else to say.

Mr. REID. Did I understand you to say you were in danger of execution at one time?

Mr. HARRISON. Yes.

Mr. REID. Why?

Mr. HARRISON. Because I was about to commit a murder on two different occasions.

Mr. REID. How far had you gotten?

Mr. HARRISON. To the door of the house, with a gun in my hand, waiting for the man.

Mr. REID. Of course, you were never arrested for that?

Mr. HARRISON. But for the grace of God I would have committed that act. His mother came to the door, by some unknown, unseen direction.

Mr. REID. You do not mean to tell the committee you are using this as an example that you were "seeing red" then?

Mr. HARRISON. Oh, yes.

Mr. REID. How long did your "red" spell last in this case?

Mr. HARRISON. I can not recall now how long.

Mr. REID. The reason I inquire is that I want to ask you another question based on that.

Mr. HARRISON. I think the mother's appearance and her statements; she said, "You are after my son, Mr. So-and-So." "Yes."

Mr. REID. What I am trying to figure out is, your action was premeditated?

Mr. HARRISON. Oh, yes.

Mr. REID. Are most murders premeditated?

Mr. HARRISON. No.

Mr. REID. That is what I want.

Mr. HARRISON. No. I do not think the majority are. It is a condition where all things are right for the murder, and you get the murder.

Mr. REID. Of course, the murderer in that instance would not think about the example of the State, would he?

Mr. HARRISON. The murderer in my instance should have thought of the action of the State.

Mr. REID. In killing somebody?

Mr. HARRISON. Oh, deliberately to kill.

Mr. REID. I say, that didn't deter you?

Mr. HARRISON. Not a bit.

Mr. REID. Nothing would have deterred, whether the State has capital punishment or not.

Mr. HARRISON. No. I had foolishly taken the law in my own hands, or was willing to.

Mr. REID. The first citation of the example would have made no difference whatever in your case whether there was capital punishment or no capital punishment; you had determined to override the law of man and God, is not that right?

Mr. HARRISON. Yes, sir.

Mr. REID. With that in view, do you think the fact that they have capital punishment or they do not have capital punishment can be said to be an inducement or deterrent to crime, either way?

Mr. HARRISON. Absolutely, no; it does not deter, in my opinion, in the slightest.

Mr. REID. Does it tend to incite murder?

Mr. HARRISON. I think with the unthinking man, yes. He sees the example of killing; that men kill by law.

Mr. REID. How much study have you made of this question?

Mr. HARRISON. Over 20 years.

Mr. REID. Are murders committed by thinking or unthinking people?

Mr. HARRISON. I believe every man who at the time kills or desires to kill is not normal, at that moment he is not normal.

Mr. REID. I understand, but you don't distinguish between an abnormal person as being a stronger thinker than a normal person?

Mr. HARRISON. No; the abnormal thinker does not quietly—

Mr. REID. He thinks more deeply, does he not?

Mr. HARRISON. Deeply toward hell, yes.

Mr. REID. I didn't say which direction. That is just the point I want to make with you: He is thinking; he certainly has got the brain cells, has he not?

Mr. HARRISON. Yes.

Mr. REID. I am not talking about judgment or reasoning; I am talking about what he is thinking.

Mr. HARRISON. He is thinking in his way.

Mr. REID. That is what I mean. The people engaged in your work, every one of them, are thinking, are they not?

Mr. HARRISON. Yes.

Mr. REID. They must be to be in the good work that you are engaged in—

Mr. HARRISON. They can be made to think good, but they usually are thinking selfishly.

Mr. REID. Is not that the tendency of human beings, to think selfishly on every occasion?

Mr. HARRISON. Yes.

Mr. REID. Is poverty a cause of the commission of murder?

Mr. HARRISON. No; not always.

Mr. REID. From your study of 20 years, I would like to have you divide them.

Mr. HARRISON. The poverty of teaching; poverty of example.

Mr. REID. I don't mean that.

Mr. HARRISON. Poverty of want? No; not solely, a small factor.

Mr. REID. Do you think that love—where does love come in the category?

Mr. HARRISON. The love that they have—

Mr. REID. I mean the passions.

Mr. HARRISON. Passion and love are to me two different things.

Mr. REID. I understand that, but love affairs.

Mr. HARRISON. Passion—let us call it "passion."

Mr. REID. Call it love affairs.

Mr. HARRISON. Human love affairs; man's love affairs?

Mr. REID. That is right.

Mr. HOUSTON. You might say lust.

Mr. HARRISON. Can I say "lust"—fine; "lust" is the word.

Mr. REID. You do not mean to say that every murder committed for love is lust?

Mr. HARRISON. No.

Mr. REID. In some love cases the lust if forgotten.

Mr. HARRISON. The great majority is lust, in my experience of over 20 years.

Mr. REID. The hiding of another crime, what percentage does that play?

Mr. HARRISON. Murder to hide another crime?

Mr. REID. Yes.

Mr. HARRISON. That is a fact.

Mr. REID. What proportion?

Mr. HARRISON. I can not get that proportion, though probably—

Mr. REID. Have you an estimate in your mind? We have to proportion these out so we can intelligently draw conclusions.

Mr. HARRISON. Let us say selfishness is the largest factor; to hide another crime is another factor, not as large as selfishness, but larger than the killing from lust or jealousy.

Mr. REID. In the 20 years you have a certain number of cases in mind of murder, haven't you?

Mr. HARRISON. Yes.

Mr. REID. How many—500, 200, 100, or 9?

Mr. HARRISON. Of personal contact, or general knowledge?

Mr. REID. Your knowledge; I want to get the condition of your mind.

Mr. HARRISON. No, sir.

Mr. REID. How many hundreds?

Mr. HARRISON. How many?

Mr. REID. Yes.

Mr. HARRISON. To answer the question I would say 500.

Mr. REID. Out of 500 crimes, what crimes stand out?

Mr. HARRISON. The cause of the crime?

Mr. REID. Yes.

Mr. HARRISON. Selfishness, the desire of the individual to do as he chooses.

Mr. REID. That means the whole thing?

Mr. HOUSTON. That is a very general reply. We want a more specific reply.

Mr. REID. Yes. I want to divide them down.

Mr. McLEOD. The particular motive.

Mr. HARRISON. The particular motive of the majority?

Mr. REID. Yes.

Mr. HOUSTON. For instance, revenge or robbery or rape?

Mr. HARRISON. Selfishness, to me, is the answer.

Mr. REID. That is so general it can not be admitted.

Mr. McLEOD. What do you mean by "selfishness" in this case?

Mr. HARRISON. The desire of the individual to do as he pleases.

Mr. REID. Of course, that is inherent in the human breast, unless eradicated by religion or something else.

Mr. McLEOD. Signify the lone motive.

Mr. HOUSTON. That is a general condition of mind of which you speak. From that general condition of mind there must be injected a motive.

Mr. REID. That is right.

Mr. HOUSTON. Now, the motive?

Mr. HARRISON. The majority of the murders?

Mr. REID. Yes.

Mr. McLEOD. Is it the injuring of some one loved?

Mr. HARRISON. It seems to me to have changed in the last few years to a lot of murders of the last few years caused by foolish heroism caused by the press giving front page to these murders. Vanity, then, is the answer to that.

Mr. REID. Don't you know, as a matter of fact, that most of the murders committed of late years are the direct result of attempts to violate the Volstead Act?

Mr. HARRISON. No; I do not.

Mr. REID. We have had more killings in the city of Chicago and I presume in New York and Detroit, which were the direct results from an attempt to violate the Volstead Act—deliberate killings.

Mr. McLEOD. And, if not for that reason, isn't it for the reason that poor liquor is drunk on account of the Volstead Act, and that poor liquor leaves the mind crazy?

Mr. HARRISON. I think that that can be diverted back to the attempt to violate the Volstead Act.

Mr. REID. Sure. That is what I am talking about.

Mr. HARRISON. The attempt to violate the Volstead Act has been the cause of many murders, I would say.

Mr. REID. In Chicago we do not have to hang a lot of these people because they shoot each other. I think there were about a dozen instances where they deliberately shot their confederates. What category would you put that in?

Mr. HARRISON. But you find that the cause for murder was robbery in many of those cases?

Mr. REID. It was not in that case, because they were cheating the cheater.

Mr. HARRISON. Yes, but they were going after money; they were seeking the other man's goods.

Mr. McLEOD. Would you call it selfishness?

Mr. HARRISON. Oh, yes; violation of the commandment, "Thou shalt not covet," is selfishness.

Mr. McLEOD. For the reason that they are restrained from what they are legally entitled—not because of the law, but legally entitled, in their own opinion; is that what you mean?

Mr. HARRISON. Yes; restraint or license instead of liberty. They are not conscious of the distinction between the two. They consider license liberty.

Mr. McLEOD. Right in that connection, is it your opinion that violators of the dry law we have to-day—don't they conscientiously consider they are violating the law when they do actually violate the law?

Mr. HARRISON. I won't say that, because I don't think that the Volstead Act, either for or against, is as great a factor as the individual's desire for ill-gotten money.

Mr. REID. These people violate the Volstead Act to get the money, because they are poor, and they want money; that is one set of crimes. Now, we have another set of crimes where they hold up business houses continuously. I saw in the Tribune an article about a gang composed of youngsters of 10 or 15 years. What category are you going to get them in?

Mr. HARRISON. A foolish desire on the part of youth to get money easy and look for the glory from the gang.

Mr. REID. Let me ask you this, then: Has there been any change in the kind of murder since the war?

Mr. HARRISON. Yes; I think so.

Mr. REID. Now, tell us the difference.

Mr. HARRISON. A change in the fearlessness of youth to take things into his own hands and to acquire money without earning it; a desire of youth to set a pace that many rich men are setting, and he is trying to keep the pace; in other words, he is trying to live up to the champagne appetite on a beer income. The example of the reckless boy who commits murder just to follow the Jones' as it were.

Mr. REID. To try to keep up with the "Jones'?"

Mr. HARRISON. Yes.

Mr. McLEOD. Does capital punishment tend to lessen crime, in your opinion?

Mr. HARRISON. I think it would.

Mr. McLEOD. Does it?

Mr. HARRISON. We haven't had time to try it out.

Mr. McLEOD. Does it generally, throughout the country, tend to lessen crime?

Mr. HARRISON. Yes; and in the foreign countries where there is no capital punishment crime is lessened.

Mr. McLEOD. I say, does capital punishment lessen crime throughout the country?

Mr. HARRISON. Oh, the fact of capital punishment?

Mr. REID. Yes.

Mr. HARRISON. No; I don't think it does.

Mr. McLEOD. What do you base your answer on?

Mr. HARRISON. The absolute disregard of the statutory law by the individual when he wishes to kill.

Mr. McLEOD. You testified a few moments ago that you did not feel that a man committing crime thought of or considered the consequences that follow; is that a fact?

Mr. HARRISON. The average man, in the heat of rage who kills does not consider the consequences.

Mr. McLEOD. Does any criminal in your opinion consider the consequences of crime?

Mr. REID. Do you mean crime or murder?

Mr. HARRISON. Crime, generally. The majority of them do not.

Mr. REID. You think when a burglar goes into a house and he considers he will be put in jail, does that not deter him?

Mr. HARRISON. Yes; he sees the revolver manufactured for general killing.

Mr. REID. I am talking about when a burglar goes into a house is the fact that he may or may not be caught and put in jail a deterrent? I mean, the fact that he might go to jail?

Mr. HARRISON. He believes he will escape jail through technicality and the assistance of an able lawyer, or he does not care whether he goes in there.

Mr. REID. That is not true. The greatest number do not escape.

Mr. HARRISON. The greatest number do not.

Mr. REID. And there are not enough able lawyers, and I am busy enough, so the great majority of them do not get away. [Laughter.]

Mr. HARRISON. But the average prisoner thinks that.

Mr. REID. I don't think so. That is what I want you to develop. How did you get that conclusion?

Mr. HARRISON. I see them released so easily on bail.

Mr. REID. You believe in releasing on bail, don't you?

Mr. HARRISON. Yes.

Mr. REID. Under our form of government, they should be released?

Mr. HARRISON. But the power of money to console as he chooses the law of the land—I am putting the prisoner now.

Mr. REID. Of course, that is an excuse and not a reason.

Mr. HOUSTON. Do you think there is anything in the idea that human life has been cheapened in the estimation of the public generally or those in particular who took part in the war?

Mr. HARRISON. Yes; I do. This McHenry case that Judge McCoy referred to—that boy's killing was a short while after the war, and he had no value on human life.

Mr. HOUSTON. Did he serve in the war?

Mr. HARRISON. He was in New York during the embarkment of the boys across, and the moving pictures of the killings and those things were in his mind when he was 18 years of age; while he was 18 years of age, he had the mentality of a boy 7 or 8 or 9.

Mr. HOUSTON. In other words, he was feeble-minded and ought to have been confined in some institution?

Mr. HARRISON. I think so, but the court did not consider him insane, from the medical standpoint of insanity; yet his actions proved to me that he was insane.

Mr. REID. The fact that he did the killing?

Mr. HARRISON. Exactly.

Mr. REID. Cause and effect, and you think the cause was present? I know crimes committed after the war by some of the smartest boys in the world, who were not mentally defective in any way, shape or manner, but the idea of carrying a revolver and going to

war and all that seemed to have given them a little different notion of things.

Of course, your idea is that nothing will help in this world but religion?

Mr. HARRISON. I do not mean religion as taught by the theologians; I do not mean ecclesiasticism.

Mr. REID. Of what denomination are you?

Mr. HARRISON. None.

Mr. REID. None at all?

Mr. HARRISON. No.

Mr. REID. Catholic or Protestant?

Mr. HARRISON. No.

Mr. REID. What was your training?

Mr. HARRISON. I was brought up in the Episcopal Church and broke away from it as quickly as I could.

Mr. REID. How long ago?

Mr. HARRISON. Many years ago.

Mr. REID. What I am trying to find out is your early education.

Mr. HARRISON. My early education was from paganism to atheism by my father.

Mr. REID. Where do you stand now in regard to it?

Mr. HARRISON. I have no creed; I am connected with no church or organization.

Mr. REID. You are an infidel?

Mr. HARRISON. Oh, no.

Mr. REID. An atheist?

Mr. HARRISON. Not for one minute; absolutely not.

Mr. REID. Are you a believer in Christianity?

Mr. HARRISON. In Christianity; not ecclesiasticism.

Mr. REID. Scientist?

Mr. HARRISON. I was a Christian Scientist; I am no longer connected with that organization.

Mr. REID. Of course, I do not think of you as affiliated with any institution. I want to get your idea, because there is no hope except through religious training.

Mr. HARRISON. Religious training needs to be defined, for no creed or dogma or organization will not produce results. The fatherhood of God may be got less simply.

Mr. REID. How are you going to get them simply?

Mr. HARRISON. Through the fatherhood and motherhood of man from the square deal from the gold course up.

Mr. REID. How are you going to do it?

Mr. HARRISON. Through our example.

Mr. REID. Through the schools?

Mr. HARRISON. First at home, Judge, and then in the schools.

Mr. REID. Would you have them teach these doctrines in the schools?

Mr. HARRISON. I would have them teach these doctrines in the homes.

Mr. REID. We are going to have them in the home, of course.

Mr. HARRISON. We haven't them in the home.

Mr. REID. We have not?

Mr. HARRISON. No.

Mr. REID. It was in your home when you were brought up?

Mr. HARRISON. The church was; yes.
 Mr. REID. Did they have the spirit there?
 Mr. HARRISON. Ah, no.
 Mr. REID. Didn't they?
 Mr. HARRISON. No.
 Mr. REID. Why not?
 Mr. HARRISON. You must ask the theologian—because it was not put into the home.
 Mr. REID. All right. It could have been put in the home?
 Mr. HARRISON. Yes.
 Mr. REID. Is it in your home now?
 Mr. HARRISON. Yes; it is in my home now by example—only by example, not words, not a set form of ceremony, but by example.
 Mr. REID. What form does that example take?
 Mr. HARRISON. Kindness to each other; consideration of the others' wishes and needs.
 Mr. REID. There is no discontent in your home at the present time?
 Mr. HARRISON. No.
 Mr. REID. By what system do you arrive at that?
 Mr. HARRISON. The application of the laws of the Ten Commandments.
 Mr. REID. That is what I want to know. What example do you hold up, the example of Christ or Moses?
 Mr. HARRISON. Christ's Sermon on the Mount; condensed in that.
 Mr. REID. Do you think if that was taught in the schools and homes to people generally it would have some effect on the commission of crime?
 Mr. HARRISON. Yes, sir; positively I do.
 Mr. REID. Don't you think that the fact that the people are poor has anything to do with the commission of crime?
 Mr. HARRISON. No.
 Mr. REID. You would not deny that actual need leads to petty crimes; for instance, thievery and arson?
 Mr. HARRISON. Fortunately, Judge, I know this: I have been eight days without food—on my feet without food, not sick; and I would not have asked a man for a dollar.
 Mr. REID. That is probably where home training came in.
 Mr. HARRISON. But I think not every man when he is in need would beg or commit a crime for a dollar.
 Mr. REID. He would not?
 Mr. HARRISON. I say not every man.
 Mr. HOUSTON. Still you must remember if you were eight days on your feet without food you are an unusual individual.
 Mr. HARRISON. At the eighth day money came which I was looking for.
 Mr. McLEOD. The fact of self-preservation stands out first.
 Mr. HARRISON. Yes; man's law. "Self-preservation is the first law of human nature," not the man who is governed by the laws of God, because he has no fears of the other man. The ninety-first Psalm is either of value or it is a joke. I say it is of value because it is true.
 Mr. REID. What does it say?

Mr. HARRISON. Protection—He will give the angels charge over you to keep you in all your ways.
 Mr. McLEOD. You take issue with the Quakers, do you not?
 Mr. HARRISON. Yes. With the Quaker in many ways I take issue. Beautiful character, that he has produced.
 Mr. REID. I am very interested, because here is a man who has had all the feeling—
 Mr. HARRISON. From the gutters of South Street, New York City, right up to the finest in Washington.
 Mr. McLEOD. You mentioned two cases where you come near getting in trouble. What was the second case, if you have no objection? You don't need to answer, if you don't want to.
 Mr. HARRISON. I would rather not go further into that, please, Mr. Chairman. Only I can state, it was with the condition of absolute rage, "seeing red," with the premeditation of the other case I first mentioned.
 Mr. REID. John Wesley said, "There goes I, except for the grace of God."
 Mr. HARRISON. Then Bob Ingersoll repeated it.
 Mr. REID. How far are you going to let your make-up contend with the conditions as we find them? With your peculiar idea of Christian spirit appearing in your mind, I was wondering if we have not got to that standpoint as a part of resistance. You have got a bad temper. I have one—a tough one sometimes.
 Mr. HARRISON. I have got control of my temper, I think, Judge.
 Mr. REID. I am not a "judge;" I am a lawyer. You see, what I am trying to find out is, how far are we going to go to try to stop this thing, when your Christian spirit says you have got to stand for anything in order not to be too harsh on your judgment. How far are we going to be content with that?
 Mr. HARRISON. I think we start to remedy it with our examples, seeking first to get control of ourselves; be master.
 Mr. REID. Robert Burns said, "I see the better way and approve, but do not pursue it." Is not that the tendency of everyone?
 Mr. HARRISON. Not of everyone, but of the majority.
 Mr. REID. Of course, this is a government by the majority, and we do or do not certain things because they become habit or custom. Everybody does it. I was wondering how the peculiar Christian spirit that you have been able to embody in your life and your family makes you say, "Well, this has got to come and consequently we must put up with it?"
 Mr. HARRISON. I think we arrive at that. But, no; this is not a government of the majority. But is a government of God, governing with or without man's laws.
 Mr. REID. You think one with God is a majority?
 Mr. HARRISON. Absolutely.
 Mr. REID. How are we going to tell which one that is? God permits murder, does he not; God permits crime?
 Mr. HARRISON. Oh, no.
 Mr. REID. Don't you think he could stop it?
 Mr. HARRISON. God does not permit.
 Mr. REID. It is permitted, then?
 Mr. HARRISON. No; man commits.
 Mr. REID. You believe God is omnipotent?

Mr. HARRISON. Absolutely.

Mr. REID. All right. Nothing can go ahead without his sanction. That is our early training, is it not?

Mr. HARRISON. Yes. Now, we have a man killed, and how do we deal with it?

Mr. REID. Yes.

Mr. HARRISON. I say the man is not killed; that the true individual, man can not touch your spirituality—your true individuality, no man can take that. He can stop the use of your body, yes, with bullet or club. But you are not killed.

Mr. REID. Does not the same thing apply when the State puts on the electricity or puts the rope around your neck?

Mr. HARRISON. Yes.

Mr. HOUSTON. You are getting back to the spirit of the martyrs?

Mr. HARRISON. Surely.

Mr. McLEOD. Does the spirit suffer—in other words?

Mr. HARRISON. I don't think so.

Mr. McLEOD. If capital punishment is the object of the law to punish?

Mr. HARRISON. I think so.

Mr. REID. Or to take the individual out of life so he can not lose his temper the second time?

Mr. HARRISON. And that as well—I think the two—

Mr. McLEOD. Capital punishment does not punish then, does it?

Mr. HARRISON. Absolutely no.

Mr. McLEOD. It is not a fit method of punishment, if the spirit don't suffer?

Mr. HARRISON. No.

Mr. McLEOD. If the spirit goes on, distinct from the body, and you say it is the object of capital punishment to punish the criminal?

Mr. HARRISON. Yes.

Mr. McLEOD. Then, it won't fit the punishment?

Mr. HARRISON. It does not accomplish the desired result, because it is an attempt to take into man's hand God's power and violate God's laws, "Thou shalt not kill," and "Vengeance is mine saith the Lord."

Mr. McLEOD. Is institutional premeditated killing more so than any criminality?

Mr. HARRISON. As much so as the most premeditated case the murderer ever committed; yes.

Mr. McLEOD. Therefore, what do you call capital punishment?

Mr. HARRISON. An error.

Mr. McLEOD. Legal homicide?

Mr. HARRISON. Yes, sir.

**STATEMENT OF CLARENCE W. TIGNOR, ATTORNEY AT LAW,
WASHINGTON, D. C.**

Mr. McLEOD. Please state your full name.

Mr. TIGNOR. My name is Clarence W. Tignor.

Mr. McLEOD. What is your address and occupation?

Mr. TIGNOR. No. 415 Third Street SW., attorney at law.

Mr. McLEOD. Who do you represent?

Mr. TIGNOR. I am president of the George Bell Parent Teacher Association; vice president of the Southwest Civic Association; and also a member of the Zion Baptist Church, representing 2,400 members.

Mr. McLEOD. You appear here as an opponent or proponent of this bill?

Mr. TIGNOR. Proponent of the bill to abolish capital punishment in the District of Columbia.

Mr. McLEOD. All right. Make as brief a statement as you can.

Mr. TIGNOR. I want to say just a few words, and that is that in my practice of law during the past 16 years or more—

Mr. McLEOD. You are a lawyer in the District?

Mr. TIGNOR. Yes, sir; I have come in contact with quite a number of persons accused of murder, those who have been convicted, as well as with a great number of people who knew them and had known them in their past lives, and I am of the opinion that capital punishment as a deterrent effect has been wholly lost before the committal of any crime by these people who have been so charged. I have talked with them at the District Jail, and some of those who were out on bond; and a heart to heart talk with them has convinced me that the thought of capital punishment played no part whatever.

My experience with regard to punishment is that it has been exercised in such a small percentage of the cases—

Mr. McLEOD. What do you mean by "exercise"?

Mr. TIGNOR. That so few of those who have been tried or charged with murder have been actually executed and the percentage is so very small that it could in no wise be beneficial, either upon the community or upon those who would be grouped as the criminal class.

Mr. McLEOD. What is the reason they were executed, the great majority?

Mr. TIGNOR. Do you mean my personal opinion and upon what I base that?

Mr. McLEOD. What you base it on.

Mr. TIGNOR. I base it upon the observation of the number of crimes that I have read of being committed, and, having followed them out—a very small percentage of them actually were executed.

Mr. HOUSTON. You mean in capital prosecutions?

Mr. TIGNOR. Yes, sir; I am speaking of those who go through to capital punishment for crime.

Mr. McLEOD. Why were they not executed?

Mr. TIGNOR. They escaped through legal technicality; they escaped in cases where money was employed, where they were able to get a good bit of money; in very few such cases were they ever executed, because, as you gentlemen know, in criminal procedure the longer a case is drawn out, as occasionally in civil procedure, in criminal procedure particularly, the longer a case can be drawn out—and that in great majority depends upon the ability of the criminal to command finances.

Mr. McLEOD. To hire proper counsel?

Mr. TIGNOR. The chance of never being executed is increased.

Mr. HOUSTON. In your experience has there ever been any increase in crime in the District of Columbia—I mean proportionate increase. Of course, the city has increased in population, and, of course, naturally you would have more crime by reason of increased population.

Mr. TIGNOR. Yes.

Mr. HOUSTON. But has there been an increase of crime, speaking particularly now with reference to murders and homicides, we will say—a proportionate increase in other words, are there more in proportion than there were years ago?

Mr. TIGNOR. No, sir. I believe if the situation is taken as a whole, the Volstead Act, the war period, which the psychologists tell us generally affect that situation, having lived in the vicinity where a great many murders were charged, all my life in the Southwest section, nearly, except the time I lived in Anacostia—with its 30,000 people, and in close proximity to where murders have been committed—and I don't believe if the whole situation is taken into account that there has been any appreciable increase in crime.

Mr. HOUSTON. In your personal experience as an attorney, for instance, in your association with men who committed homicide, you made the statement a while ago that you felt convinced from that experience that men contemplating crime were not debarred because of possible or probable punishment?

Mr. TIGNOR. Yes, sir.

Mr. HOUSTON. In how far has their expectation or belief that they would not be executed entered into it? You speak about the very thing—there have been so few actually executed?

Mr. TIGNOR. Yes, sir.

Mr. HOUSTON. Of course, that is a fact generally known. How far has that fact acted as an impelling force to men to commit crime: in other words, "I will go ahead and do it and I will get clear?"

Mr. TIGNOR. I do not think that fact alone has influenced a man at all. Mainly, the men who commit crimes, are generally men who have not had the benefit of home training nor the benefit of schools, and I don't believe that they ever calculate the small number of people who hang—I don't believe they ever go that far, to see that only 2 per cent of the murderers were hanged last year, and "Consequently my chances are two in a hundred." I don't believe that they figure anything on that basis; I mean that they do believe that "Oh, well, if I commit murder I will be hanged;" that that is the general impression they get.

But, on the other hand, that fact that they will be hanged is not a deterrent effect upon them, when they get ready to commit crime.

I talked with a man who had found his wife in an unfaithful act. He had made up his mind to kill her. He came and talked with me about the thing. The fellow was determined to do that very thing. He said, "I am going to do it. I didn't come here to seek any benefits, and I don't want your opinion upon the situation. My wife is guilty of this thing, and I am going to kill her. But I only came to see you to arrange about other matters."

I talked with that man, and I said, "Don't you know the penalty of premeditated murder in the District of Columbia is hanging by the neck until dead?" "That doesn't affect me at all." He said, "I am not bothered about that. That does not worry me."

"It is a question of my getting revenge for what that woman has done to me."

And for three solid hours after talking with that man he was still of the opinion. After having been told that without any legal technicality or chance of escape that the penalty would be "hanging by the neck until dead," that didn't influence him at all. It took three solid hours to convince him, not along the line that he would be hanged, but along other lines—the doctrine of the fatherhood of God and the brotherhood of man—that he was as much his brother's keeper, and regardless of what his wife had done, that he ought not to alter his relations to society. Those were the only arguments that finally dissuaded him—not the thought of hanging. He was already convinced that when he cut his wife's throat that he would be hanged by the neck until dead.

Mr. HOUSTON. Have you noticed any change in the character of the men who have committed murder in the last few years? It used to be what you might term the "rough-neck class." Have you noticed that there is more tendency among the younger element who have had opportunities of education and advantages and even religious training to deliberately commit murder or take human life for some selfish purpose? I have been impressed with that change in my experience as a prosecutor, especially since the war.

Mr. TIGNOR. My answer is that it has impressed me.

Mr. HOUSTON. Deliberately planned—because, as has been stated here awhile ago, they have got into a way of living far beyond their means and things they wanted, and they had to have them, and they hadn't any disposition to go out in a manly way and apply themselves and earn it. But would take this short cut to secure what they wanted. I have been impressed with that condition, and I just wanted to ask you whether here in Washington, where you have been associated as a practicing attorney, if you noticed that, particularly in your race?

Mr. TIGNOR. I am glad you brought that up, because—

Mr. HOUSTON. The other race have had greater advantage of home training?

Mr. TIGNOR. I would say I have, as you say, been associated with my race, and 20 years ago the illiteracy was far greater. I have lived adjoining a public alley, a large 15-foot alley that went through several blocks, and a few of the murders were committed right in that vicinity, and I happen to know some of them were boys who had started in school about the time I had; had grown up and possibly their parents did not keep them in school. Some of them were also of the distinctly illiterate type.

Mr. HOUSTON. Were they mostly committed by boys, for instance, starting with you, who instead of following some proper path of life had assumed, you might say, a criminal career and gradually developed?

Mr. TIGNOR. No, sir; I would not say that.

Mr. HOUSTON. Developing from petty crimes into more serious crimes?

Mr. TIGNOR. I would not say that.

Mr. HOUSTON. In other words, had they developed along lines of criminal tendencies shown in early years?

Mr. TIGNOR. No, sir. I would say it was the result of environment and you will find the same condition to-day. A man may be in greatly reduced circumstances that may be raising a boy who

started to school with my boy. At this time he is possibly further advanced in every way than his father who came along when I did. But proportionately he is about the same age as my boy would be to that man's son as I was to his father.

The relative positions are this: My boy possibly will have gone or has gone a little further in school, than I have gone. This other boy through circumstances was forced out into the streets. But he got more education than his father did at that period that he may have become involved, not claiming of course that crimes follow family lines. But I mean taking this man in this relative position to another one over there [illustrating], not meaning the father and son committed crimes, but the relative position would be that this boy is further advanced and the statistics would show that this crime was committed by a boy in the seventh grade.

Now, it is no common thing for a boy among the poorest of our group to get as far as the sixth or seventh grade; consequently, no matter when a crime is committed by a youngster or a person who has had any benefit at schools and has arrived as far as junior high school or seventh grade, which back there would have put him beyond the average, he would have been considered out of the ordinary. But now the sixth or seventh grade boy is just considered among the ordinary boys.

Mr. HOUSTON. What has generally been the motive for the homicide?

Mr. TIGNOR. The motive for the homicide has generally been following some little game that possibly did not amount to anything.

Mr. HOUSTON. Craps?

Mr. TIGNOR. It might have been craps; just the turning of a penny or anything, and that superinduced or intensified by somebody who will sell them whisky. The conditions that existed in the pre-Volstead time are just the same as those—I am in favor of the Volstead amendment, and I am not speaking reflectingly against it. I am hopeful that every letter of the law will be enforced, because we have derived great benefit from it. But the conditions that existed in pre-Volstead days when there were barrooms on every corner are not unlike the conditions of to-day, when the man can secretly get hold of whisky.

Mr. HOUSTON. I can go back 15 years when the general court calendar lasted two weeks, with every degree of crime—assault, rape, murder—everything; every one—I never saw anything like it—went on the witness stand and his defense was, "I was drunk"—two murder cases, one rape case, numbers of assault and batteries, and, of course, a larceny or two.

Mr. McLEOD. Do you think the Volstead law was in effect then?

Mr. HOUSTON. Oh, long before that. Judge Boyce my predecessor, was sitting on the bench, and called me aside. He said to me, "Did you ever see anything like it? In every case for two weeks the accused went on the stand and said he was drunk."

Mr. TIGNOR. I think, sir, you will find that exactly the condition in the District of Columbia.

Mr. HOUSTON. My experience trying murderers and defending them was almost invariably that the murder grew out of a crap game, and, of course, liquor was present and a quarrel occurred over the winnings.

Mr. McLEOD. Then, is it your conclusion that capital punishment does not abolish or eliminate capital crime?

Mr. TIGNOR. Yes, sir; and when we arrive at the causes which the judge has so clearly outlined—this free flow of liquor and those things that fire the imagination. There is not now—I don't believe there was ever—an excuse for taking human life as having a deterrent effect upon crime.

Mr. McLEOD. We will now adjourn until 10 o'clock Monday.

(Thereupon, at 1.05 o'clock p. m., the subcommittee adjourned to meet Monday, February 1, 1926, at 10.30 o'clock a. m.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Monday, February 1, 1926.

The subcommittee met in the caucus room, House Office Building, at 10.30 o'clock a. m., Hon. Clarence J. McLeod presiding.

Mr. McLEOD. The committee will come to order. Mr. Zimmermann, do you care to be heard?

STATEMENT OF REV. ALBERT HERMAN ZIMMERMANN, ASSOCIATED CHURCH PRESS, WASHINGTON, D. C.

Mr. McLEOD. What is your full name?

Mr. ZIMMERMANN. Albert Herman Zimmermann.

Mr. McLEOD. Who do you represent?

Mr. ZIMMERMANN. The Helpers from the Hills, the Associated Church Press.

Mr. McLEOD. Proceed.

Mr. ZIMMERMANN. Mr. Chairman, ladies and gentlemen, it is ever a delight to stand four square on questions that are being brought before these important bodies in the building from which the sentence went forth when the corner stone was laid, "A square deal for every man."

It never was more true than this morning, as one has well said:

We are dwelling in a grand
But awful time,
In an age on ages telling;
To be living is sublime.
Then let all the truth within you,
The Soul's truth go abroad;
Strike, strike, till every nerve and sinew,
Tell on ages, tell for good.

In the matter bearing directly on the question that is before us here, I regret that it is not my privilege to follow the man who has been advertised to be in the lead this morning. I should like very much to follow him, of whom it was said, "He broke Bryan's heart."

Never was there a greater mistake made than when that sentence was uttered by that party. That heart could not be broken against the rock of platitudes or creeds or dogma.

It is singular that in the announcement that we would be heard here this morning, the same paper carries these significant sentences—I

shall try to be just as brief as I can, for there are others that I think want to be heard more than I do. [Reading:]

The drift of our generation is to machine-made opinions. Our actions are dictated by custom. Our thoughts are dictated by creed.

Custom and creed furnish, of course, an indispensable preservative element to society; they are containers in which the achievements of the human spirit are carried over from one generation to the next.

But custom and creed are agencies of peril as well as of preservation; unfortunately at times they preserve the bad as well as the good; and from them the obsolete and the vicious acquire a sanction in a generation that really knows better.

I attempt no indictment either of custom or creed; I merely call attention to their corruption.

"Nothing is more rare in any man," said Emerson, "than an act of his own." Translating this into his own vivid prose, Oscar Wilde said:

"Most people are other people.

"Their thoughts are some one else's opinions;

"Their lives are mimicry;

"Their passions a quotation * * *."

In fact, the great verities and vitalities of life are not best approached by asking whether they are true or false, but by asking what they mean to life.

We do not ask regarding an exquisite flower whether it is true or false; we sense its perfume and enjoy it. * * *

So in the deeper matters of mind and morals, the test of truth is life.

"There is no blackboard demonstration that God is good," says Charles Ferguson. "You must risk it or die a coward * * *."

Opinions made out of the stuffs of our own courageous contacts with life and its enveloping mysteries are the opinions that make us men.

Mr. REID. What were you reading, Doctor?

Mr. ZIMMERMAN. I am reading from the paper that we call the Washington Post in the District of Columbia, on the editorial page, of the date that announced the calling of this meeting.

Mr. REID. What date was it, so we can put it in the record.

Mr. ZIMMERMAN. January 30, 1926. The rights of life—with rights come duties for every individual that stands under them. Out of an experience with numbers of men behind the bars to-day and their wives and families, whom it has been our privilege to touch, I am persuaded as I stand here this morning, out of that experience that some one is right when he says this:

We shape ourselves on joy or fear of which the future life is made.

And feel that future atmosphere with sunshine or with shade.

The tissue of the life to be we weave in colors all our own.

And in the field of destiny we reap as we have sown.

Bobby Burns comes close to it again, when he says this:

The voice of Nature loudly cries

And many a message from the skies

That something in us never dies;

That on this frail uncertain space

Hang mementoes of eternal weight

And future years in places unknown

Will show that we have reaped as we have sown.

Burns and Whittier touched the keynote of what I wish to say this morning concerning the rights of. I take it, as I read this bill, we are all agreed that there is nobility in life. It is a grand thing to live, not to drivel, not to drift—but to live.

This is true whether it be the ephemera of an hour or the eagle of a century; the flower of a day or the yew tree of a millennium; the infant of a week, or the man—alas, in our criminal classes—the boy,

the girl of the teens, or the trembling hand of three-score years and ten.

Life is glorius. It is everywhere. It is the only thing of which God—and I say it reverently—is prodigal. Hence, nothing before Confucius or Buddha or Zoroaster wrote the four laws, one of which we talk of to-day, some men would have us think these laws came later. We have in the words the architect of this universe wrote on the corner stone of the civilization which we enjoy "Thou shalt not kill." It was not a mandate. If you will pardon me after 46 years as a humble Methodist preacher, sometimes they say a poor Methodist preacher, and I think they were right—poor in one sense of the word.

Mr. REID. Methodist poor preacher?

Mr. ZIMMERMAN. That is fine. You must have been in a Methodist experience meeting some time, Mr. Reid, from the way you speak out in meeting. I was trained to it at 16, and I am not ashamed of it to-day.

It was not a mandate that was written on that corner stone of this universe, as this magnificent temple of civilization in which you and I are living to-day, in a prosperity such as the world has never known, under a flag of which we are more proud, in which we have more hope than we ever had in all the past—nothing to be ashamed of, to know that God did not mean that for a mandate, but more like that picture that hangs in the halls of one of our great small colleges, where we find two hands coming out of a shadow, one clasping the other, and a drop from this vein and a drop from that vein falls into the platter—it is a covenant of Rome, and Brutus went to suicide under it.

So the Supreme Architect of this universe when he said "Thou shalt not" meant not a fear thought which has made a fearful neuro-rasthenic combination that doctors have the hard job with to-day.

But it meant this, if I understand the Hebrew direct, if I may be pardoned for saying that, not that I am a scholar—

Surely thou lovest me enough, since I have written my love in the stars, imprinted it on the rock, whispered it in the winds, had it sung by birds and written in Nature's great book, surely thou enbreathed grain of dust, Adam may be thy name—thou lovest me enough to say things, "My covenant with thee not to kill, not to steal, not to commit adultery, not to break through the laws that hurt yourself, hurt society, have undercut nations and have wrecked civilizations."

Surely the answer to the Master Architect, who has given us in the word of love the Psalmists caught, will be love that will do away with this law when light, more light; in love, more love shall respect life as a whole—from a grain of sand under your feet to the mote that you might see in the sunbeam on this day were it shining out here now to the stars that burn above.

There is one principle—if I understand it correctly—

Mr. REID. Doctor, I think we all agree that nobody should be killed. But particularly we are interested in your idea of the State's right to kill for murder committed.

Mr. ZIMMERMANN. I am coming to that.

Mr. REID. Talking generally on the subject. I think we all agree.

Mr. ZIMMERMANN. I am coming to that.

Mr. HOUSTON. Out of your experience and from your association with criminals—

Mr. ZIMMERMANN. Thank you, sir—out of that. You want that experience as I can give it to you?

Mr. REID. Yes.

Mr. ZIMMERMANN. Heredity, environment—that which comes from the past trough blood into the brain should be given such consideration in our civilization as to have the States carefully look into those conditions of that boy, that girl, that man, or that woman, and the wealth behind the State makes it possible for them to realize that we must for all men hope and for none despair—

Mr. REID. If I understand you, you said heredity and environment.

Mr. ZIMMERMANN. Heredity and environment.

Mr. REID. Do you think they are an excuse for not administering capital punishment?

Mr. ZIMMERMANN. I think, sir, that when we go through the thing into the past of seven generations, that I can name in one family, in which miscegenation took place, a generation of murders took place, tracing it from Utica, N. Y., to this Capital and South—I know whereof I speak when I say that heredity and environment play an important part in all criminality.

Mr. REID. Before the commission of the crime?

Mr. ZIMMERMANN. Beg pardon?

Mr. REID. In the commission of crime?

Mr. ZIMMERMANN. Commission of crime is due to disease which has brought to us homicide and suicide, and is bringing it to us to-day, criminality in such strange measure.

Mr. HOUSTON. Is there any reason for a man who has criminal inheritance, if he is normal, why he should not be able to overcome the tendency of heredity?

Mr. ZIMMERMANN. I am glad you put in the words "if he is normal"—no, sir. For the will is the one sublime, immortal thing. The will gives us a key to the situation of the emotions and the sensations and the action of any living man, then, that is normal. But what I claim is this—

Mr. REID. Will to do what?

Mr. ZIMMERMANN. To do right.

Mr. REID. Normal?

Mr. ZIMMERMANN. If the man is normal he will swing normal; if he is diseased he will swing abnormal, as did that boy who dropped the match in yonder apartment last night and endangered so many lives. He was not normal, I claim.

I have looked them into the eye; I have felt their hand quiver; I have examined them kindly and lovingly as clergyman; and I have found the undertone coming out again and again; and I have recognized, having had a bit of training as a trained nurse as well as a preacher, sir, to try to fit me for the west China field in 1889—that they are those yonder in your District of Columbia jail. Major Peak gives me the permission not to talk unless I desire to, to all prisoners, but to go from one to the other—that they are abnormal. I answer you that if he is normal, if she is normal, with a normal inheritance from the past and perhaps a bad one from the past, the will swings right, the reason and life rings true. But, alas, how

many are normal this morning, under the light of science, psychology, and in the true realm of living?

Mr. McLEOD. One question. Do you feel that in the event capital punishment were abolished in the District that it would tend to eliminate crime, in your opinion?

Mr. ZIMMERMANN. Decidedly. If the District backed it up with that strong right hand of the pulsation of people who believe in the fatherhood of God and the brotherhood of man and prove it by their acts, by providing a place for those people outside of those walls, crowded as they are in yonder jail to-day.

Mr. McLEOD. Do you feel that the punishment that a criminal faces tends in any way to put him in fear of any crime?

Mr. ZIMMERMANN. Kindly repeat that.

Mr. McLEOD. Punishment—does that tend in any way to deter him from committing crime?

Mr. ZIMMERMANN. Yes and no. Yes, if he is normal, or has that normality somewhere in heredity or environment that will help him back to normal if he is abnormal. But no if he is abnormal.

Mr. McLEOD. Does a criminal think of the consequences before he commits crime, in your opinion?

Mr. ZIMMERMANN. Since the Volstead Act came in I am afraid he does not.

Mr. HOUSTON. Have you ever talked with murderers before their conviction?

Mr. ZIMMERMANN. I have had to be, Mr. Chairman, very cautious, for in 1911 I paid the price of trying to do a bit more work than one preacher can do in one church, and for 14 years I have had the happy privilege of getting out of God's sunlight something back of the health I had when I was captain of my football team and played baseball. But, sir, I avoid the death cell because of that, unless I am sent for.

Mr. HOUSTON. I said "before conviction"—after arrest and before conviction.

Mr. ZIMMERMANN. Alas, alas, the word of arrest should never be written over hundreds that are taken to our courts in childhood, when they should be put where they can be handled as children or handled as men. But between the two periods you are but multiplying the moment the hand is laid upon that criminal, be it that boy yonder this morning or the older man; you are adding to the fear thought of this universe, which is destructive, and only faith thought can make live.

Mr. McLEOD. Do you feel that the example of the State administering capital punishment affects the mind of a criminal in any way as regards the example?

Mr. ZIMMERMANN. All our lives are an open book, are seriously affected by example.

Mr. McLEOD. The example of taking life.

Mr. ZIMMERMANN. Not in the new psychology practically applied, because it merely adds to his fear thought instead of faith thought in life, and his example goes to pieces under that. Fear thought kills, faith thought makes alive.

Mr. REID. Do you say the "new" thought or the "news" thought?

Mr. ZIMMERMANN. I said the practical psychology, not the academic. Thank you, Mr. Reid, that word "new" has got to be

considered. There are so many things said to be so very new that they go all the way from Egypt there and back again.

Mr. HAMMER. Do you regard crime as a disease?

Mr. ZIMMERMANN. Not all crime, but in the main, as I look at it in what I have touched upon.

Mr. HAMMER. What would you substitute for capital punishment?

Mr. ZIMMERMANN. My first substitute would be always this: We all know that industry is God's greatest boon. Let the State give him hospital treatment and an opportunity to work. I am in touch, if you will pardon me this morning—

Mr. HOUSTON. Do you mean by that, punishment by the infliction of hard labor?

Mr. ZIMMERMANN. Sensible labor, under men scientifically fitted to take care that the man who needs it has a chance to labor.

Mr. HOUSTON. Prisoners have a base ball club?

Mr. ZIMMERMANN. Surely—club them all they can. It is that that saved the Philistines—and a baseball bat and a bag of tobacco civilized the Philippines we are told.

Mr. HOUSTON. And cigarettes?

Mr. ZIMMERMANN. I don't like him so well although I knew him when he started in Chicago. But he said a good thing when he said it. "If you want to smoke, buy yourself a sweet briar and smoke like a man but don't burn paper."

Mr. HOUSTON. Or a corn cob pipe.

Mr. ZIMMERMANN. Have you one to spare, sir? Many of us in the Methodist church—Mr. Reid knows it, if I may say this incidentally are trying to wipe all this out. Do you know the old darky in the South that I heard about in Pennsylvania when I was a newsboy, who used to sing "Bredren, keep in the middle of the road"?

Mr. HOUSTON. But do you believe in punishment for any crime?

Mr. ZIMMERMANN. Let the punishment be in the faith taught, of helpfulness surely—it is written in nature. I pluck a rose and if I am careless, I get the thorn.

Mr. REID. That is just what I would like to have developed.

Mr. ZIMMERMANN. I don't know whether I developed it or not.

Mr. REID. But you are a Methodist?

Mr. ZIMMERMANN. No; I am a Helper from the Hills, which takes in all denominations.

Mr. REID. Aren't you a Methodist any more?

Mr. ZIMMERMANN. I am a retired Methodist preacher.

Mr. REID. When you put your hand in the fire, it gets burnt; is that not correct?

Mr. ZIMMERMANN. That is nature's law.

Mr. REID. When you touch an electric wire you get shocked?

Mr. ZIMMERMANN. That is nature's law also; quite correct.

Mr. REID. When you kill a man, is there any reaction that puts you out of business?

Mr. ZIMMERMANN. I believe that so far as we are physically concerned in this physical frame of ours that that man when he commits that act has coming back to him the same act that he committed, but not by the law organic or inorganic—by the law of God.

Mr. REID. A moment ago I asked you when you put your hand in the fire, you got it burned; if you touched anything charged with electricity, you got a certain result?

Mr. ZIMMERMANN. Right.

Mr. REID. I asked you if the same reasoning follows in regard to anything else that is permitted under the scheme of our existence. In other words, the same reaction. When a man kills another he does not get any reaction.

Mr. ZIMMERMANN. I believe he gets immediate reaction.

Mr. REID. It doesn't kill him or stop him from proceeding to do that again.

Mr. ZIMMERMANN. Then his higher manhood is abnormal.

Mr. REID. You think everybody who commits murder is a "dead one"?

Mr. ZIMMERMANN. Oh, in the sense in which I see in the teaching of the Man of Galilee and the Radiant Christ; that is the answer. It is in the thought lie we are what we are.

Mr. McLEOD. Mr. Sosnowski, I believe you desire to make a statement.

Mr. SOSNOWSKI. If you please, Mr. Chairman.

STATEMENT OF HON. JOHN B. SOSNOWSKI, REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. McLEOD. What is your full name?

Mr. SOSNOWSKI. John B. Sosnowski.

Mr. McLEOD. A Member of Congress?

Mr. SOSNOWSKI. Member of Congress from the first district of Michigan.

Mr. HAMMER. Are you opposed to capital punishment?

Mr. SOSNOWSKI. I am strictly opposed to capital punishment. I don't see what good it has brought the country. If we will compare the criminal court records of the various States and cities, for instance, if we compare the city of Detroit, my home town, where we have no capital punishment, and New York, Chicago, and other cities which have capital punishment, we will be readily convinced that it does in no way aid the elimination of crime.

As a matter of fact, the man who plans crime does not stop to think what the consequences will be. If he has any hatred in his heart for anyone, or if he has in mind the committing of a train robbery or the wrecking of a bank or any other institution, he at that time does not stop to think what the penalty will be. Many a man has been convicted on circumstantial evidence when it has been later shown in years after that the man was innocent.

Mr. HOUSTON. How many cases do you know of that kind, Mr. Sosnowski?

Mr. SOSNOWSKI. I, of course, have no record here at hand now, but there are a great many. From time to time the press reports have carried it all over the country, showing that 5, 10, 15, or 20 years after the crime had been committed some one had confessed to a crime for which an innocent man was either hanged or electrocuted.

Mr. McLEOD. Do you refer now to the Dombrowski murder in Michigan?

Mr. SOSNOWSKI. For instance, the Dombrowski murder, in Michigan, Mr. Chairman—that refreshes my memory.

Mr. McLEOD. Would you mind stating to the committee some facts in regard to that case—what the outcome was?

Mr. SOSNOWSKI. In the Dombrowski case in the city of Detroit, State of Michigan, a man was convicted and sentenced for life for a crime which he had never committed.

Mr. McLEOD. First-degree murder?

Mr. SOSNOWSKI. First-degree murder.

Mr. HOUSTON. Do you know anything about the evidence in that case, whether it was circumstantial or direct?

Mr. SOSNOWSKI. I know something in connection with it, and that is that a farmer living some 18 or 20 miles outside of the city of Detroit has his place entered and he was murdered; and a man I believe by the name of Sauerman was found guilty of murder in the first degree and it was afterwards proven that he was not the guilty party.

Mr. McLEOD. Had he served time before this was discovered?

Mr. SOSNOWSKI. Yes, he had.

Mr. McLEOD. How long had he served?

Mr. SOSNOWSKI. I believe he was in the State penitentiary two or three years.

Mr. McLEOD. How was he finally released?

Mr. SOSNOWSKI. He was finally released by the confession that was made by the man that was apprehended and confessed that Sauerman was not the man who committed the murder.

Mr. McLEOD. Sauerman was then pardoned?

Mr. SOSNOWSKI. I don't know just what the result was, because I had left the city. But I understand he was pardoned.

Mr. McLEOD. That was a case of circumstantial evidence, was it not?

Mr. SOSNOWSKI. Exactly.

Mr. McLEOD. And that was a case of first-degree homicide, was it not?

Mr. SOSNOWSKI. Yes; that is right.

Mr. REID. Let me ask you a question. How large is Detroit?

Mr. SOSNOWSKI. Well, it is climbing right up on the heels of Chicago, with a million and a half inhabitants.

Mr. REID. Chicago has about 3,000,000. You say you do not have much crime up there because you haven't capital punishment?

Mr. SOSNOWSKI. No; I say I think we have less crime than they have in other cities that have capital punishment.

Mr. REID. That is not a fair comparison, because you can not compare Chicago with Detroit in the matter of population.

Mr. SOSNOWSKI. Only in proportion.

Mr. REID. How many murders have you had in Detroit in the last year or series of years; have you any statistics on that?

Mr. SOSNOWSKI. No; I have not.

Mr. HOUSTON. Do you know whether or not there has been an effort made in your State of Michigan to reestablish capital punishment?

Mr. SOSNOWSKI. Oh, there has been from time to time by a very small minority.

Mr. HOUSTON. Why that agitation?

Mr. SOSNOWSKI. Well, that is largely due to a great many people coming into the city of Detroit from States where they have capital punishment.

Mr. HOUSTON. Have any prominent officials of your State been behind such a move?

Mr. SOSNOWSKI. It would be a very small percentage of them.

Mr. REID. Why would there be any agitation if there was no cause?

Mr. SOSNOWSKI. Well, there are many people who make it a habit of asking for legislation from time to time simply to satisfy their own ambitions.

Mr. REID. Have there been no murders or series of murders?

Mr. SOSNOWSKI. Not any more than in the past and not any more than in any other city in proportion to the population of the city of Detroit.

Mr. McLEOD. Has capital punishment ever been reinstated in the State of Michigan since 1847?

Mr. SOSNOWSKI. Not that I know of.

Mr. HAMMER. My information is that Tennessee abolished capital punishment and restored it.

Mr. SOSNOWSKI. I don't get that.

Mr. HAMMER. My information—I don't know how correct it is—is that Tennessee abolished capital punishment and restored it; and the reason assigned for it was that the failure to punish by hanging or electrocution was to encourage crime.

Another reason that was assigned—I am just asking your opinion about that—for capital punishment is that there are many extreme cases—I have one in mind now—where the crime was so revolting that public sentiment almost unanimously felt that he should be executed, and in that particular case in order that the criminal could be executed it was restored.

I am talking about the argument used in favor of capital punishment that we should be impartial in the administering of punishment, and that you can not be impartial when the public mind is almost unanimous against some criminals and in favor of executing some; and that it ought to be retained in order that those worst cases could be executed.

Mr. SOSNOWSKI. I don't believe that any man in his right mind would commit murder. I believe that a man that commits murder or any crime which would warrant, as some officials state, execution; that is, he is not in his right mind, and there is something mentally wrong with him and that we should take measures to correct and from a strict medical standpoint treat such criminals to correct any, I might say, inflection or any disease that they might be suffering from, and give them a chance in later years to realize that they have done something which is entirely wrong.

It has been stated from time to time in nearly all criminal cases, and I think you gentlemen will agree that the record will show that there has been at least 90 per cent of insanity traced to all criminals who have committed major crimes.

Mr. HAMMER. You don't mean to say probably what you said that no man commits murder intentionally—premeditation, lying in wait and poisoning, with the purpose of killing? Don't you think a man could be so debased that he will have such an absence of the better instincts of nature, such an abandoned wretch that he gives away to passion, hatred, prejudice, spirit of revenge, that he don't necessarily have to be deranged to kill people?

Mr. SOSNOWSKI. I still maintain that he actually loses his mind when he does that and he is not responsible for his acts at the time.

Mr. HOUSTON. Mr. Sosnowski, don't you believe that a person who commits murder, supposedly while insane, is sufficiently protected by court practice and rules of evidence at the present time?

Mr. SOSNOWSKI. I don't get that.

Mr. HOUSTON. That a person who commits crime while supposedly insane is amply protected by the court practice and rules of evidence at the present time? In other words, under the plea of insanity he is amply protected?

Mr. SOSNOWSKI. No; I don't think so. In fact, I have read a great many cases where insanity pleas were made and that was disregarded and the men were executed just the same.

Mr. McLEOD. In making that statement you classify malice or heated passion with a temporary form of insanity.

Mr. SOSNOWSKI. In other words, a man not realizing at that moment—

Mr. McLEOD. What he is doing?

Mr. SOSNOWSKI. That is right.

Mr. HAMMER. You referred to temporary insanity. The law does not recognize that, does it—the juries do, but the courts do not?

Mr. SOSNOWSKI. Not in all cases. There are cases where they do not recognize it.

Mr. REID. What would you do with a man who committed murder, then?

Mr. SOSNOWSKI. What would I do with a man who committed murder?

Mr. REID. Lock him up for that?

Mr. SOSNOWSKI. I would give him life imprisonment.

Mr. REID. If insane?

Mr. SOSNOWSKI. In that case I would send him to a criminal insane department.

Mr. REID. For how long?

Mr. SOSNOWSKI. For such a length that he was cured.

Mr. HAMMER. And then try him?

Mr. SOSNOWSKI. Yes, sir.

Mr. REID. You don't mean that.

Mr. SOSNOWSKI. I do not believe the gentlemen here understand me. I maintain I am against capital punishment. I would try him; of course, I would try him.

Mr. REID. What do you want to try him for? You say he must be crazy if he commits murder, so there would not be much use trying him under your theory.

Mr. SOSNOWSKI. What are you going to do with him, just turn him loose?

Mr. REID. I asked you what you would do with him.

Mr. SOSNOWSKI. I would give him a life sentence.

Mr. REID. What is the purpose of capital punishment?

Mr. SOSNOWSKI. It is to punish those who commit major crimes—murder, rape—and yet, you know as well as I do that in a great many cases people were electrocuted or hung on circumstantial evidence.

Mr. REID. Do you take into consideration the thought that such a man should be removed from society so he could not repeat the act?

Mr. SOSNOWSKI. We have other means of taking care of those. We have in our State and they have in other States.

Where we haven't capital punishment, is it not true that the crime record is less in Michigan than it is in those States where they have capital punishment?

Mr. HOUSTON. Have you the figures to prove that?

Mr. SOSNOWSKI. You know that as well as I do, without any figures.

Mr. REID. I don't know it. I am surprised at Michigan in the commission of crime.

Mr. SOSNOWSKI. Has capital punishment prevented murder in New York, Chicago, and other cities where they have capital punishment? Will you please answer that question?

Mr. HOUSTON. Certainly not. But is the whole purpose of punishment, for instance, taking the life of a man who has taken the life of another—merely the punishment of the criminal who has committed the crime?

Mr. SOSNOWSKI. Is not the punishment sufficient, if you have the evidence on a man that he has committed murder to put him in solitary confinement?

Mr. HOUSTON. You don't get my question. The main purpose of the punishment of the criminal who has committed murder is to deter others from doing the same thing; that is where the State comes in, in prosecuting that criminal for the protection of society.

Mr. SOSNOWSKI. Has it done so? Has it served its purpose in big cities?

Mr. HOUSTON. Has it stopped it?

Mr. SOSNOWSKI. Has it decreased it?

Mr. HOUSTON. How can you tell how many men who had murder in their hearts, who had the desire, the purpose, and the motive to commit murder, were prevented because of fear of punishment?

Mr. SOSNOWSKI. No sane man will commit murder.

Mr. REID. You do not mean that?

Mr. SOSNOWSKI. I mean it exactly.

Mr. REID. Do you think it follows from the commission of murder that a man is insane?

Mr. SOSNOWSKI. He is insane at the time.

Mr. HOUSTON. Of course, if that is your premise, he should not be punished.

Mr. McLEOD. You mean he may have been in the heat of passion, mentally unsound for the moment; you do not mean strictly insanity.

Mr. SOSNOWSKI. No; temporary insanity in those cases.

Mr. REID. Then he would get over it would he not?

Mr. SOSNOWSKI. I don't quite get that.

Mr. REID. He would get over it within a certain time?

Mr. SOSNOWSKI. If he is temporarily insane.

Mr. REID. Then he would get it again?

Mr. SOSNOWSKI. Suppose he did, would you electrocute him?

Mr. REID. I would not. But under your theory that if he is insane and he will get over it, then a man can commit a crime when he is insane, and, according to your theory, he might have a second spell.

Mr. HOUSTON. He might become insane again and kill somebody else?

Mr. SOSNOWSKI. Oh, no; you have overlooked the point I have made; he was found guilty, and he was imprisoned for life, so how is he going to commit murder again?

Mr. HOUSTON. I think you failed to get Mr. Reid's point and mine also. If he committed a crime or a murder while insane, he is not responsible and therefore can not be convicted of that crime because he is not responsible. He would have to be confined in an insane asylum.

Mr. SOSNOWSKI. But we have had convictions, haven't we?

Mr. HOUSTON. Well, possibly.

Mr. SOSNOWSKI. We have had it in the Thaw case.

Mr. HOUSTON. I think we have had a great many acquitted on the plea of insanity when they committed the crime.

Mr. HAMMER. Are you familiar with criminal history which indicates that crime is on the increase because of the increase in population? I don't mean that as an argument for capital punishment—but has it increased and to what extent? Is it increasing in your State in proportion to the population less than in other States? Have you any information on that?

Mr. SOSNOWSKI. Not offhand.

Mr. McLEOD. What is your opinion?

Mr. SOSNOWSKI. My opinion is that it is on the decrease.

Mr. HAMMER. In proportion to the increase in population?

Mr. SOSNOWSKI. Yes.

Mr. HAMMER. Michigan is increasing in population very rapidly, especially your own city.

Mr. SOSNOWSKI. Yes.

Mr. HOUSTON. Would it be possible, Mr. Sosnowski, for you to obtain the figures and compare them as to the crimes and the convictions, punishments, and so on, with other cities, and file that with the committee, and as compared with other States?

Mr. SOSNOWSKI. I could not to it at this time, especially when the House is in session, because I have perhaps one of the largest districts in the United States, and it takes practically all of my time.

Mr. HOUSTON. I thought you might secure it from some authority in your State, perhaps the attorney general's office.

Mr. McLEOD. Is it your opinion that the District of Columbia would be better off or benefitted by the abolishment of capital punishment?

Mr. SOSNOWSKI. I think not only the District of Columbia but any other State would be benefitted by the abolishment of capital punishment.

Mr. HAMMER. I will state to you, as far as the United States courts are concerned—all courts in the District of Columbia are United States courts; we have no State courts here.

Mr. REID. The old Mosaic law was "an eye for an eye and a tooth for a tooth." How do you reconcile that? Have you sanctioned that?

Mr. SOSNOWSKI. I don't get you.

Mr. REID. When a life is taken, according to the Old Testament, a life is given for a life—in the Old Testament when a life was taken they took another life in the place of it.

Mr. HOUSTON. An eye for an eye and a tooth for a tooth was the old Mosaic law.

Mr. SOSNOWSKI. I will let a lawyer answer that.

Mr. HOUSTON. You are so strong against capital punishment—is everybody in Detroit so strong against it?

Mr. SOSNOWSKI. I am speaking for myself and those I have come in contact with and in every case practically where I have discussed this matter with other people they were against capital punishment. You will find some people in the city of Detroit as well as anywhere else who believe in capital punishment.

Mr. HOUSTON. I was wondering how you got the good condition of so little crime. Do you think Michigan is in pretty good shape as to the amount of crime?

Mr. SOSNOWSKI. I think so; and I know it is—much better shape than many other States that have capital punishment.

Mr. HOUSTON. And you attribute that to the lack of capital punishment.

Mr. SOSNOWSKI. Not necessarily. That is hardly a fair comparison for instance, take the city of New York compared with the city of Detroit. I still maintain it has not decreased the crimes in the city of New York.

Mr. HOUSTON. Of course, they have not had the same excuses.

Mr. SOSNOWSKI. Then, let me ask you a question: Why has it not decreased the crimes in the city of New York?

Mr. HOUSTON. I can easily say if it had not been for capital punishment there would be many more crimes in New York.

Mr. SOSNOWSKI. Then why should not that apply to States that have capital punishment?

Mr. HOUSTON. You say there is no relation.

Mr. SOSNOWSKI. Not at all.

Mr. HOUSTON. Have you a large criminal element in Detroit?

Mr. SOSNOWSKI. No.

Mr. HOUSTON. I know it is an industrial city and I thought you might not have as large a criminal element in proportion as the city of New York and Chicago.

Mr. SOSNOWSKI. I think we have less in Detroit.

STATEMENT OF CLARENCE DARROW, ATTORNEY AT LAW, CHICAGO, ILL.

Mr. McLEOD. What is your full name, Mr. Darrow?

Mr. DARROW. Clarence Darrow.

Mr. McLEOD. You are a practicing attorney in Chicago in the State of Illinois?

Mr. DARROW. Yes.

Mr. REID. He practices everywhere; he has even been up in Detroit.

Mr. DARROW. I have to go farther away from home than I used to. I have practiced at law 48 years.

Mr. McLEOD. Mr. Darrow, during those 48 years, you have tried many homicide cases, have you not?

Mr. DARROW. Yes; quite a number.

Mr. McLEOD. Will you just proceed, then, with your statement?

Mr. REID. Give a general statement.

Mr. DARROW. For the last 20 or 25 years I have tried a good many criminal cases. I used to be a civil lawyer, perfectly respectful,

working for corporations. But I got switched onto the other more or less, first from a friend insisting on my doing it for him; and the newspapers did the rest, and I got to trying criminal cases, and have had a good many of them.

Of course, I have always been interested in this subject quite apart from being a lawyer. A lawyer does not know anything about it just because he is a lawyer. He has got to know something about crime, sociology, and be interested in human beings as well; he can not find it out just by reading law. And there is a good deal nobody knows anything about in connection with this subject—it is guess-work.

I had not thought about preparing any talk; I didn't think it was necessary. Perhaps it might be just as well for the committee to lead me to any questions that they think they would care to get my opinion on, if they want it at all.

Mr. REID. How many hanging cases have you been in?

Mr. DARROW. I have not been in any.

Mr. REID. I mean, where hanging was the punishment that could have been inflicted.

Mr. DARROW. Oh, Mr. Reid, I really don't know. There are a lot of lawyers who have tried more criminal cases than I have.

Mr. REID. I would like to get that in the record. You have tried a great many criminal cases, have you not?

Mr. DARROW. Oh, I suppose 40 or 50.

Mr. REID. And, of course, you haven't ever had any of your clients hang?

Mr. DARROW. Not yet. And I do not think there is much danger in the future, because I will die probably first now.

Mr. REID. Is most of your practice in Chicago?

Mr. DARROW. Yes; most of it.

Mr. REID. Cook County; that is your general practice?

Mr. DARROW. Yes.

Mr. REID. I wish you would go on and tell about conditions in Chicago. That is very interesting.

Mr. DARROW. I don't know anything about conditions in Chicago except what I read in the newspapers, and they get it from the crimes commission who are paid for keeping folks excited. I imagine they are just the same.

I picked up the paper the other day, and I found in one of the papers an item of what was happening 60 years ago. It showed they were having a crime crusade then.

And I saw another one published 30 years ago, reciting about another crime crusade.

They are always having one, because there is always somebody to stir it up. I don't imagine there is any particular difference as the years have passed. But every once in awhile we have a campaign on the subject, as they do everywhere, thinking we do not kill enough people and keep them in prison long enough; and that leaves the impression there is what they call a "crime wave" on. But as near as I can find out, the crime wave has always been on when the population is increasing. In the United States there is no danger of such things dying out; and there are at least two killed by automobiles to where there is one killed in the way of homicide.

So, I don't imagine the question has changed much from time to time.

Perhaps growing out of the war people find it a little easier to take human life. We haven't been appraising human life at very much value in the last 10 years, you know. We have been offering a premium for killing, and kind of getting used to it. So it does not mean very much, neither on the part of what the people say, unless we are all criminals, nor on the part of district attorneys, judges, or newspapers, or anybody else might enjoy. We have got used to it. Having got prohibition, we have to get a kick out of something, and that is one way to get it. But, really, I don't imagine conditions have changed very much.

Mr. REID. Tell the committee about the different cases and experiences you have had of capital punishment deterring or inciting crime.

Mr. DARROW. It is a notorious fact that the effect of capital punishment on crime is purely theoretical. There is nobody that can get at it with any certainty, from any sort of evidence. I speak as if I knew—I don't know. But I am giving my opinion, perhaps rather forcibly, and of course it is the result of a great deal of investigation.

There are plenty of books published that give compilation of figures on what we call "crime," and especially on what is known as murders or homicides and hanging. I don't know how well they are tabulated as to cities, but they are tabulated as to States.

The gentleman from Michigan, I am sure, is quite right when he says Michigan shows a lower rate than the States where there is hanging or "roasting," which is a more humane method, I believe. But there is not any doubt but what if you take the States where there is no killing for homicide, the rate of murder is lower. But that does not prove anything. I want to be perfectly fair with this committee, and I know perfectly well that it is all foolishness to talk about this question. It does not depend on the arguments: it depends on what kind of fellows you are; that is all. If you have imagination and sympathy, why you are against capital punishment: if you have not those attributes, you are for it. It is not a question of what has happened anywhere.

If a man can think of how often he has been a murderer himself, he would have some sympathy with other fellows who are legally killed; and, of course, we are all murderers at heart—that is, I never killed anybody, but I often read an obituary notice with great satisfaction [laughter], which means that I approve of it all right, and everybody else does the same. Good people get a great kick out of hanging; they always approve of that death. And there you are. It is in all of us; it is only a question of terms and conditions under which it comes out. If we realize it, we are probably a little sorry for the other fellows, whom we know perfectly well were governed by circumstances just as well as we are.

But, as to figures, I would say that it is a hopeless, useless job. The figures will show that the States where there is no capital punishment have a lower ratio of killing, of homicide. But the States where there is no capital punishment are mainly agricultural States, which don't lead to killings, like, of course, Michigan, which has got one large

city, and it has grown very rapidly and has hardly had time to get statistics; but in the main it has been an agricultural State.

Kansas has none, and it is also an agricultural State.

Wisconsin is an agricultural State, in the main; it has none; there is no capital punishment there.

Maine is another State which is not given to large cities. Farmers do not do much killing; they can not get excited readily enough; there is nothing about their business that lends itself to it, and they are not venturesome. But you have to compare populations to find out, and then you do not know, because there are no two populations, even in big cities alike; for instance, you examine generally the homicides and you will say we have a good many in Chicago; now, examine specifically, and you will find out—I am not intending to be absolutely correct on these figures, but you will probably find out that 30 per cent of them, and most likely 40 per cent are negroes; and you would find out that probably 25 per cent were Italians. Of course, the negro population has come in there very rapidly, and it creates friction. For my part, I don't think the negroes are responsible for it at all; and, of course, you can hang a negro on much less evidence than you can a white man. I understand there has never been but one white man hung here in the District of Columbia. I don't know what the facts are, but I understand that is the case. They probably thought he had some negro blood in him—I don't know anything about that.

But you may take any list of figures; for example, they are always talking about England and the United States. As a matter of fact, we do more hanging in the United States than in England. As I recall it, they have only 12 or 14 hangings in a year in Great Britain. I would not want to be absolutely certain about it, but if you could take Mr. Law's book, he has that all classified; and half of the people that are convicted over there are not hanged; they are saved by the Ministry of Justice and by the various departments; and when you get all down to it, we probably have 10 to 1 hangings here, which is away out of proportion to the population.

So it is all nonsense when they quote what England does. Of course, people are in the habit of doing it. Every once in a while we have an Irish judge going over there and sitting on the bench and then coming back and telling what a wonderful system they have in England. I don't know what they do to him, but that is what happens. However, all those statistics are available. But you can not get anything out of that. It gets down to a theoretical question: What effect does it have on John Jones if he knows that Tom Brown is hung for killing? If anybody can tell that they are better psychologists than I am. There is nobody who knows. I do know this, that it is pretty evident many times the fact that John Smith is hung makes Tom Brown kill somebody. Why I say that is because you can see everywhere crimes repeated in the exact detail suggested. I can not say that it does not sometimes prevent it. I don't know. How is anybody going to know? It is all guess work, jumping in the dark.

But I do know something about psychology and, as a matter of reasoning I think there is no connection between hanging somebody and keeping somebody else from murder; for instance, you can take it in little barnyard psychology. Take the actions of a little boy;

take little Johnny, who likes raspberry jam, and he knows his mother has got some up on the top shelf she is keeping until the preacher comes; and she goes out gossiping with her neighbors. So he shoves up a table and chair and goes after the raspberry jam. She comes in and finds Johnny's face covered with jam, and she takes that as evidence he has been in it, and tells him she will break his neck if he does it again. We have all done it.

What effect does that have on Johnny? It does not make him hate raspberry jam; that is perfectly plain. It probably increases his desire for jam, as sometimes the Volstead Act makes us thirsty. But it does not make him hate jam, and it does not make him love his mother. That is true also.

What does it do? Why, it makes him consider that he has got to be a little careful the next time he gets in there; and the next time his mother goes out gossiping with neighbors he gets into the jam, and he washes his face and rubs some of the jam on the face of his little baby sister, or does something like that, so as to destroy the clue. That is the direct psychology. If there is something going to be done to you, if you are caught, you take more pains not to be caught. There is not any question about it. Anybody any ways familiar with psychology would know it must be so. It could only affect a man who thought that it was not possible to kill somebody and not get caught. Yet, that kind of a man it might affect. I would not say it might not. But they are a pretty weak bunch, all those fellows, and they are not killers, as a rule.

It has the effect of added precaution, and everybody who knows anything about homicide or anything else anybody is trying to get away with—and there is lots of stuff good people are getting away with, you know. They know all these things are planned and planned to prevent detection—almost all of them are planned to prevent detection; and if it has any effect whatever it is that he has to make the plan more carefully.

Of course, the very danger of it with us is the enticement. Boys go into this business when they would not go into it except through enticement—I do not mean all of them. It is hard work to bunch things. No two human frames are alike, and the stimuli does not work on any two persons just the same. You have to sort them out.

Then, when you come to murderers, what are they anyway? It is all well enough to say that 100 people committed murder in Chicago at a given time. But what were they and what were their characters?

The old-time stories, you know, used to contain sketches of some maliciously bad fellow with an abandoned heart—whatever that is, I don't know—that hated somebody and killed him because he hated him. Now, that is all fiction. If that is what we are talking about, it is not worth while to talk about it, because it does not exist. It might be that once or twice in a century some such case would happen.

You can classify all killings broadly in two classes. You won't get all of them, but you will get most of them: First, they are young people or start with young people; and they are engaged in robbery or burglary, in the second place, or possibly some other serious offense. They do not intend to kill anybody, of course; that is the last thing experienced men do. But they do it if it is necessary. Now, if he is surprised, and liable to be detected, he will shoot. That is undoubtedly the largest part of the killings and very much the

largest. Again, I will say I could not give you statistics to rely on, but I am very sure of my position.

So it is perfectly evident that you can not do anything with that kind of a situation in the way of terrorizing them into goodness; you can not do that at all.

I will tell you some things that I think could be done, if you care to hear them, after a few minutes.

Perhaps the next largest class grow out of associations of men and women; husbands kill wives and wives kill husbands. Husbands do not always kill and wives do not always kill when they approve of the death. But they do kill. They sometimes wait for Providence to intervene, but there are a very considerable number of such killings. And lovers and sweethearts kill each other, because intense love is one of the inducing causes to intense hate. It may not always work out that way, but it often does. Now, there is a class that furnishes a good many homicides. Women kill their husbands. They kill a man because he married them, or did not, whichever way it is; it doesn't matter—either way. And husbands kill wives occasionally.

It is perfectly evident that hanging does not make any difference. If you got a fairly intense lady after you with a gun, you would hardly think of saying, "My dear madam, don't you know you are going to be hanged if you kill me?" [Laughter.] No; you will make your get-away as quickly as you can, and you will be losing time if you reason about it.

Those things don't count in any of the times that you might put down as emotional, where there is no money cause connected with it, where anger and intense feeling comes up at the time; they don't count. Where do they count? I confess I don't see any considerable number where they do count. There may be some very weak people that I have spoken of that would be kept from it on the theory that they never could get away with it. But that does not amount to anything.

So, quite aside from all the rest, the great mass is entirely influenced by it.

And then we always have the young and the weak who are induced to it by suggestion. It is more interesting to me to know whether anybody believes in capital punishment. I don't think they do. They just say so. Let us examine that question a little.

If I get too long on this, just indicate it, won't you, Mr. Chairman, because I never do know when to turn off on this subject, not that I think I know so much about it, but I have studied it some.

But I am interested in knowing whether anybody believes in it.

We all know that in just a little over a century 150 different crimes were punishable in England by death; and they gradually got rid of them, mainly because jurors were too humane to obey the law, and they refused to convict, and they got rid of it. So that now there are only one or two or three crimes punishable by death.

They used to hang them as a public holiday, out on a high hill. And the hanging was not necessarily a method of killing. It was an exhibition, so people could see what happened to a fellow who was bad. They might boil them first. That was the favorite way—putting them in cold oil and heating it up gradually so as to boil them, and then hanging them afterwards. Or, they might smother them

between feather beds, as we do down in the country, where we keep warm in the wintertime. But, after they were killed or before it, they were hanged at the crossways.

You people have all been over this subject, no doubt. Sometimes they were killed by hanging on a public occasion, and thousands would generally go. They would hang them for picking pockets, and everybody got their pockets picked going away from the hanging. [Laughter.] That was one reason they abolished it. They were always sure to have pickpockets there just as much as you would around a circus.

But they would leave the fellow dangling at the crossroads, hanging in chains until the birds picked all the flesh off him, and everybody who had to go by could hear the bones creaking in the nighttime, especially if there was a good strong wind.

The theory of that was honestly they thought if anybody saw those bones there they would not go out and kill anybody or pick anybody's pocket. It didn't make any difference, though.

Why don't we do it publicly? If killing one man keeps some other man straight, then it ought to be public, ought it not? If John Smith is going to be kept straight at the expense of Tom Jones's life, John Smith ought to know all about it.

We had a sheriff in Chicago who got a brainstorm, as most of them do now and then, and he issued the edict that every time there was a hanging everybody in the jail should be compelled to see it—that is, all the prisoners—the guards all wanted to go anyhow. But he was going to make the prisoners see it because that would make them good. Of course, he was not a psychologist; he was a sheriff. [Laughter.] Now, there were several lapses in his reasoning. First, it didn't follow that everybody in the jail was going to go out and kill somebody; and, second, it by no means followed that everybody who was going to kill somebody was already in jail. But that is pretty close reasoning for a sheriff, anyhow.

The sheriff was right in one way, that if there is any force in hanging, then the people ought to know it; they ought to be hanged out on a hill, just as they used to be in this country. Everybody ought to go. They ought to let out the schools, because there is nothing we teach children so important for them to learn as is respect of human life; and there is the place to learn it, where there is a hanging. If the theory of the people who say they believe in it but don't, is true, that is what ought to happen. Every child ought to be compelled to go to penitentiaries, so as to see what happens to these fellows who do not go straight; and, of course, the movies ought to have it—ought to have all these pictures. But they don't permit it. Why don't they permit it? Why not show these hangings in the movies, and then everybody would get good? That would be fine if the theory is right. But they don't permit it, because anyone who knows anything about psychology—and there are some lawmakers who do—I am speaking of members of the legislature—they know how much children get by suggestion. And they know perfectly well, or think they know—of course that is partly theoretical, but at least they have come to that conclusion—that the suggestion of crime in the movies produces crime. Now, it is up to some fellow who believes in other people to harmonize some of these things.

Of course, we get it in the newspapers—we can not help it, because no legislative body dares to tell the newspapers what to do; and if they do, they don't obey—publish it anyhow. If it is right to publish it in the newspapers, it is certainly right to have it in the movies.

And if there is anything whatever in the theory—which is the last retreat of the people who believe in capital punishment—that punishing somebody restrains another one or others, then, of course, what we need is publicity. There is not any question about it. Nobody believes in it.

Why, just look at the situation here: First, we had public hangings even in this country. I remember my father telling me about seeing in Ohio—well, I think it worked, because he never killed anybody afterwards; he never went to another one, either. But we used to have them, and everybody went, and everybody supposed that it was the duty of the officials to have it published. Finally we got rid of that. We thought on the whole it did more harm than good; and England has done the same thing exactly—just exactly the same psychology.

Then we had formerly public hangings in the jail; we got rid of that. Now, as a rule, we hang or dispose of them in the nighttime, when nobody is around, and there are even legislatures bold enough to permit publishing the details in the newspapers.

After awhile they will do it in the dark, and just have obituary notices: "John Smith died of sore throat," or something like that. Then it possibly can not do anybody any good; it won't keep anybody righteous by reading that obituary notice.

So there is not anybody really who believes in the theory. If he did, he would act differently. He just has heard about it and has been raised with it; and that is all there is to it.

Mr. McLEOD. Does the fear of the punishment itself have any effect on the minds of criminals?

Mr. DARROW. Well, now, of course, when you are asking how much something will affect my mind, or how much something will affect your mind and how much others, there is not any use dogmatizing about it. How do we know? But it is perfectly evident that the fear of punishment produces caution; first, to get away with it. But certainly there are no facts to show that the fear of punishment has much to do with it.

I know Perry, who was probably the greatest man in the world in his line, the Italian criminologist, head of the Turin school—and, of course, we are all amateurs in this country. If you find anything that is really scientific on this or most of the mental matters, you have got to go to the Europeans, who have been working at it for ages. But he says it is doubtful whether punishment ever had any restraint upon any human being. But he does not say it dogmatically. You can not do that. Nobody knows. That it has been overestimated, there can be no sort of question.

There is another thing about this: A man's life in this world, you know, is not any too pleasant. It might be in Congress—I don't know what it would be here—but as a rule it is not any too pleasant. There is a lot of trouble, and the greatest evil of all is fear, because we die a whole lot of times while we are still living—just get scared of ourselves, and if a man can banish fear he can banish the greatest evil in the world. And all the possible effect that punishment could

have is through fear. Punishment is cultivating it instead of destroying it; and the great thing is to destroy it. If we could do that, we would manage to get through life pretty fairly comfortably. It is entirely in the wrong line.

Now, is there anything accomplished by it? If the teachings of all the ethical teachers in the world is correct, it is going at it in the wrong way.

I don't know one who could be classed as a great religious teacher in the world who has ever taught it. They think the world will not be made better by it. It may be all wrong. We all profess to believe in it, but none of us follow it.

I can tell you in a very few minutes just what I think about what could be done, if this committee wants to do it or could do it. But it does bear on the other question. The great mass of what we call criminals—not only hanging but everything else—comes from one class—they come from boys. I will undertake to say, without attempting to give definite figures, that there is not one in ten—I could say one in a hundred pretty safely, but I will say one in ten to be very conservative—there is not one crime in ten that does not come from a boy, a young boy or from some one who began his criminal course as a boy.

I don't want to be misunderstood about this. There are many crimes that come from younger people, but in almost every instance it began as a child, almost every single instance, and very young, too—a very young child. The criminal idea starts very young. Of course, we don't learn very much after we get along in years. We add a little experience to what we have had and get a little more knowledge, but our general scheme is fixed and our plan of life is pretty well established. We get that very young.

The boys that it comes from are almost always boys of poor parentage—almost always poor, often subnormal; that is, they have not as much intellect as the average man, and you can know that would be pretty low, and more or less defective, and young.

These boys, as a rule, either do not go to school—practically all of them are uneducated; they don't go to school—because they can not afford it or do not like it, or haven't any capacity, and probably the latter is the right reason. It doesn't do them any good to teach them to bound Indiana; they are not interested in Indiana and probably nobody else is, that does not live there. But those things you learn in school haven't got the slightest interest for them. They forget them. They might be good mechanics, many of them could be. But the schools do not give them any training that fits them for life; and they go out without any calling at all. They have not anything else to do. They drift into crime just as naturally as some other boy goes from the primary grade to the high school and on up to college. There is not any escape from it. We are not creatures of law. Everything we do follows from something else.

Children ought to begin their education as a child when a year old. He ought gradually to get into the right habits. The parents should find out what the child is fitted for and he should be trained for the thing he is fitted for, and only turned out when he can make some place for himself in life. There are not many people who "go wrong," as we call it, who have an independent calling. If they do, there is something wrong with them almost always. You will find

very few men who have a fair kind of business that are in our criminal courts; very few men who have a trade—very few workmen with a trade that are criminals, unless he is a plumber or something like that. [Laughter.] But barring that, they are not. They have something else to do, and they all come along this line. Some time we will get to it. You may think this is very irrelevant, but it is only relevant on the point that I think punishment has not got anything to do with it.

I don't think I ought to talk so long. I don't know anything else I care to say. If any one wants to ask questions, I will answer them, and if I can not, I will tell you I can not.

Mr. HOUSTON. Mr. Darrow, you have defended, of course, a number of men guilty of homicide, and to more or less extent had their confidence, I suppose?

Mr. DARROW. Yes.

Mr. HOUSTON. In cases of that kind, have they, in their planning of first-degree premeditated murder, taken into consideration the possibility of punishment? What has been your experience along that line?

Mr. DARROW. I never knew a case where people did not take that into consideration—although I have know some plain cases of insanity. Of course, we have been speaking of insanity. Nobody knows what it is, where it is, or how much it is. But there are people whose minds are so far affected—take people that I have illustrated with the sex question, where the feelings are so strong they override everything else, don't take anything into consideration at all. But outside of that, I don't think I ever heard of a case where it was not considered.

Mr. HOUSTON. But your experience leads you to the conclusion that it does not deter—while they take that into consideration, it does not deter them from the committing of the murder?

Mr. DARROW. I don't believe it has any effect. I can not say that here and there some fellow has not been deterred. I am quite certain many of them have had it suggested, and I think everybody knows that. That is the reason we do not permit it in the movies. The mind, you know, operates in a strange way, and children learn only by suggestion.

Mr. HOUSTON. The reason, then, a man premeditates and plans—are those essentials of the first degree murder—

Mr. DARROW. Yes.

Mr. HOUSTON (continuing). Is because not of conscience but because he fears punishment?

Mr. DARROW. Well, of course, he may plan to do it; he plans both to do the thing and to get away with it; that is, assume a fellow is going to rob a bank, from the outside, I mean, now—of course, I am not familiar with the inside plans, but the outside. They have first got to pick their time and situation with respect to people around there at the time, and all those things; and plan to get away. Every fairly intelligent person, of course, plans when he does these things, the same as he does anything else.

Mr. HOUSTON. He seeks, of course, by that planning to avoid being caught?

Mr. DARROW. Certainly.

Mr. HOUSTON. If he seeks to avoid being caught, is that because of the fear in his conscience or mind—intelligence—that he may be punished if caught, or is it the natural, inherent fear?

Mr. DARROW. Undoubtedly he plans to avoid being caught on account of punishment.

Mr. HOUSTON. Because of punishment?

Mr. DARROW. Certainly. But the question of whether he is going to the penitentiary for life or a term of years, or he is going to hang, is nothing to him. He may think of it afterwards, when he confronts death.

But you can get this very easily, because you take a minor offense, not a very serious one; and to prevent apprehension they are killed, take a chance of dying. Most people do it even to prevent scandal. There are things people really dread worse than death at the time. When you get caught and are on trial, you haven't anything left beyond life. There are not many of us here who do not dread many things worse than we do death.

There is one other thing that it seems to me people do not understand very thoroughly. If you are going to classify crimes, it is very hard to tell what is the most serious one. There is no way of getting at what is the most serious ones.

As a matter of fact, the fellows who kill are generally of much stronger fiber than those who commit lesser things. You go to any of these penitentiaries and you will find the trusties are mostly men who have been sent there for life. There are sometimes fellows who never commit but one crime, and we will find fellows who come up through the course I speak of. But they have fiber to them. Take, for instance, the sneak thief. You can not cure that. You can cure a lot of people if they have the stuff in them to be cured; I mean by that, they can learn to adjust themselves to the life. But there are some of them so weak you can not cure them. You take one of these small things. You can not do much with that. Or take poisoning; it is too easy to do something like that. That is almost helpless. But I think there are very few men who are paroled for murder or homicide—generally murder in the second degree or homicide—will ever kill again—not 10 per cent of them. I have followed the statistics pretty well from most of these prisoners, and they vary some, but as a rule it is less than 10 per cent, if the figures are good. I do not place as much reliance on figures as some people do, but that kind of figures ought to be pretty reliable. So the reason we fix punishment for murder is just because we got the habit. It just happened that way. There is not any more reason for that than stealing or pickpockets.

Mr. HOUSTON. Could you state from your experience if the man who has committed murder fears hanging more than he does life imprisonment, or vice versa?

Mr. DARROW. If you step up to a man and say, "Which would you rather do—be imprisoned for life or hanged?" I think about 9 out of 10 would say they would rather be hanged.

Suppose you asked that of this bunch of people here. And we are all making a serious mistake in psychology when we think those people are any different from ourselves; they are not. They have just a different twist here and there, probably because of circumstances in life. I would guess if these people here would tell us

just the way they feel to-day 9 out of 10 would say they had rather die, would rather be executed than to be sent to prison for life, because it is a horribly hard thing, and everybody knows it. There is not a ray of light in it; and just as a fellow would take ether for a surgical operation, so he would be dead while it was being performed, he would like to be dead when the pain comes; and there is nothing but pain. Everybody takes ether so he would not be living during that time.

Mr. McLEOD. It is a fact, is it not, that mental anguish or mental pain is more severe than physical pain?

Mr. DARROW. It annoys us a good deal more. We all know this from our own experience: Our minds have troubled us a lot more than our bodies. Of course, we get toothache once in awhile before we get new ones. But, at the same time, it is a trifling matter. The anguish of mind is a great thing.

But I have not got through with the answer, because I want to leave it just as I think it is: You step up to a man, if you can imagine it—I have never done it, just about to rob a bank—I never got in that early on it—and say “If you kill somebody and get caught, what do you want to do, be hanged or go to prison for life?” All of them say, “I would rather be hanged.”

But catch them once and get them into court and convict them, and get a death sentence; and you may fill their place up with poison and razors and ropes, and there is not one in a hundred that will suicide. I think I know what I am talking about. The will to live is always strong in us.

You ask me what I would rather do next week, be sent to the penitentiary or to hang. I would say, “Hang me.”

If you ask me what I want to do this afternoon, “Do I want to die or go back to my cell?” I will say “I will go back in my cell”—just the will to live. That is the psychology of it.

Mr. HOUSTON. They are generally willing to spend a lot of money for a high-priced lawyer in order to get a life sentence instead of hanging?

Mr. DARROW. No, no. You know this “high-priced lawyer” is bunk.

Mr. HOUSTON. I am a lawyer; I happen to know.

Mr. DARROW. Yes; but you are a respectable lawyer, trying civil cases?

Mr. HOUSTON. Criminal cases, too, in a small way.

Mr. DARROW. Have you ever found many criminals that have much money?

Mr. HOUSTON. I never did.

Mr. DARROW. There is not money enough in a big prison to pay a lawyer for going through the inmates. There is nothing there. They are all poor when they get there. I say “all”; there are exceptions.

I had a case which I seldom talk about, which everybody thinks about, which I would like to talk about. But you know how far a lawyer can go in talking about it—of two boys. Now, you can imagine what a family would think of having somebody hanged, whether the individual thought so or not. It is something we do not want in the family. That is another terrible thing about this capital punishment business. The family never gets over it. “Your grand-

father was hanged; your uncle was hanged.” It lives to torment any number of unborn children, who at least are absolutely innocent; and for nothing. There is not a man lives who can show any connection between punishment and suppression of crime. Mind, I am not saying there is not—it is a metaphysical question; but it does not show.

Let us see just a minute about one proposition: How many people are hanged?

To hear the newspapers and crime commissions and good people talking about hanging—my God, they could get rid of hanging, and we could have everything else—“We don’t need Christianity; we don’t need schools, but for God’s sake give us hanging.” How many people are hanged in the United States? Well, I would say not over 125 a year. And who are they? First, half of them are negroes. Most of those ought not to have been hanged. I am not speaking with reference to the South, because we feel just the same way up North—I don’t, but everybody else does. You can convict a negro on any kind of evidence, anywhere I ever practiced law, just because we got used to it, unless it is up in Detroit. I don’t know about that. But otherwise you can.

Practically all of the rest of them are inconsequential, half idiotic, don’t count at all. And yet with this little fool thing we are cheapening the value of human life.

The first thing I think to prevent murder is to teach a higher value of human life. It filters down to everybody. And if the State can not do it, who can do it?

I hear these advocates of capital punishment say, “We are just as merciful as the fellow who did the killing, aren’t we?” “Yes, sir, just about; the State is just about as merciful as they are.” A fine comparison, but they don’t know it. They are not quite as merciful, because I never knew of anybody who killed under torture. Killing is a matter of business, so as to save their liberty. But the State does the torture act. They say to a fellow, “On the 23d day of next December you are to be hanged by the neck until dead.” Fine scheme, isn’t it. Can you imagine anything more of a torture than that? “In the early morning hours next week they are going to lead you out and sit you in a chair, roll up your trousers, and switch on the electricity and burn you to death.”

What happens in the meantime? I never knew of a murderer who would do it. They are pretty nearly always trying to help each other, at least. It takes a good fellow to do that. There is not any indignation quite so cruel as righteous indignation. No humane people do it; and yet we act like we thought it was a little thing. If we cultivate some sort of kindness, charity, humaneness, and, first of all, see that the boys have a chance, the youngsters, to fix habits, we can do something for crime, and I don’t believe we can do it any other way.

Mr. McLEOD. Mr. Darrow, you suggested that the great number of capital crimes were committed by the poor boy, uneducated?

Mr. DARROW. Yes.

Mr. McLEOD. Is there a great contrast—I am asking this question on request—in one of your many famous cases recently tried in Chicago?

Mr. DARROW. Yes.

Mr. McLEOD. There were two willful boys.

Mr. DARROW. That case could probably never be duplicated in a thousand years. It is just as easily understood as our presence in those rooms. It is one of those things—I might talk to some lawyer privately, but I would not talk about it in public. It never happened before, and probably no such thing will ever happen again; and it was a plain, clear case of mental condition and nobody had ever dreamed of severe punishment if they had not had money—I mean death penalty. It probably has been the most misunderstood case we have had in this country for a long time—I don't know when. But all of you know that stands absolutely alone. I don't need to even turn to books. You gentlemen are mostly lawyers. You know how much money people have who go to jail; they are the poor. Are rich men better than poor people? I don't think so—I don't honestly think so. I never had much money; I never cared much for it. But somehow or other the last few years I have been feeling that I ought to have enough left for my wife to get married on, anyhow. [Laughter.] So I have been trying to get a little bit ahead, and I find the more money I get the stingier and meaner I get. I always would give it away before. But I am getting stingy. I think it destroys anybody; and it certainly is not true that rich people are better than poor people. It is the condition that causes it, and it will cause it forever. And it is not the history of the United States; it is the history of the world.

I don't know why people can not think that there is a cause for crime. You know this used to be a world of miracles, and the whole world was a miracle, and when you sowed wheat you sowed with prayer. Nobody thought it would come up if they didn't pray. Now nobody prays unless it gets too dry in the summer time. They might get up a prayer meeting before the crop is all gone.

But they used to think it was a world of miracles. Of course, disease was a miracle. Which meant the devil infested the body and should be cast out—cast out with prayers and imprecations, and all the spirit things; and doctors were sent to jail and otherwise maltreated because they tried to cure sick people, and after that insane people, because they were possessed with devils or were devils themselves.

Now we know the causes of disease. We know the causes of the growth of plants. We know perfectly well that insanity is disease, and how it originates; and we have nothing left now but crime, which is the poor result of deviltry on the part of the individual. Some time we will know enough to know that nothing happens that is not caused.

Suppose you could lay your hand on the boy at the right time or different right times. Say two boys were brought into this world, both born without any knowledge at all. People are generally born without any knowledge and generally die that way, too, for that matter. But all are born that way, have no ideas of right or wrong, and no habits of any kind. Of course, killing is not wrong; stealing is not wrong; nothing is wrong. Gradually one of them is taught and gets a line of habit and the way to make his way in the world; and he keeps in that way. The other one never was taught, never gets any habits, just exactly as easy to go one way as the other, because there is no inherent feeling against killing anything; it is not

born; it is purely inculcated. There is nothing against stealing. And the other grows up and there is no place for it. I do not know anything that is simpler, but may be that is one reason why you can not ever make some one see it. I don't know.

I feel I ought to apologize for taking so much time.

Mr. HAMMER. One of the chief objections to capital punishment in my mind is that where capital punishment exists frequently an ignorant, illiterate, debased—not necessarily debased, always—but low-type individual, a colored man perhaps, is brought to the bar of justice charged with a capital offense. He is not able to employ attorneys and pay large fees, and he gets one as cheap as he can, and the case results in his pleading guilty usually to a lesser offense—not the capital offense—second-degree murder; or, instead of burglary, where burglary is a capital offense, say for housebreaking, and frequently he gets a longer term than he should. The judge sometimes does not develop the case, and the prosecuting officer is not diligent, and does not take the time to present all the facts to the judge because he is charged with the higher offense. I have sometimes seen ignorant negroes and white people get a much longer term than they would have gotten if they had been indicted for the offense for which they were actually punished.

I think that is one of the chief objections, because they quit convicting people for the major offense in most States?

Mr. DARROW. That is right.

Mr. HAMMER. And another thing, the juries are usually against capital punishment. I do not mean all of them. But take in a section like where I live, and a great many Moravians and some Quakers and others such as Methodists and Baptists who are not much on punishment, and even Presbyterians, who are a little more for punishment—

Mr. DARROW. Yes; they are strong for punishing folks. I hope they get it. [Laughter.]

Mr. HAMMER. In one instance I knew where there was a lynching, and one of the participants in the lynching bee, as it is called sometimes, said he tied the knot that hanged one of the negroes—there were three negroes lynched for committing a very heinous crime. Well, the defendant didn't go on the stand when he was tried—the defendant did not—but the jury decided he was not telling the truth when he admitted that he committed the crime and tied the knot, and they turned him loose.

Mr. DARROW. That was not in North Carolina, was it? [Laughter.]

Mr. HAMMER. Yes; and I was prosecuting attorney. It has been a long time, Mr. Darrow. But the jury did convict the leader of the lynching, and he was sentenced to 15 years—a white man. And there was not another lynching in the State for seven and a half years, and we practically abolished lynching there. There was none last year.

Mr. DARROW. I know North Carolina has done that, and it is gradually fading out of the South. I know the number of lynchings is not so great as they were. But you haven't any monopoly on that.

Mr. HAMMER. I know some men in my State who are yet advocates of lynching, and I know some ladies also who advocate it.

Mr. DARROW. Women are apt to say what they think more than the men. [Laughter.]

Mr. HAMMER. I know men of high standing in the community, and what are called outstanding citizens, who are in favor of it. But it is murder, and there is not any excuse for it.

Mr. DARROW. Yes; they lynched a colored man a few years ago who lived 40 or 50 years in Springfield, Ill., right close to Lincoln's Monument.

Mr. HAMMER. We had a case in our State the other day in which a colored man committed a most criminal and barbarous outrage on a deaf and dumb girl 16 years old, and he, after being convicted and then before he was electrocuted, admitted his guilt; and the newspapers in the State that favor capital punishment are using that as a great outstanding case that shows capital punishment should not be abolished; and I have an article here that contends in what they call "unanswerable arguments" in that particular case, and it does look like, as Judge McCoy said before our subcommittee the other day, sometimes when these horrible cases come up it ought not to be abolished, and it is hard to decide what is the proper thing to do.

Mr. DARROW. It is just sentiment, which is a dear thing. They nourish capital punishment like they nourish and reverence a dead grandmother. It has just got to be a household thing with them; that is all.

I didn't mean to interrupt you, but I was just going to point to Wisconsin. They didn't get rid of capital punishment there because they were good, but because they hanged a young fellow there who was innocent, and they got rid of it.

Iowa didn't have any capital punishment, but somebody committed what they called an atrocious murder, and they enacted a capital punishment law next legislature, but he escaped it because he came in ahead of the law. But a lot of poor fellows were punished for that brain storm.

Mr. HAMMER. You don't think that that occurs often, that men are convicted or executed who are innocent?

Mr. DARROW. I would like to say a word about that.

Mr. HAMMER. I do not agree with you that negroes are treated worse than white men. I think they favor negroes more than white men as a rule.

Mr. DARROW. They do not with us.

Mr. HAMMER. I do not know that they do with us, but I have had that impression in court—that they are more disposed to give the negroes a fair trial.

Mr. DARROW. In the first place, they are all poor and they are all handicapped. There are two kinds of people in this world who are handicapped—one the very poor and the other the very rich. They haven't got a chance, as a rule. I can not think that you are right. I think they haven't got much of a chance. You might say I said it because you are from North Carolina, but I think you are a probably little ahead of the rest of them down there on that question, and I will tell you afterwards why I say that. But that is what I do think.

I was down in Louisiana debating capital punishment in New Orleans and, of course, I heard the same story. "We have got to have it down here to protect the purity of the white blood." Well, I mildly suggested I didn't think the colored people were entirely

responsible for lack of purity of the white blood; which I do not; and I am not especially crazy about the Nordics anyway. It didn't bother me much.

But, anyway, the next night some of the lawyers gave me a little dinner, and there were a number of lawyers and judges invited in, and finally we got onto this same old question which you can not get away from—the race question; and they made all these statements, and I said I thought they were obsessed of the idea and terribly exaggerated. They seemed to all jump on me with great unanimity; and finally one man spoke up and he said, "I am not going to stand this any longer. Mr. Darrow is right about it. I am a judge of the Supreme Court of Louisiana, and have been for 20 years, and we have had three cases come before us for rape of a white woman by a negro, that time, and I suspect they were not one of them guilty. I know one was not, because he came up with any record to get into court. But they let them in anyway."

And I sent a special agent down there to investigate that case, and he reported to me, and others came from that section and told me the same story, that this was a case of a boy 18 years old who had been for several years living in a house with a woman 40 years old, and by some misadventures he claimed this.

We had practically the same thing in Illinois, where the charge was made against a negro raping a white woman, and they sped him away from Springfield to a far-away jail because of the mob; and the mob destroyed all the restaurants of the negroes and many of their dwellings and property and hanged a number of them, and then afterwards found out the fellow was innocent, and never tried him and turned him loose without a trial.

I want to answer the question as to the number of innocent and guilty convicted. I have not any doubt that where the defendant is able to get a fairly competent lawyer as a rule they are guilty. I might put it stronger than that. I am thoroughly satisfied that I defended a guilty negro who was convicted. By the way, that was a case of "large fees" where I didn't get any fee. We all have them, you know, in this business. He spent 15 years in the penitentiary. I managed to save his life, because there was doubt in the jury's mind. He died in the penitentiary. Everybody who investigated the case, a pardon board and all the rest, were satisfied; and there was not any doubt in my mind.

Mr. HAMMER. Mr. Darrow, here is one of the things we have to contend with in the South, and I suppose you have elsewhere: There are people there who believe in mob violence and they believe in lynching; there are some there and some in your State.

Mr. DARROW. Yes; oh, there are some in our State.

Mr. HAMMER. Every one of those who ever went into a mob contend for and believe in capital punishment. All that crowd of people believe in capital punishment; and the excuse they give for it is that the courts do not do enough to criminals. Therefore when you have such a case as this Montague case in North Carolina, this newspaper says if they hadn't had capital punishment the mob violence would have prevailed. I don't believe that. But there are some people in the State and some newspapers who say that.

MR. DARROW. I have some excuse for the mob that lynches people, but I haven't any excuse for the court that kills them. There is at least some feeling and excitement in the mob.

But I want just to answer the question about how many innocent are convicted:

Of course, from the nature of things that is something we can not tell. We are lawyers. I have tried many a case myself that I could not honestly say to myself that I was satisfied, both civil and criminal, and I think that is the experience of every lawyer. It is awfully hard to know in lots of cases. If you did know the facts; if you knew that John Jones killed Tom Smith, then you would not know very much. You would not know why he killed him; you would not know the condition of John Jones's mind. You would not know the influences back of that. You would not know whether he ever had any chance, or what chance or what he did not have. If you did, you could not judge him. I do not believe any one could judge any one, if they were all-wise and all-understanding. I don't believe anybody is made of anything, except two things, heredity and environment. I can not understand your heredity; I can not understand my own. I don't know where it goes. I can trace it a little ways, but I might be the brother of my father, coming down through my mother, and still be a brother carried down in generation or further removed than that. And even then I would not know. Nobody can know any other fellow's environment. He does not know his own very well.

But if you believe that everything in the world is law, and that every act in the physical world and mental world is sequence, one following the other—you do know there is a cause for it; you may not understand it. The jury can not understand it; the court can not understand it. So wise people are stuck all the time.

MR. HAMMER. You stated you had some excuse for the mob. The very reason you assigned for that is the very reason that some of the States, in fact all of them where I live, in my part of the country, have what they call "lynching bees"—every one of them murderers. Every man that lynches another is a murderer. But in the case they would not convict for murder, I could not imagine a lesser offense, because he had been acquitted of the higher offense, don't you see? But when we did try the one for the lesser offense, the actual leader, he was convicted, and properly convicted. Of course, he was afterwards pardoned after being in the State prison for a while.

That goes to show that where persons who are members of the mob are in favor of capital punishment, they are not in favor of capital punishment for themselves; and the legislators have enacted a statute that the juries will respect and return a verdict some time against lynching, and for that very reason a great many people think that we ought to abolish capital punishment, because juries get so they won't convict; and the very same reason we ought to have a law for lynching ought to be the same reason for abolishing capital punishment.

MR. DARROW. I can understand where people lynch, and if I believed in capital punishment I would consider all the psychology that goes into lynching and would not judge them very harshly, especially in a town where there is a colored person; although I

think they are wrong. But you can not change those opinions except during a long period of education. It is like a lot of other questions, if you get too far away from the customs and habits of the people; and it is a slow process.

But I think governments can afford to take the advance. I think they should show their respect for life.

Of course, there are other governments in the world that haven't capital punishment, you know, and I do not believe there is anybody here who thinks we will have it 100 years from now.

MR. McLEOD. Mr. Darrow, will you complete your answer to the question by Judge Hammer as to how many men in your opinion were innocently executed?

MR. DARROW. I could not give any, of course. I think there are a great many.

I heard somebody speak about being convicted on circumstantial evidence. Circumstantial evidence is geometrical demonstration compared with direct evidence.

MR. HAMMER. I didn't get what you said.

MR. DARROW. I say circumstantial evidence amounts to geometrical demonstration compared with direct evidence. I don't know; I sometimes get angry about it. But I don't very much any more. You let a half dozen fellows get arrested for murder, and the meanest one of the lot—of course, the State's attorneys always like the worst; they don't like the good ones—but the meanest one in the lot can go and get his liberty; and you would not believe him on anything on earth. That is done all the time.

But suppose a witness goes on the stand and is asked, "Didn't they give you \$1,000 for testifying to this story?" And he would answer, "Yes; he gave me a thousand dollars for telling this story." Would anybody believe him? But if he says, "They gave me my life if I would tell this story," they believe him and hang somebody else on it.

MR. HAMMER. Not often.

MR. DARROW. Oh, lots and lots of times. Of course, they are more or less cautioned by judges, but judges are worse than jurors.

MR. HAMMER. Some of them; not all of them, only a few.

MR. DARROW. But they are pretty strong for righteousness after they get elected, and before they go into some other business.

MR. McLEOD. I have just one more question, Mr. Darrow: In selecting juries, from your vast experience with capital crimes, isn't it difficult to get a jury that will sit where there is capital punishment?

MR. DARROW. The newspapers have got them worked up now so they like to sit, and right now they kind of enjoy killing somebody. When you hammer away day after day, year in and year out, on hanging somebody, of course you get a hanging psychology. But I would say half of the jurors really do not believe in capital punishment in normal times. Of course, it differs in different places.

MR. McLEOD. Then you think the percentage who might have been executed were innocent—say, in the last 5 years or 10 years, or any period?

MR. DARROW. No; I don't know. I think they have hanged plainly insane people in Chicago. But as to the facts I have never investigated the facts of these cases, and I would like to speak very exactly about it. I do think I have tried some cases where innocent

people were convicted. Of course, once in a while an innocent man is acquitted, too—maybe, not often, but still I am sure they are sometimes convicted. It is a great lottery. We all know about the errors of human judgment.

Take this case—I tried one in your town. The jury stood six to six, seven and five. There were at least seven who believed one way and five the other. Finally they will agree. They stand six and six and agree; and two and eight and ten and agree. Is there any way to tell whether they are right or not? There are any amount of cases where it is utterly out of the question. And, then, I know as a lawyer—I know the things that affect juries.

I remember once I had a case—and where I know exactly—before a Federal judge, and made up my mind the defendant was going to plead guilty. I knew all about the fellow, and I told the judge the truth about him, which I sometimes do.

Mr. HAMMER. Generally, I am sure.

Mr. DARROW. If I can trust them, I always do that. The defendant was in the jail—he had been in jail a good many times before; a kind of good fellow before that. We have good fellows even out of jail. But I told the story. The judge said, "What do you want to do?" I said, "I want you to do the best you can." The district attorney said, "How much can I give him? What is his age? I will give him three years." "Bring him in. All right; I will give him three years."

It was in another city, and I wanted to get back home quick. This fellow had been in court so many times that I didn't think it necessary to tell him to slick up and shave and wash and turn his shirt, or something like that. Any way, I didn't do it; and he came in. He came in with a growth of beard about a week old on his face, and he looked the part all right—good gracious—as much as anybody I ever saw—dirty shirt, no collar; and the judge looked at him and he said, "I sentence you to the penitentiary for three years—and six months." [Laughter.] So that he got six months for not having on a clean shirt. And I saw the judge afterwards and I said, "I don't blame you for giving that fellow six months for having a dirty shirt. But you ought to have given it to me for not telling him," which he should have.

But you know how uncertain it is to get at anything in this world. How many times have you stepped up and shaken hands with somebody and said, "Well, I am mistaken"—for somebody you know perfectly well, but it was an entire stranger. How many times do you think you recognize people and you are entirely mistaken? That is one of the common things of identification, and general identification under circumstances where it is almost impossible to tell, and where all of us are subject to errors in all these things. It is an awfully tough thing, and I hate to judge anybody. I do it in the shape of getting mad with them sometimes, but that is about as far as I would like to go. But when you get into the minds the influences that bring things about, it is just simply hopeless. If you believe, as I do, that there is no axis in the universe, you can find out if you get a chance to find out.

Mr. HOUSTON. One thing, I think Tennessee—

Mr. DARROW. I have of Tennessee.

Mr. HOUSTON. They once abolished capital punishment and have since restored it.

Mr. HAMMER. I have heard that. I don't know whether it is true.

Mr. DARROW. I heard it down there.

Mr. HAMMER. I think a Member of Congress from that State told me so.

Mr. DARROW. Somebody asked me how that happened. I am not going to try to make another speech, but just a word about that. Why does it happen that a fellow turns over in bed?

Why, because he gets tired and turns over—just like human beings, all Democrats one year and Republicans the next.

Mr. McLEOD. Without objection the committee will stand adjourned until 10.30 to-morrow morning.

(Thereupon, at 1.25 o'clock p. m., the subcommittee adjourned to meet to-morrow, Tuesday, February 2, 1926, at 10.30 o'clock a. m.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON THE
DISTRICT OF COLUMBIA,
Tuesday, February 2, 1926.

The subcommittee met at 11.35 o'clock a. m., Hon. Clarence J. McLeod presiding.

Mr. McLEOD. The committee will come to order. Without objection, I believe it is the will of the committee to hear Doctor Haywood first.

Mr. HAMMER. Yes; I move that we hear from Doctor Haywood.

STATEMENT OF DR. OSCAR HAYWOOD

Mr. McLEOD. Doctor Haywood, what is your full name?

Mr. HAYWOOD. Oscar Haywood.

Mr. McLEOD. And whom do you represent, Doctor?

Doctor HAYWOOD. I represent myself, I suppose.

Mr. McLEOD. Are you interested in the question of the abolishment of capital punishment in the District of Columbia?

Doctor HAYWOOD. Yes, sir.

Mr. McLEOD. To what extent, Doctor?

Doctor HAYWOOD. To a considerable extent. I have given 25 years of my life to an effort to abolish it.

Mr. McLEOD. You have studied this question, then, for a period of 25 years?

Doctor HAYWOOD. Yes, sir.

Mr. McLEOD. What is your home State?

Doctor HAYWOOD. North Carolina.

Mr. McLEOD. You wish to make a general statement, do you, Doctor?

Doctor HAYWOOD. Yes, sir.

The prevailing impression with respect to this question is that the effort to abolish capital punishment is a new reform, whereas of all the reformatory movements of the ages it is probably the oldest.

The movement to abolish capital punishment has grown up with the growth of the sense of brotherhood and equality. It is a little

strange that a republic should have taken over this hereditary institution of the monarchies and the older countries of Europe; and yet the fact that it is hereditary was the reason for taking it over in this country.

Blackstone, in 1760, complained with a good deal of feeling that there were 160 different offenses in England for which men were put to death.

Victor Hugo said that in the latter part of the seventeenth century a man was put to death in England for cutting down an ash tree.

So rapidly has this reformation gone forward in Europe, and particularly in England, where all reform movements are slow, that to-day in England there are only two offenses for which men are put to death.

Capital punishment has been abolished in all the countries of the world in respect to certain classes. There are certain classes in all the countries of the world, including the United States, that are exempt from capital punishment. No rich man has ever been put to death in the United States, although numbers of them have committed murder, and cold-blooded, deliberate, first-degree murder at that. No pretty woman who has enjoyed social prominence, or social influence, has ever been executed, and, with very few exceptions no woman has been executed.

Away back in the criminal trials of this country there was in New York City a woman who killed a man. She was a plain woman, a working woman, a woman who scrubbed floors. She was convicted of first-degree murder and condemned to be hanged. A mighty ecclesiastical machine was put to work, and within three days of the time appointed for her execution she was brought out of the death house and set free.

So, certain large classes are exempt from the penalty, and the result is that public confidence in the courts has been seriously shattered, or let us say, seriously shaken, if not, in many cases, shattered. Therefore, the courts in order to protect the State must enjoy the liberty of sentencing men and women who are convicted of capital offenses, not to death, but to life imprisonment, or some other punishment that will protect the State; because the State would be destroyed should public confidence be lost in the courts.

If capital punishment has been abolished for certain classes it should be abolished for all classes. The fact that it has been abolished for these specific classes, which I have mentioned, is an argument in support of its complete abolishment.

The movement for the abolishment of capital punishment is steadily going forward with a persistence that causes it to out rank any other reform. Mr. Darrow said yesterday that no member of this committee could believe that 100 years from to-day capital punishment, the death penalty, would be inflicted upon anybody. I say that in 25 years it will be abolished in every State of the American Union and in every country of Europe.

Mr. McLEOD. Upon what do you base that?

Doctor HAYWOOD. I base that on the growth of the sense of brotherhood and of equality.

Capital punishment grew up out of class distinctions. Very naturally so—the feeling that certain classes of men were superior

to others. The only people in this country who are executed at all are the ignorant and the poor.

For over 15 years I was pastor of the Baptist Church of the Covenant in the city of New York. That church stood on Thirty-third Street, between Eighth and Ninth Avenues. It was an endowed church, with a half million dollars of endowment. It was in one of the poorest districts of the city; and I came in contact with the criminal population personally—and this is not an autobiographical statement at all. I think I may say for myself that I have attended more criminal trials than any lawyer in this room, possibly more than any lawyer in the United States Congress. The first reaction I had to the abolition of capital punishment came through the experience of a friend of mine who was put to death in Richmond, Va. His name was Thomas J. Cluvears. The story of his life is a romance; the story of his death is one of the saddest tragedies ever written. He was a good lawyer, and he was superintendent of the Sunday school of the First Baptist Church in the city of Richmond. He was accused of the murder of a young girl by the name of Fannie Lillian Madison, whose body was found floating in the reservoir of the city of Richmond. The only evidence against Cluvears was a watch key that was found at the edge of the reservoir, identified by a jeweler in the city of Richmond as one he had mended, belonging to Mr. Cluvears. His successive trials extended over a period of three years. At the end his life was forfeited upon the gallows at a public hanging in the city of Richmond. I was standing near the scaffold there—only a boy—and I shall never forget the tremor with which my frame was seized when, without a particle of excitement, Cluvears said to the vast crowd of possibly a hundred thousand people:

I die to-day conscious of my innocence, and with no feeling of bitterness toward any person in the world.

He was one of the martyrs of the ages. He was innocent.

In New York City I had my attention called to a criminal by the name of "Dago Dick." That was the name by which he was known in the underworld. The first time I saw Dago Dick was when he was standing before the court of general sessions and the judge said to him:

Have you anything to say why the sentence of death should not be pronounced upon you?

He stood there with his cap in his hand and his eyes focused on the floor. A silence filled and flooded the court room, a silence such as one rarely ever feels in this world. Somebody has said that only God knows what silence is; but I think I realized that day what it is.

At length counsel for the prisoner said to him: "Answer: 'I have nothing to say, your Honor.'" He said, "Nothin' say, yonner."

That boy was born in the third floor back of a tenement house on the Bowery. His mother, a homeless street woman, abandoned him in his infancy to a pair of childless drunkards who taught him to lie and steal before he could lisp or toddle. During all of his childhood no hand was ever laid upon him in kindness; and his own hand was a fist upraised against the world. I followed his history from the time he was a child until finally he gave up his life in Sing Sing.

Jacob A. Reiss said he saw him standing one day before a church—St. George's Church—the church in which Doctor Rainsford was the pastor for a number of years, a church that has established 50 social settlements in the city of New York and many nurseries for the care of children of working women. Mr. Reiss said that he saw this boy standing before Doctor Rainsford's church engaged in slinging mud. The boy would stoop down and scoop up mud by the handful and then systematically decorate the front of the church with it. Mr. Reiss approached the boy from the rear and seized him by the shoulders because he was afraid the boy would throw the mud in his face, and said, "Why the church?" The boy looked up with a look that was hunted, but unafraid, and Mr. Reiss said:

I saw in his face the reason why he was throwing mud on the church. It was self-defense. No church had ever done anything to help him in his struggle with circumstances, but rather the church had declared that the devil's name is circumstance.

When Dago Dick was 10 years of age he was a drunkard. When he was 16 he had the honor of seeing his picture posted in the rogues' gallery, which was a distinction deserved when he was 12. At 18 he was a river thief; and when he was 21 years of age he was sent to Sing Sing. For the first time in his life, at Sing Sing, he climbed into a new suit of clothes; and his name, the name the street gave him, was taken from him, and he was numbered. He was sentenced to five years. Every holiday, every Sunday, in those days in Sing Sing was a day of solitary confinement; and every working-day was a day of unrequited toil. At the end of the five years he went out of the prison a branded man, without a home, without a friend. He very naturally sought out the kind of people that he knew—the same sort of people as himself—people who had "been through the mill." He could not get work. He was the last male descendant of five generations of tenement dwellers. He owned no land. He had no shelter; he had no money; and he could not get any work, because his only references were cops, magistrates, and prison keepers.

Between man and the brute stands the convict.

There was only one door in the whole world open to that boy, and that was the prison door. So he knocked on the prison door, and the jailer said to him, "Get yourself arrested and you will be admitted."

He got himself arrested, and when he came back he brought three of his friends with him.

The superintendent of Sing Sing, I feel sure, will tell you that a very large percentage of the people who go to prison have been there before. They may not have been to that particular prison, but they have been to some prison before.

When Dago Dick was turned out of prison the last time he had nothing. He wanted something to eat. Let us say that he met a man on 500 acres of unoccupied land just out of New York City, chasing and persecuting a golf ball over those 500 acres—and this boy said to him, "Mister, give me money enough to buy me a roll and a cup of coffee."

He was refused. Given the power to convert stones into bread he would have spoken mountains into loaves. Not possessing that power, he used the only skill at his command; and drew a dagger from his pocket, thrust it through the heart of that man who had refused to give him bread enough to keep body and soul together; and from the

pocket of his dying victim he filched coin enough to buy a loaf and a mug of ale. For that he was put to death.

That is the kind of man we execute. Suppose the rich man had killed him for not half as good an excuse as the boy had for killing the rich man. The rich man would have gone scot-free.

I believe you remember very well when a man of wealth walked into a crowded theater in the city of New York with a revolver in his hand; walked down the aisle and stopped in front of another man sitting there and pumped him full of lead. He was allowed to walk out of the theater with a smoking revolver in his hand, walk down and get a taxi, or a street car, and go to his hotel five blocks away, get on an elevator and go up 10 stories to his room and go to bed before he was arrested. He was arrested, tried, and sent to an insane asylum in which he enjoyed a five-room apartment. At the end of five years the keeper of the insane asylum opened the front door and allowed him to walk out. He got into an automobile and went to Canada. He came back to the United States and committed two or three other crimes, and is at large to-day.

Had he been a poor man he would have been strung up to the nearest lamp post for having killed the greatest artist in America.

So the point is just here, and this is the whole point, that the courts in order to save the State, have got to be given the liberty, certainly, of sentencing men to life imprisonment, if they want to, or to some other form of penalty.

I shall be through in just a moment, and to get through as rapidly as possible, I am going to refer to my notes in order to cover the four arguments used in defense of the death penalty. You will see that it does not take a man of more than ordinary intelligence to knock all those arguments into a cocked hat.

The first argument is that it is requisite to remove from the social community a member who has already injured it in a violent way and who may injure it again.

No one in his senses will for a moment deny the uncontested right of society to claim protection at the hand of the State. You will all admit that. It is the business of the State to protect society. The vicious, the unfit, the evil-minded, the insane, fall under the hand of the State, and there they must abide. But the extreme methods of punishment do not secure to society any greater protection than do the remedial methods of treatment.

The whole idea of punishment in respect to law enforcement is wrong anyway. I shall come to that just a little later. The punishment idea is altogether wrong. There is no punishment in it; there ought not to be any punishment of any kind in it. We have done away with corporal punishment; they do not whip men now; they do not butcher men now under the law of any State.

Mr. HAMMER. How about Delaware?

Doctor HAYWOOD. Do they have the whipping post there?

Mr. HAMMER. Yes, sir.

Doctor HAYWOOD. That is not as bad as some other things. Consider the hideous possibility of executing the innocent.

The offenses calling for the death penalty are most difficult to ascertain, to analyze and identify. You can not draw the line between murder in the first degree and murder in the second degree. There is not a lawyer in the United States who can do it. Why?

Because you do not know anything about what went before it; you do not know anything about the antecedents; you do not know anything about the causes. To arrest the entities that may be responsible for the situation you may have to arrest the State; you may have to arrest the schoolhouse; you may have to arrest the graveyard. You do not know who is responsible. Maybe some idea that some evil-minded teacher put into the boy's head when he was a student in school is responsible for it. The whole trend of education is wrong, anyway. We are not going into that now, except to mention it as one of the many ramifications into which we are carried by a thing like this. It carries with it a great many reforms. When you abolish the death penalty you are going to abolish a great many other things, too.

How can you abolish war until you abolish the death penalty? Here is this State here, and that State there undertaking to abolish war and yet those States are making war on the criminal, and the criminal a member of the State, too. So you have a kind of civil war going on between the State and members of the State—between the State and the criminals, and the war between the State and the criminals is a losing war for the State. The number of persons who commit crime is multiplying all the time.

Science and philosophy have searched and quickened every department of organized life except criminal jurisprudence. The courts to-day are exactly as they were in ancient Rome, the same precisely—have not varied a particle in 2,000 years—there has not been an important reform. I know that I am talking to lawyers, and while I am not a smart man by any means, I have studied law, too.

Take the jury system. Where did we get it? We got it from Rome, did we not? Yes. It came down through England to us. What is the difference between the jury system now and the jury system in Rome? There is none. It is the same thing now that it was then; and the jury system as it exists to-day is a system that men would never think of using outside of the courthouse. When a man wants his dogs judged as to their pedigree or their character, or when he wants his cows or his horses or his sheep judged, what does he do? He selects men who know about the matter, does he not? Yes. When called upon to select 12 men to try a man for his life, whom do we choose? Blacksmiths, carpenters, plumbers, hoboes—anybody that happens to be out there whom the sheriff sees and tells to come in and take a seat in the box. Down he goes, and there he sits if there is not some lawyer who knows that he is not fit to sit there. After all the evidence has been submitted and the lawyers have done confounding the law's confusion, the 12 retire within a room where they are expected to analyze character, interpret circumstances, reconcile conflicting testimony, weigh argument, and decide the most complex case in 24 hours. It is a task for which 12 of the best judges in the State would not think of taking less than six months; but these 12 men have to go out and decide it in 24 hours. If they have not decided it in 24 hours they are called upon to make a report and they tell the judge they can not decide. Then he sends them back again and tells them to decide the matter, and they go out awhile longer and bring in a decision, and the accused must hang because these 12 men must go to dinner.

The first argument for capital punishment is that you must remove people from society who have injured it. The second is that the state must avenge itself and its laws; the state must punish.

What is vengeance? It is an individual act practiced by one individual upon another.

Punishment belongs, if it can be said to belong anywhere, and I doubt if it belongs anywhere at all—but if it belongs anywhere it belongs to the kingdom of nature, whose laws are inexorable and whose penalties are accurate. Nature does not make any mistakes, you know.

Between the individual and the kingdom of nature stands the state. Retaliation is beneath it, and punishment is above it. The state should not afflict to vindicate itself; it should not punish to vindicate; it should correct; it should cleanse and heal to save itself. The whole idea is correction, not punishment at all.

The third argument is the theory of example; by the infliction of the extreme penalty, by extinguishing life, which it did not give and can not restore—the state must shock those who are apt to fall into temptation.

All the facts prove fatal to this theory. Men learn little morally from their own experiences, and next to nothing from the experiences of their fellows. The vices that are deadliest, those against which nature issues fiery doom are the most prevalent vices. Fear does not impel men to virtuous action. Danger is a stimulus to adventure. It stimulates men to do wrong. The more hazardous a given course is made to appear, the more alluring it becomes to especial temperaments.

In 50 years of the long reign of capital punishment in the United States murder has increased in the United States from 24.07 to each million of population to 112 to each million—from 24 to 112. Does that look as though capital punishment is abolishing murder?

Now, I wish to say a word about Robert G. Ingersoll. I understand Mr. Darrow is in sympathy with Mr. Ingersoll's views. It is a singular thing, but a fact nevertheless, that all great reforms have been led by atheists, infidels, agnostics and heretics.

Take Voltaire. What did he do? He destroyed the guillotine in France.

Victor Hugo. Ah! What did he do? Destroyed the death penalty in France.

Robert G. Ingersoll. What did he do? He is the only public man of any large influence that has ever lived in the United States to give a part of his life over to an effort to abolish capital punishment—the only one.

Henry Ward Beecher the heretic is the only preacher who has lived in the United States with any large reputation, anything like a national reputation—although he said he did not have a national reputation and that P. T. Barnum was the only man that ever did enjoy a national reputation in the United States—Henry Ward Beecher is the only one that has enjoyed a national reputation in the United States and preached in opposition to capital punishment.

I will come to the preachers a little later on.

Robert G. Ingersoll, in his effort along this line wrote a book, *Crimes Against Criminals*. I ask you to get that book and read it.

It is the most entertaining of his books. He cites in that book the case of a man who witnessed the execution of a man in Alexandria, Va., and on the same day murdered a peddler in the Smithsonian Grounds here in Washington; and one who witnessed his hanging went home the same day and murdered his wife.

The facts are these: There are fewer homicides in the States that have abolished the death penalty, and a large percentage of convictions—Maine and Wisconsin—than there are in those States that have retained the extreme penalty, such as New York, Pennsylvania, and Virginia.

Capital punishment was abolished in Maine in 1876. I do not mention those States that have abolished capital punishment in the last few years because they have not had the time to try it. Capital punishment was abolished in Michigan in 1847, in Rhode Island in 1852, in Wisconsin in 1853. In Maine capital punishment was abolished in 1876, restored in 1883, and again abolished in 1887.

These States show the lowest percentage of homicides and the highest percentage of convictions, relatively; and in all of these States lawless mobs are unknown, and in not one of them has a lynching ever occurred. In no State is respect for life held so sacred by the people as in those States where it is held most sacred by the law.

Where the courts take life the individual is going to feel that he has the right to take it, too; and whenever you make life so sacred that not even the courts may take it, then individuals are not going to take it.

We regard life, you know, as a very trivial matter. We are putting to death annually in the United States, by automobiles, more people than were killed in any battle of the Civil War, and think nothing about it. I do not want to take up too much time.

Mr. HAMMER. Go ahead.

Doctor HAYWOOD. I now call attention to the fourth argument in support of capital punishment, which is that the Bible is in favor of capital punishment. Many persons believe that because this verse occurs in the Bible: "Whoso sheddeth man's blood by man shall his blood be shed," it is binding for all time and upon all nations. Hence the chief advocates of the death penalty in the United States are ministers. If you ask me how I know that, I will answer that I have been working at this thing for 25 years. When I first started in it there was not a church in the United States that would let me speak on this subject inside of it. I will tell you a little story: During the absence of the pastor of the Tabernacle Baptist Church at Atlanta, Ga.—one of the most important Baptist churches in the State of Georgia, and for that matter in the United States—during the absence of the pastor of that church four years ago I was invited by the pulpit committee to preach in the pulpit of that church. I was not going to speak on capital punishment. I accepted the invitation; and the pastor who was in an adjacent State learned I was to preach there on the following Sunday. He telegraphed back to that committee: "No man who believes in abolishing capital punishment shall be allowed to preach in my church."

So I have been speaking in theaters, courthouses, on the street corners—and I am not ashamed of it—God knows I am not. And I have spoken because I believe the church is being misrepresented

by people like that, and that Christianity is being misrepresented by them. The result is that a man who believes in this kind of thing and who goes out to show just what the doctrine of the New Testament is—the Old Testament, too—in regard to the death penalty has to do it outside of the church.

These men do not understand that it has been repealed by both the language and the spirit of the New Testament.

When the condemned are prepared to be hanged, or electrocuted, even these ministerial devotees of the death penalty hardly think it a proper thing to dispatch a soul in its sins. They admit that the vilest sinner may repent and be saved, and will not deny that many murderers have protested repentance and a change of heart. Some ministers think it ungracious of me to suggest that a man who has repented and been pardoned by God and thereby fitted to enjoy God's presence forever in heaven might be committed to a convict prison for the short time of his natural life. Why not? He has confessed his sins, repented, and been saved by God; why not let the State save him, too? No; they would take no chances. He may be shamming, let him hang.

Now, to come back to this verse again, this sixth verse of the ninth chapter of Genesis: No Bible previous to the fifth century contained the words "by man." These two words "by man"—"whoso sheddeth man's blood by man shall his blood be shed"—these words "by man" are not found in the Septuagint or the American version or in Wycliffe's Bible or in the Vulgate. The Spanish, Italian, and French versions of the Bible omit them—"whoso sheddeth man's blood by man shall his blood be shed."

Calvin says that the translation which renders the Hebrew text "by man" is a forced construction. It is also agreed that "will" can be used as properly as "shall" in this verse. The verse then would read: "Whoso sheddeth man's blood by man will his blood be shed." That is the way it reads: "Whoso sheddeth man's blood, his blood will be shed." This rendering puts the words on a par with the words of Jesus: "All they that take the sword shall perish with the sword," which means that those who undertake to kill will very likely be killed; that a violent life will very likely end in a violent death.

Wendell Philips, discussing this equivocal verse in Genesis, says: "Why, a county sheriff would not arrest a sneak thief on such a warrant."

However, take one other Old Testament verse to support the death penalty. Here is this one: "He that killeth a man shall surely be put to death." Why is not that verse used? Why do not people use that? Well, this is the reason: It would prove too much. The same chapter and almost the same verse, the verse following the one I just quoted says this: "He that blasphemeth the Lord shall surely be put to death."

Put a man to death for swearing. Put a man to death for taking the name of God in vain. You see, whenever you undertake to carry it out in the Bible, and live according to the Bible in that respect, you get yourself in trouble. But the truth is this: That the first murderer was not put to death at all, but a penalty was pronounced upon any man who should kill him.

What does the New Testament say of the doctrine of "An eye for an eye and a tooth for a tooth?" Does it not say, "Whosoever shall smite thee on the right cheek, turn to him the left also?"

Now, in just a few minutes I shall be through. Five minutes.

The gallows is the oldest device in civilization and, indeed, the civilized got it from the savage in the same way that the Christian got his gunpowder from the pagan. The archeologists who have uncovered cities that have slept untold centuries under the desert sands have found that the penal systems of remote antiquity were not vastly different from our own. The spade has uncovered crude pictures of a kind of gallows as well as other devices for inflicting the death penalty. In Christian nations, primitive and modern, the death penalty has claimed quite as many victims as war. Spain was one of the great Christian nations when Cortez with his 200 Spanish banditti massacred the Peruvians, robbed them, broke faith with them, condemned to death their great leader after he had paid a room full of gold for his ransom.

While the Moors occupied part of Spain the Jews prospered, but when the cross appeared over the Alhambra and the crescent was driven out, the Jews were subjected to the husbanded vengeance of the years and put to death by thousands. Italy, that claims 99 per cent of her population as Christians, leads the world in the invention of exquisite tortures. In England the executioner has always been a state functionary. Turkey and Greece have the same record, although one of them is Christian and both are decadent.

In America where, for the sheer sport of blood letting, men have driven almost every species of native wild life into extinction there has been given to the world its most pathetic epitaph. It is found in an Indian graveyard at Cooperstown, N. Y.—this is the most pathetic thing ever put on a tombstone. It reads as follows:

White men, greeting: We, near whose bones you stand, were Iriquois. The wide land which now is yours was once ours. Friendly hands have given us back enough for a tomb.

In many places, for the faggot and the gallows the moderns have substituted that equally ingenious invention, that grim and melancholy instrument for the judicial extinction of life, the electric chair. The name "electric chair" is the quintessence of irony. Why, it is not "an electric bed" or an "electric couch;" it is a "chair." The name bespeaks hospitality, humanity. It is a hideous thing with a gentle name. To this apparatus the victim is escorted, and invited to sit down, which he does submissively in the presence of a company of curious strangers. Then he is struck dead by a thunderbolt.

As late as the year 1832, when the reform bill was enacted, 40 kinds of forgeries, with many even more common offenses, were capital in England.

In Holland at one time the death penalty was fixed by weight—weight! Above or below a certain weight a man was a sorcerer and a woman was a witch. Nothing was more ingenious. They put you on the scales and the evidence burst forth—too heavy, you were hanged; too light, you were burned. At one of the market places the scales for weighing witches may be seen to this day. It is used for weighing cheese.

Capital punishment was abolished in Holland in 1870. It has also been discontinued in Portugal. In Belgium there has not been an execution since 1863.

Mr. McLEOD. Let me interrupt you there, Doctor Haywood, to ask if you know which country was the first to abolish capital punishment?

Doctor HAYWOOD. I think I can tell you. I think it was France. France abolished it but restored it.

Mr. HAMMER. They have capital punishment in France now, do they not?

Doctor HAYWOOD. Yes; they have it in France. The death penalty was repealed in Switzerland in 1874 and in Rumania in 1864.

Capital offenses have diminished from a score and ten to five or less in most of the States of the Republic; and in Michigan, Wisconsin, Rhode Island, and Maine imprisonment for life has been substituted for the death penalty. I thank you, gentlemen.

(Whereupon, at 12.10 o'clock p. m., the committee adjourned to 10.30 a. m. Thursday, February 4, 1926.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
THE DISTRICT OF COLUMBIA,
Thursday, February 4, 1926.

The subcommittee met at 11 o'clock a. m., Hon. Clarence J. McLeod (chairman of the subcommittee), presiding.

Mr. McLEOD. The meeting will come to order.

Mr. BLANTON. Mr. Chairman, before you proceed, I would like to have the committee understand its program.

I take it for granted that when the proponents of this bill get through with their evidence that the chairman will then accord to those of the committee who are not in favor of this bill the opportunity to introduce witnesses and evidence against it; and when that time comes I, being one of those, will want an opportunity to have a day set when we can have some witnesses come here to testify, and I take it for granted that the chairman of the committee will accord those against the bill that opportunity.

Mr. HAMMER. Every meeting we have had some member has called on the opposition, and particularly Mr. Reid asked everybody present, to try to find somebody against the bill; and an application was made this morning, the first one we have been able to find after diligent search; and I know I have tried and made suggestions, as well as Mr. Reid, in order to hear both sides, whether they wanted to be heard or not; we wanted to hear them, and the Congressman from Missouri, suggested that the Attorney General be invited to come, as he has had some experience as a prosecutor and has some very well prepared arguments in favor of capital punishment and against this bill, and will be very glad to come before the committee.

I have just spoken to Mr. McLeod about it. I would like to get the hearings completed as soon as we can, Mr. Blanton. But there is no disposition to cut anybody off and a number have been heard against the bill. Mr. Blanton has probably not heard them, as he had not got here when Mr. Reid made the motion, and I know the chairman was in accord with that. There is very great desire and disposition for everybody to be heard.

Mr. McLEOD. Mr. Houston also made the request, if I recall. He urged that the judges of the District of Columbia and the district attorney here be brought down or at least invited, which I did; and as I recall two of the judges appeared but we heard from no one of the district attorney's office.

Mr. HOUSTON. You will recall that Mr. Rathbone and Mr. Gilbert notified us they would be away and there would be no quorum until they returned.

Mr. McLEOD. I do not believe there is any opposition to the desire of Mr. Blanton that the opponents be heard, and if we can possibly wind up with the proponents who wish to be heard, we will be glad to set a date to hear the other side.

I believe the committee would now like to hear Mr. Kvale.

Mr. KVALE. Mr. Chairman and gentlemen of the committee, in the first place I would like to know if the hearing is on this one bill or on both bills.

Mr. McLEOD. It is on all bills pertaining to this subject.

Mr. HOUSTON. There is practically no difference between the bills, Mr. Kvale, except the last section provides, as I recall, the disposition of the machinery.

Mr. KVALE. The reason for my inquiry is that in all the reports I have seen about these hearings, they have been on the McLeod bill, when, as a matter of fact, my bill was before the Congress last session and it was reintroduced the first day of this session.

Mr. HOUSTON. The last paragraph was changed, and that paragraph provides for the abolition of the electric chair; and then there is another one which, instead of that, simply abolishes capital punishment.

Mr. KVALE. It does not matter to me. "A rose by any other name would smell as sweet."

(Thereupon informal discussion took place which the reporter was directed not to record.)

Mr. McLEOD. I believe those are the only two bills before the committee.

Mr. HAMMER. At the request of Mr. Rathbone, a Member of Congress at large, from Illinois, the chairman of this committee has advised former Judge Henry Neil, of Chicago, of the fact that he would be heard, and he only desired five minutes, and he is in opposition to this bill, and if Mr. Kvale don't object, we might hear him now.

Mr. BLANTON. Mr. Chairman, I think the proponents should go ahead with their case.

(Thereupon further informal discussion took place which the reporter was directed not to record.)

Mr. BLANTON. I happen to be one member of the committee who is against this bill, in the interest, as I see it, of society; and I would want in a way, with my colleague, Mr. Houston, who seems to be the only other member present against it, I will want to collaborate with me in controlling the evidence in opposition to this bill. We do not want any weak evidence; we want to put on strong evidence.

Mr. HAMMER. We desire to hear him whether you gentlemen do or not, because he has been invited.

Mr. BLANTON. If the proponents want to hear him, we have no objection, because he will be the proponents' witness. I say that, because we don't know what he will say.

STATEMENT OF HON. HENRY NEIL, WASHINGTON, D. C.

Mr. McLEOD. What is your full name?

Mr. NEIL. Henry Neil. I was formerly judge in Chicago, in the Cook County court.

There is one point, in reading the reports of the testimony here against the bill, that I think has not been covered by your other witnesses, and that is the mental attitude of the murderer at the time which controls his action. I have visited many murderers in their cells and talked with them—talked with men just before they were executed, talked to the murderers just before they had committed suicide in their cells; and I think the mental attitude, that is, the abnormal mental attitude of the murderer at the time that controls his actions should be taken seriously into consideration. For instance, I remember one murderer who came home in a frenzy of thinking that his life was not worth living, and that he would better put an end to his own life; and when he got home he evidently decided that his wife was the primary cause of his misery; and so he took a hammer and smashed in her brains, and I noticed at the coroner's inquest when he was committed for trial and as the officers were about to take him off to prison, that he threw his arms very affectionately and very earnestly around his brother's neck and kissed him with exceptionally passionate fervor, which meant to me that what was in his mind was that it was a farewell kiss that he was giving.

The next morning I saw that man's body lying on the stone floor of his cell with his throat cut from ear to ear. He had killed himself during the night.

Now, my thought is that the abnormal attitude of mind that controls the murderer at the time of his act is very similar to the attitude of mind of the person who commits suicide, that that is his method of putting an end to himself; it is that the State will kill him if he kills someone else, and so he kills someone else in order to have the State kill him.

Mr. BLANTON. I want to ask you a question.

Mr. NEIL. May I just continue the thought a minute?

Mr. BLANTON. In that connection, I would like to ask you a question, so I may get your trend of thought. Take, for instance, a brute who deliberately waylays a poor girl and criminally assaults her. What is your attitude about that case?

Mr. NEIL. The psychology, the mental attitude, is exactly the same to my mind as that I am stating here. The principle is the same. The brute is seeking instinctively for reproduction, and he has not been able to satisfy his reproduction instincts, and he is trying to do it in this brutal, unnatural way. He, as I said before, has an abnormal state of mind.

Mr. BLANTON. Then, in a case of that kind, you would want not to take his life; you would want to send him to the penitentiary?

Mr. NEIL. Yes; for this reason, if you will let me finish that, and I will answer you in my statement: He is more fearful, if he considers it at all, of life imprisonment than he is of the death penalty.

Mr. BLANTON. I am not speaking of him, Mr. Neil; I am speaking of the poor girl that he assaults.

Now, let me ask you a little closer question. Of course, it is all right when the poor girl is somebody else's sister. But suppose it were a close member of your own family that this brute assaulted. Would you still feel that he ought to be given clemency and sent to prison for life?

Mr. NEIL. You take the exact opposite—

Mr. BLANTON. I want to get your views.

Mr. NEIL. I am telling you now.

Mr. BLANTON. I have my own views, but I want to get yours.

Mr. NEIL. You take the exact opposite of how to prevent him doing that. I think that if he felt he would get life imprisonment that he would be more retarded than he would be by the death penalty.

Mr. BLANTON. I am talking about your own case. When somebody else's sister is the victim, that is one thing; but suppose she is the immediate member of your own family, your own daughter or your own sister. Would you want him sent to the penitentiary for life and not hung?

Mr. NEIL. I would want the fear of being confined for life in his mind a preventive, and I believe it would be a greater preventive than the executing of him.

Mr. BLANTON. I want to know about this one particular case: Here is a brute who assaults a member of your family—a close member of your family, your daughter or your sister. What would you want done with him? What would you want society to do with him as a punishment—send him to the penitentiary for life or hang him?

Mr. NEIL. I would want society to do for him what I thought would retard others from doing a like act. If I believed that the life imprisonment would tend more to retard others from doing that act than the capital punishment—now, that is clearly shown by the fact that whenever a murderer is arrested and put in jail, the very first thing all jailers do is to try to prevent that man from committing suicide. That is what many of them do; and that attitude of mind, I claim, that these murderers are in is exactly that attitude of mind as that of the person who commits suicide, which is self-murder.

Mr. HOUSTON. You mean to say that a prisoner commits suicide because he is fearful of life imprisonment?

Mr. NEIL. Yes; if he commits suicide. He certainly can not have committed suicide because fearful of being killed, because he kills himself.

Mr. HOUSTON. My experience is that not one would commit suicide if he thought he was going to be hung.

Mr. NEIL. Why should a man commit suicide if he is afraid the State would kill him?

Mr. BLANTON. He is seeking to cheat the State out of a just punishment.

Mr. NEIL. He is choosing the quickest way out of his misery, and that is the purpose for which he committed the murder.

Mr. HOUSTON. Mr. Darrow stated that his experience was that they could leave razors and any other means of committing suicide in the prison cell of the ordinary man who had committed murder, and he would not take his own life.

Mr. HAMMER. As a rule.

Mr. HOUSTON. As a rule; that was his experience.

Mr. NEIL. That is true after a certain period of time after the murder is committed has elapsed, so that the murderer gets back to what you might call a normal method of reasoning. But while he is in this abnormal state of mind during which he committed murder, he will commit suicide when he gets a chance; and every jailer when a man is sent to prison immediately takes the precaution to prevent that man from committing suicide. Many of them do commit suicide. And in countries like Great Britain where we have a fewer number of murderers you also have a fewer number of suicides. You will find that the statistics show largely together, in comparison, all the time, that when the number of murderers decreases, the number of suicides are decreased. It is a method of the murderer of ending his own misery and getting out of his own troubles.

Mr. BLANTON. Right there I want to ask you a question.

Mr. NEIL. Let me finish.

Mr. BLANTON. But right here I want to ask you a question. I have not been able to find in my investigations one single case of suicide where a party has been given a life imprisonment sentence—not one case. Can you cite me to any one? I can not find one in the United States.

Mr. NEIL. That harmonizes exactly with my theory. I said that after a period of time after the murder is committed, then the murderer changes his attitude. But immediately following the murder and during the time of the murder he is in that state of mind where he is really committing suicide for himself, trying to get himself out of his misery; and after a period of time has elapsed—you take the case I have cited now, of the man who cuts his throat.

Mr. BLANTON. There have been hundreds of thousands of murder cases since A. D. 1, hence no one case will illustrate.

Mr. NEIL. You mean hundreds of thousands of cases where men committed suicide immediately following—

Mr. BLANTON. No; because there are not many of them, but hundreds of thousands of cases where men have committed murder since the world began so that we can not take up an individual case; we can only take up the principle.

Mr. NEIL. The principle is what I am trying to talk about.

Mr. BLANTON. You are not in favor of mob law, are you?

Mr. NEIL. No.

Mr. BLANTON. My State never had a case of mob law last year, not one, because the laws were enforced. Don't you believe that if we were to do away with the death penalty that every time there was a criminal assault on the person of a female relative there would be a mob? Don't you believe that?

Mr. NEIL. I don't think that has anything to do with it, because the mob is just excited to that abnormal state of mind that the assaulter was at the time. I am not arguing the question as to the bills just at this particular time.

Mr. BLANTON. But there are cases of assaults, are there not?

Mr. HOUSTON (interposing). That is in all these bills we are considering.

Mr. NEIL. More than the death penalty. I think in that particular case—

Mr. BLANTON. Just one moment. I want to ask you one other question: Are you a practicing attorney now?

Mr. NEIL. No.

Mr. BLANTON. What is your business?

Mr. NEIL. I haven't any business.

Mr. BLANTON. If you haven't any business, if you are a man without a business, what value are we going to give to your testimony before the committee?

Mr. McLEOD. He has stated he is retired.

Mr. NEIL. I am retired.

Mr. BLANTON. You are not a very old man, are you?

Mr. NEIL. I am over 60.

Mr. BLANTON. I am nearly 60, being 53, and I am in the prime of life.

Mr. NEIL. What has that got to do with this?

Mr. BLANTON. I am talking about the probable effect and value we are going to give to your testimony. We want to know what value the testimony you are giving is to this committee. Why should we give more credence to your testimony than to any other individual?

Mr. NEIL. That is for the committee to decide when they hear it.

Mr. HOUSTON. What has been your experience in the past?

Mr. NEIL. From talking with so many of these murderers as I have. I think that in the case I have cited there that if that man had not found his wife at home, when he went home in that frenzied, abnormal state of mind, that he would have committed suicide and thereby saved his wife; and I think that the death penalty tends to encourage them to murder in that state of mind rather than retarding them, and that life imprisonment is a greater retarder than the death penalty.

Mr. McLEOD. Mr. Neil, before you finish, you stated that you had been a judge for how many years?

Mr. NEIL. I was elected for two terms of four years each.

Mr. McLEOD. You served eight years as a judge?

Mr. NEIL. I served about six years, and then I went abroad on war work.

Mr. McLEOD. You served six years as a judge of the State?

Mr. NEIL. In Cook County, Ill. But that is not where I got my experience.

Mr. McLEOD. You base your experience partially on that?

Mr. NEIL. No; I don't base my experience on that; I base my experience on talking in prisons and in jails, and so on, with many murderers.

Mr. McLEOD. Have you made this question a study?

Mr. NEIL. I have made it more or less a study; I have visited men and talked with them just before they were executed.

Mr. McLEOD. And you have been interested in this subject how long?

Mr. NEIL. I have spoken on this subject many times in the last 10 years.

Mr. McLEOD. And you now feel qualified to testify before any body as regarding the advisability of the abolishment of capital punishment?

Mr. NEIL. I think so.

Mr. BLANTON. As to being a judge, you were only a county judge; you never tried any felony cases, did you?

Mr. NEIL. No; I never tried any felony cases.

Mr. BLANTON. Shouldn't you have told the committee that?

Mr. NEIL. I didn't tell them to the contrary. You are assuming—

Mr. BLANTON. When a man says he has been a judge six years, in qualifying to testify here as an expert on this question, that would indicate he has tried criminal cases.

Mr. HAMMER. I don't think it necessary for a judge to testify or even a lawyer to testify.

Mr. McLEOD. Before you proceed, Mr. Kvale, I would like to read this one letter following up Mr. Neil's argument. It is from the Prisoners Relief Society, and it is signed by the president of the society, E. E. Dudding [reading]:

OFFICE OF PRISONERS RELIEF SOCIETY,
Washington, D. C., February 2, 1926.

Hon. C. J. McLEOD,

Chairman Subcommittee District of Columbia, Washington.

MY DEAR SIR: Here's an offer that's hard to beat. Some time last summer a man by the name of McGraws made an offer to the District Commissioners to die in the new electric chair. McGraws is dead; died in November.

If Congress will pass a bill making it possible I will be glad and willing to die in a public exhibition to help carry through the idea of abolition of the death penalty. That's how much I think it's wrong. I would do this, not for the sake of the criminals I might save but to advance civilization.

I would have to make only one reservation and that would be that Congress pay my death claim on the policies I hold. I think it would be unfair to the company that I am insured with in such a case.

I have given much thought to this matter and I am ready if proper law provisions are made. I would wish to die by the rope in place of the electric chair if I could have my choice.

If you fellows do not believe I'll go through with this you are fooling yourselves, and as far as I can see I have my wits about as I've always had them.

Now may I leave the subject with you and stand ready to meet the fate on an hour's notice and to help matters fix the trap so I can spring it myself and save the other fellow the trouble?

Yours truly,

E. E. DUDDING.

STATEMENT OF HON. O. J. KVALE, REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. KVALE. I am very sorry that I have not been able to attend the hearings held on these bills, with the exception of the hearing held Tuesday, when Doctor Hayward spoke. I have read the reports in the newspapers about these hearings, and I shall try not to repeat what has been said before this committee. In fact, there is not time enough now to go into it in detail.

There are a few things I want to emphasize. I have a great many reasons for being opposed to capital punishment, and each one of them is sufficient for me—some of them stronger than the others.

In the first place, in my judgment it cheapens human life. And human life should be sacred in the year of our Lord 1926. You will recall that there was quite a hubbub some years ago about the advisability of permitting physicians to end the life of a sufferer, or that idiots and imbeciles might be mercifully put to death.

It seems to me that if we were to be allowed to take human life under any conditions it would be to end a life of misery, where physicians tell us it is a hopeless case, so far as any cure is concerned; and yet the very idea has been revolting to Christian civiliza-

tion, because human life is sacred and only the one who gave life has a right to take life. And it cheapens human life just like war. Not in the same degree, but it is on the same level.

I think you have had statistics to prove to you that murder has not increased where capital punishment has been abolished.

I believe statistics have been given and they are in the record, and I shall not take time to repeat them.

It is the certainty of punishment and not the kind of punishment that will act as a deterrent. I am in favor of justice; I am in favor of meting out justice to the criminal to protect society, not as a matter of avenging or of punishing but as a protection to society. I believe in meting out punishment sure and swift, and it is the certainty of punishment that will act as a deterrent and not the kind of punishment.

Another thing is, that hundreds of innocent people have been put to death in the electric chair and on the scaffold—hundreds of people; the records show that.

I say, my friends, it would be better to have a hundred guilty people escape than to have one innocent man put to death.

Mr. BLANTON. Will you yield?

Mr. KVALE. Certainly.

Mr. BLANTON. Do you mean to say that, that there are hundreds of innocent people put to death in the United States?

Mr. KVALE. Through the history of capital punishment during all these centuries.

Mr. BLANTON. You mean since A. D. 1?

Mr. KVALE. Oh, yes; you can go that far back, and then I think I would have to say "thousands."

Mr. BLANTON. Now cite five cases in the United States where it is definitely known that innocent people were put to death.

Mr. KVALE. Yes; I could cite more than that if I had them here. But I won't fill up the record.

Mr. HAMMER. Mr. Blanton, he doesn't live in a country where they do not convict them the way you and I do.

Mr. BLANTON. I think you are mistaken, my colleague. If you will look it up. It is just like if you were to call on Congressmen to sit down and write the names and addresses of their constituents, it would not take nearly so large a piece of paper as you think.

Mr. KVALE. Then omit the "hundreds" and say "dozens." There are many records of such executions. And don't forget that many such instances, in the nature of the case, never come to light.

Mr. HAMMER. I don't mean to interrupt you, but you made another statement which I think is extreme.

Mr. KVALE. What was it?

Mr. HAMMER. What did you say about one man being saved rather than ninety-nine—

Mr. KVALE. I think it would be better for 99 guilty men to escape than for one innocent man to be hanged.

Mr. HAMMER. Don't you think society is just as much interested in it as the individual is, and it is just as important that every guilty person should be convicted as that anybody should be acquitted. You are wrong about that.

Mr. HOUSTON. Mr. Kvale, you are not a lawyer, are you?

Mr. KVALE. No, sir.

Mr. HOUSTON. Don't you know that the whole procedure in a criminal case, the fact that a unanimous verdict of 12 men is required and that reasonable doubt in the minds of the jurors is always charged the jury—the whole procedure is based upon the very thing you suggest, to protect the innocent from possible conviction?

Mr. KVALE. Very well; it may be a difference of opinion. You are entitled to yours and I have mine.

Mr. HOUSTON. That is the basis. Any law book on the subject will tell you that.

Mr. KVALE. Part of my statement will prove that.

Mr. BLANTON. Perhaps one every five years. You will read about them in the papers.

Mr. KVALE. Here is another reason: Capital punishment has degenerated into the worst form of class legislation, so that while I can not go as far as Doctor Hayward and say that no millionaire has ever been put to death legally, I do say that there are very few records of a millionaire having been taken to the gallows; it is the poor man that is hanged and put in the electric chair; it has come to such a pass. I mean, having Clarence Darrows send these men to life imprisonment or to insane asylums. Understand, I do not object to these men being sent to the asylum. I wish every criminal could have a Clarence Darrow to fight for him, not to set him free—I don't want to set him free—but take him away from the gallows or electric chair. But they can not always have a Clarence Darrow to defend them, and the poor men are the men who are electrocuted.

Mr. BLANTON. May I ask you one question?

Mr. KVALE. Yes.

Mr. BLANTON. Suppose you lived down in my State or in my colleague's State of North Carolina, where there are a great many members of another race, and a black brute should criminally assault some one near and dear to you, not somebody else's daughter, but your own. Would you want him given clemency?

Mr. KVALE. Well, to be frank—

Mr. BLANTON. Would you?

Mr. KVALE. My answer to that would have to be this, it may all be that something in me would demand his life.

Mr. BLANTON. That is exactly what is demanding the death penalty. The poor girl assaulted is some man's daughter.

Mr. KVALE. If so, then that something in me is wrong and contrary to the law of God as I read it, and should be suppressed in me as well as in everybody else.

Mr. BLANTON. Every poor girl who is criminally assaulted has a brother and father.

Mr. KVALE. I know it.

Mr. BLANTON. And it is their right and the girl's rights, we are protecting.

Mr. KVALE. I know it.

Mr. BLANTON. Just like we would protect your rights if it was your daughter.

Mr. KVALE. I want that man sent to prison; I want society protected in the right way.

Mr. BLANTON. In my State, I will state to you, Mr. Kvale—I respect you highly, and you know it, and I respect your sincerity.

But in my State we have a woman governor, who is led away by sentimentalism, and she is pardoning criminals by the hundreds.

Mr. KVALE. And I don't approve of that.

Mr. BLANTON. Faster than district attorneys can put them in the penitentiary.

Mr. KVALE. But that is no argument here, Mr. Blanton; that may be the abuse of the right of pardon. I am in favor of changing the whole system of pardoning, where the crime has been murder.

Mr. HAMMER. It is not like most governors; the husband is doing the pardoning.

Mr. KVALE. And these others going to the insane asylums are set free. I think they should all go to insane asylums or life imprisonment, and be kept there. I don't believe any sane man ever committed murder; I believe every man who commits murder is insane.

Mr. HOUSTON. To the same extent we all are, or no more so. I have defended too many and prosecuted too many. I have been locked up in the jail two or three or four or five hours myself. They are just the same as I am or anybody else.

Mr. KVALE. That is your opinion, and my opinion is that no sane man will take human life.

Mr. HAMMER. It is a hard thing to say. I can not understand why a man kills another. I know I have been so mad once or twice that if I had had a pistol I might have killed somebody. So I never trusted myself. When I was a boy I was so mad one time I might have killed a man. I was not insane, I was angry from continued and persistent annoyance and insult.

Mr. KVALE. That is the answer to Mr. Blanton's question, What would I do if my daughter was assaulted? I am afraid that I would feel that that man's life should be taken. But that would not be right in me.

Mr. BLANTON. That is the trouble, we are always willing to send the assaulter of some other man's daughter to the penitentiary, instead of hanging him, but we don't bring it home to ourselves.

Mr. KVALE. When I am in my right mind I want that man sent to prison for life or to an insane asylum.

Mr. HOUSTON. And then he would probably be pardoned after he has been there 20 or 25 years by some pardon board.

Mr. KVALE. That is another question. I have not been in favor of indiscriminate pardoning.

But my chief reason is that capital punishment is opposed to Christianity, as I understand Christianity, opposed to the life and teachings of Jesus of Nazareth.

Mr. BLANTON. May I ask one question?

Mr. KVALE. I think I will cover your question.

Mr. BLANTON. I want to ask one question about our Southern States: Suppose you knew if you abolished the death penalty you would cause mob violence every time there was a criminal assault in one of the Southern States. Would you still be in favor of abolishing it?

Mr. KVALE. Two wrongs never made a right. I can not go along doing something which I believe to be wrong, in order to avert some other possible wrong.

Mr. BLANTON. My State is an empire, as big as seven of the smaller States, and yet we kept down mob violence last year. There was not

a case of it in my State, because we promised that the law would be enforced.

Mr. KVALE. You would have the same effect if you promised they would be going to the insane asylum or imprisoned for life.

Mr. HOUSTON. That applies to the Northern States as well as Southern States.

Mr. HAMMER. Certainly. At the same time, that don't make it right.

Mr. KVALE. Taking life legally, I think, is based on precedents established three or four thousand years ago by the law of Moses. And a great many Christians—and I don't deny they are Christians, just as sincere in their views as I am in mine—who are in favor of capital punishment go to the Bible for their proof, and they cite the old Biblical injunction, "Who so sheddeth man's blood, by man shall his blood be shed," and the law of Moses regarding capital punishment.

Mr. HOUSTON. The author of that was a pretty good psychologist.

Mr. KVALE. Who is a good psychologist?

Mr. HOUSTON. Moses.

Mr. KVALE. He was a good psychologist, and I certainly do not question his right to take that position. But the trouble is it proves too much for these good people who want the Bible to prove capital punishment.

That same law of Moses makes capital punishment applicable to adultery; it makes it applicable to blasphemy. Everyone who blasphemed God and the king was to be stoned to death. Not only that, but he who cursed his father and mother should be put to death. And I frankly admit that if you are going to have capital punishment I would rather see it meted out to a man who has sunk so low that he will curse his mother than to a person who in a fit of passion takes human life.

Mr. HAMMER. "Honor thy father and thy mother that thy days may be long on the earth."

Mr. KVALE. It was administered for the breaking of the Sabbath. Where would you land if you applied the same thing here? If you are going to take the Biblical argument and apply capital punishment because it says in the Old Testament it is to be applied in the case of murder, then, in order to be consistent, you have to apply it in all these other cases, if you want to follow the Old Testament.

Mr. HOUSTON. Do you realize that in the purpose of the law these punishments that you call punishments are penalties—get that?

Mr. KVALE. Very well.

Mr. HOUSTON. Here is a law established by the sovereign power of the State. It says that law must be obeyed. That is where the State comes in, and it fixes a penalty to prevent every—

Mr. KVALE. I understand that.

Mr. HOUSTON (continuing). Prevent violation of that law.

Mr. KVALE. My idea is that capital punishment is based on the Old Testament law.

Mr. HOUSTON. You have to have a penalty which is the penalty that will prevent the most violation of law.

Mr. KVALE. I say, in order to be consistent, those who advocate capital punishment because the Bible says it must be administered, must also advocate capital punishment for these other crimes. Am I right?

Mr. HOUSTON. Yes.

Mr. KVALE. Take Sabbath breaking. In the first place you are confronted with the old controversy over which is the Sabbath, Saturday or Sunday. Think of all the Sabbath breakers, the golf players, people traveling in automobiles, who would have to go to the gallows if we were consistent and applied the Mosiac law in every instance.

Mr. BLANTON. May I call your attention to one case which is well known, where a man named Patrick murdered in New York a millionaire named Rice, and he was sentenced to death, and the Governor of New York reduced his penalty to life imprisonment, and later he was pardoned.

Mr. KVALE. He should not have been pardoned.

Mr. BLANTON. And he is now enjoying life.

Mr. KVALE. That is miscarriage of justice. I am not advocating that.

Mr. BLANTON. Don't you know that that takes place in every State?

Mr. KVALE. Then, remedy that, and don't take human life in order to remedy it.

I have read my New Testament, so have you. I have read it through with this one purpose in mind, to find anything that might sustain me in being for capital punishment, because I want to tell you that practically all my brother ministers—as you know, I have been a minister a long time—are in favor of capital punishment.

Mr. HOUSTON. What do you say about obeying the laws?

Mr. KVALE. If it is the law to have capital punishment, of course, I say, obey the law. Naturally. I want to obey all laws, but I want to repeal that law.

I would like to have you show me from the New Testament one act of Jesus of Nazareth—one sentence, one word, one syllable, showing that he was in favor of capital punishment. I have not found one.

Mr. BLANTON. I will show you.

Mr. KVALE. Very well.

Mr. BLANTON. Search his entire scriptures and all of his administrations and you won't find one instance where he ever raised his finger against the proper administration of law.

Mr. KVALE. I will show you right now where he did not sanction capital punishment where the law of Moses demanded it.

Mr. BLANTON. You can not find one instance in the New Testament where he raised his finger against the proper administration of law.

Mr. KVALE. When you get to your office, take your Bible and read the eighth chapter of the Gosepl according to St. John, where it tells about a woman who was guilty of adultery, according to the law of Moses punishable by death, by being stoned to death. Her accusers were about her. You recall the incident. He wrote on the ground. I will not repeat it, because you remember it, and he said, "He that is without sin let him first cast a stone at her." And he asked her, "Woman, where are thine accusers?" * * * "Neither do I condemn thee." He was against capital punishment for her; he set her free.

Mr. BLANTON. That woman was not before the courts.

Mr. HAMMER. Not until convicted. She was only charged.

Mr. KVALE. There was no question as to her guilt.

Mr. HAMMER. I am with you on it. But, at the same time, they didn't have evidence. She was not convicted.

Mr. BLANTON. That woman was not before the courts. There was no trial. It was not a court proceeding. Christ did not in any way interfere with the administration of proper laws in court.

Mr. McLEOD. Mr. Kvale, it is a fact—you don't have to go back as far as Moses—that 200 years ago Great Britain had 243 crimes punishable by capital punishment, and now they have brought it down to 4.

Mr. KVALE. That was brought out by Clarence Darrow I understand, that they even had capital punishment for pickpockets.

The reason I went back to Moses is that a great many people think that capital punishment is right because it is based on the law of Moses. And I say that the civil law of Moses has been abolished. We are not bound by the civil code of Moses, we are under the Christian dispensation. There is nothing in the life of Christ, there is not a syllable as recorded in the life or teachings of Jesus of Nazareth that is in favor of capital punishment, not a syllable. That is why I am for abolishing it.

Mr. BLANTON. I move we adjourn. It is after 12 now.

Mr. McLEOD. Perhaps we could hear Mr. Fairbairn if he will only require a few minutes.

STATEMENT OF A. B. FAIRBAIRN, WASHINGTON, D. C.

Mr. FAIRBAIRN. I have very little to say, except this: I support the McLeod bill, and I believe that the average man in the District of Columbia does. I am disqualified to sit on a jury where the punishment might involve capital punishment, because I would not find a man guilty of murder in the first degree where capital punishment would be inflicted.

Mr. McLEOD. What is your business?

Mr. FAIRBAIRN. I am a publicity man. I am against capital punishment because I believe it degrades society. I quite understand Mr. Blanton, the gentleman from Texas, in mentioning those unspeakable crimes that occur in the South once in a while. They stir the blood; and I one time volunteered to become a member of a lynching party, because that was the time when the blood and the passions were aroused, and become hot. I was young at that time. I didn't finally do that job, I am thankful to say.

But for society to degrade itself by calmly and deliberately taking the life of a human being, I don't think that we should set that example in the greatest capital on earth, among the greatest people in the world, and where the greatest Congress meets. I do not believe we should have it.

The gentleman from Minnesota was saying something about the Mosiac law and about how Jesus Christ instituted the era of love and good feeling.

Now, I think that God Almighty, away back—away before Moses was heard of—forbade capital punishment. You will remember how when Cain, when the brands were put upon Cain, every man was forbidden to touch or take his life, even though he killed his

brother Abel. I think that is the best authority against capital punishment we have.

Mr. BLANTON. I want to ask you a question.

Mr. FAIRBAIRN. Go ahead.

Mr. BLANTON. Do you know it is a fact that there are approximately as many criminal assault cases in the District of Columbia as in any comparable city in the United States?

Mr. FAIRBAIRN. I really didn't know that.

Mr. BLANTON. That is a fact. Do you know that about the highest punishment recently that has been given one of those assaulters has been 20 years in the penitentiary? Did you know that?

Mr. FAIRBAIRN. I didn't know that.

Mr. BLANTON. You ought to investigate that. Let me ask you one other question; I want to get it in the record. You are a publicity man?

Mr. FAIRBAIRN. Yes.

Mr. BLANTON. In what line?

Mr. FAIRBAIRN. Oh, any line—political and other lines; for the farmers.

Mr. BLANTON. Are you connected with any publication?

Mr. FAIRBAIRN. I have two or three newspapers that I write for.

Mr. BLANTON. Would you mind giving their names?

Mr. FAIRBAIRN. Yes; the Sioux Falls Press, Sioux Falls, S. Dak.; Sioux City Tribune.

Mr. BLANTON. Are you a member of the press gallery?

Mr. FAIRBAIRN. No.

Mr. BLANTON. You are not accredited to the press gallery?

Mr. FAIRBAIRN. No. The reason I am not a member of the press gallery is that I can not say that I make my living by newspaper work, I have so many other things; and I am interested in legislation, and no man who is interested in legislation can properly be a member of the press gallery.

Mr. BLANTON. Are you what is termed a "lobbyist"?

Mr. FAIRBAIRN. I would not call it that.

Mr. BLANTON. Are you interested in legislation?

Mr. FAIRBAIRN. I am interested in legislation and in this legislation particularly.

Mr. McLEOD. We will now stand adjourned until next Monday at 10.30 a. m.

(Thereupon, at 12.15 o'clock p. m., the subcommittee adjourned to meet Monday, February 8, 1926, at 10.30 o'clock a. m.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
CAUCUS ROOM, HOUSE OFFICE BUILDING,
Monday, February 8, 1926.

The subcommittee met at 10.30 o'clock a. m., Hon. Clarence McLeod (chairman of the subcommittee) presiding.

Mr. McLEOD. The committee will come to order.

Mr. BLANTON. Mr. Chairman, I would like to introduce a little statement that I have clipped from Mr. Clarence Darrow's own

book—his own words, that came from his own brain—which I submit as an epitome of his life, and I would like to read it in the record; it is the last paragraph, and it reads as follows:

All my life I have been planning and hoping and thinking and loitering and waiting;

All my life I have been getting ready to do something worth while; I have been waiting

For the summer and waiting for the fall; I have been waiting for the winter and waiting for the spring.

I have been waiting for the night and waiting for the morning;

Waiting and dawdling and dreaming until the day is almost spent and the twilight close at hand.

I am going to ask the committee later—I don't want to interrupt the distinguished gentleman who has come here from Mr. Newton's State this morning; but later when the committee has time I want an opportunity myself to introduce some facts before the committee, and the chairman will hear Mr. Newton now.

STATEMENT OF CLEVELAND A. NEWTON, REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. NEWTON. If the committee would care, I thought I would like to take a few minutes to speak of some of my seven years' experience in the criminal courts.

Mr. HOUSTON. I am sure we are glad to have it, as it has been pretty wide.

Mr. McLEOD. You are a Member of Congress from the State of Missouri?

Mr. NEWTON. Yes, sir. I was for 18 months assistant United States attorney in the western district of Missouri; and from there I went to St. Louis, where I served four years as assistant circuit attorney, where I had nothing to do except to prosecute felony cases; we had no misdemeanors; everybody who came into our court took a chance at the penitentiary. I remember that during the first two years I was there I tried 207 felony cases. I was there four years, and then I was one and a half years Assistant Attorney General in charge of criminal prosecutions, and you naturally get a good deal of experience.

Mr. HOUSTON. That was Assistant Attorney General of the United States?

Mr. NEWTON. Assistant Attorney General of the United States in Washington.

The thing that has impressed me more about the enforcement of criminal laws—I think we ought always to keep two things in mind; there are two purposes in every punishment: The first purpose is the one least important, and that is to punish the offender for the crime that he has committed, but the most important purpose of every punishment is to deter others.

Mr. BLANTON. Mr. Newton, if you will permit me to interrupt you right there, because it is an important point.

Mr. NEWTON. Yes.

Mr. BLANTON. As against this great number of felony cases that you have tried, Mr. Darrow says he has had 40 or 50, and that covered all the classes of cases he has ever tried.

Mr. NEWTON. Of course, I would not put myself in Mr. Darrow's class.

Mr. BLANTON. He said criminal.

Mr. McLEOD. I think that was meant for homicide.

Mr. NEWTON. There is one thing that always impressed me as a prosecutor: I never saw the time in the prosecution of a case that I had any feeling against the defendant. The prosecutor is just a part of a system of government. The prosecutor who has feeling against the defendant is unfit to prosecute; he ought not to have any feeling against the defendant. A prosecutor ought never to prosecute a case unless first he is convinced after his own impartial investigation that the man charged is guilty. He ought never to put a witness on the stand if he doubts his integrity, because the prosecutor is to the criminal the embodiment of the State; and if the State is fair and firm and just, you are making an impression not only upon the man that you are trying, but you are making an impression upon the rest of them.

One of the troubles about the criminal law in this country is the delays and the uncertainties. I remember when I was assistant United States attorney in Kansas City, a very strong, forceful newspaper man came to me. He was an Australian and he was on the Kansas City Star. He could not understand the great number of murders we were having in this country. Kansas City was then having a murder every week—murders, murders; and those murderers were going on and very few of them being punished. It was very hard to get the proof. You had to have somebody see the offense, and then sometimes they would get away on some technicality. In those days it was "hang or nothing" in Missouri. If there was any doubt at all the juries would acquit, and some of them would not take circumstantial evidence.

This Australian newspaper man came to me one day and he said, "I can not understand this great prevalence of the taking of human life." In Australia, I think he said, there was 8,000,000 people. He said, "Two years ago was my last year there. Out of 8,000,000 people in the whole of Australia in one year there was only one murder committed; that man committed his crime on the 6th day of the month; on the 7th day he was tried and convicted; and on the 8th day he was hung by due process of law. In Australia when a man takes human life he says to himself, 'I wonder if that fellow is worth hanging for.'"

One of the troubles in this country is not only the delays but the uncertainty of punishment.

I remember a case that I prosecuted, among the great number of cases—I had nothing to do with preliminaries; the cases came to me all prepared; all I had to do was get the jury, read over the notes, convince myself as to guilt of the defendant, and if he did not plead guilty, try him.

Mr. McLEOD. Mr. Newton, for the reason that this is a matter of record, do you know what the experience of this newspaper man you cited has been in Australia?

Mr. NEWTON. He told me he had been a newspaper man practically all his life in Australia, and that he had made an investigation of the matter. Of course, he had been in Kansas City on the Star about two years then.

I wanted to give you a bit of my own experience in the trial of the case of a man by the name of Arthur Daly. One day a man was

found down on a vacant lot, in the early morning. I remember the thermometer stood at 40 that night. It was cold and rainy. He was unconscious. They took him to the hospital, and they found that he had some evidence of alcohol and some other powerful drug. They worked on him. The man died at 1 o'clock that day. They finally, after great effort, succeeded in getting his name out of him. They whipped him on the feet, gave him atropine and strychnine. He had no marks. He finally said his name was Harvey; and then toward the end, asking him as to where he lived, they finally got the word "Osage." They got only those two words "Harvey" and "Osage." They advertised this fact. In a day or two they found that he had a wife and three little children on a farm out from Osage; that there was a mortgage on his farm, and that he had come down to St. Louis. A stranger he was, a country boy. He looked around for friends to help him get a job, and he found two men, nice looking fellows, who took him into the Ohio saloon. He had a few dollars and he bought beer and sandwiches and paid for their beds for a week, and they were going out on a job; and on Saturday night they discovered he had a little money—I believe he had \$6 in cash. One of them went across into the Metropolitan drug store and bought 10 grains of morphine. He brought it back, and here was this country boy who absolutely trusted them; he had no doubt about their friendship; he had been helping them—and they sat there at the table and one of them attracted the young fellow's attention while the other held the morphine under the table, and he would take the morphine out a little at a time and drop it in a glass of beer, more and more, while the other held his attention the other way.

Then he stirred the beer around a little, and then switched glasses with him; and then said to the unsuspecting country boy, "Come on, and let us drink to the good job we will have to-morrow." They drank. In a little while they began to get what this third boy called "groggy." They took him out and he could not talk. He wanted to sing and could not. They took him down on this vacant lot, and then hunted for the police and saw there was none around; and when he became unconscious one of them went into one pocket on one side and one on the other, and they got \$6 and his watch. They took his Stetson hat and pawned it; and took the \$6 and went away; and as they went up the street Brown, alias Daly, said "I gave that ——— enough morphine to kill a man." The other one said, "You did? How much did you give him?" "Ten grains." And as they went away from him the fellow was lying there unconscious, Daly raised up and come down with all his might and hit him in the chest, and the post mortem showed that two of his ribs were fractured. Daly weighed 190 pounds. The other one said, "Why did you want to hit him like that?" "Well, if he gets over it, it will keep him from squealing."

He lay there all night, and the next morning the policeman found him.

We found that wife, the three little children, and the mother was not 21 years old. For \$6 they murdered him in cold blood. They didn't care enough about him to even leave him out there on the cold ground to freeze to death. They had no interest in him. But this Daly went up to the saloon and found a typical Kentucky colonel there who had a little pride in his dignity. "Buy me a drink," Daly

said, and the colonel resented it; and Daly, after getting his \$6 and pawning the poor fellow's hat and leaving him out there on the street, ordered this man to buy him a drink, and when he didn't comply he took a beer bottle and hit the old man over the head and knocked him down.

It took a week to trace this thing back. But a detective had seen these two fellows with Harvey, and after they identified him he went hunting for the men. Brown he found at a railroad camp and Daly he found in a workhouse; and he had the pawn ticket for the hat. Brown came in, and as soon as he went to Brown he said, "Is Harvey dead?" And they said, "Yes." He said, "Well, I never intended to kill him. Daly told me to give him 10 grains of morphine and he thought it would kill him."

We went into that trial and there were the circumstances: The mother with three little children, made orphans for life, and the widowed mother not 22 years old. I realized there were difficulties in the case. They were trying to say that he died of alcoholism, and I had to try to prove that he died by morphine poisoning. I offered to recommend a life's sentence. Daly said, "No; I want to hang or go free. If I can not go free I want to hang. I don't want any life sentence." We went to trial and the jury gave him the death penalty. It went to the Supreme Court and the Supreme Court affirmed the verdict, and the day of his execution was at hand. Then all the pressure in the world came from preachers, well-meaning men; from women, who saw a fine young fellow 25 years of age and were horrified at the idea of execution. They wanted his sentence commuted to life. I said, "You do that thing and the chances are that it won't be but a little while and he will be pardoned. Here is a man who has committed a murder as cold blooded as a murder could be committed, taking a man's life in cold blood and making children orphans and the young wife a widow. When I am prosecutor in that kind of a case the law is going to take its course. I am sorry for the defendant, but I am not going to take the responsibility of letting him go and set an example to somebody else." Finally the governor commuted it to life sentence, and in four years that fellow was pardoned.

Mr. McLEOD. Right there. Didn't he prefer the death penalty to life sentence?

Mr. NEWTON. At first he did, but I wish you could have heard him beg when they were nailing up the scaffolding.

Mr. McLEOD. I thought you said he dreaded life imprisonment more than death?

Mr. NEWTON. Yes; but you never heard a fellow cry and beg when they were erecting the scaffold. He lost 65 pounds worrying over it.

Mr. BLANTON. His idea was that he probably would be turned loose by the jury. It was his hope of escaping punishment.

Mr. NEWTON. He thought he could beat the case.

I will give you another example to show you the effect on the mentality.

Mr. HOUSTON. When the actual time came for the hanging, he preferred to take life imprisonment to death.

Mr. NEWTON. Certainly; and you never heard a man beg as he did.

Mr. HOUSTON. Yet he did make that declaration?

Mr. NEWTON. Sure he did; he was a good sport. But when he heard them nailing at the scaffold he changed his mind; and you never heard a fellow beg like he did, and he sent his father and brother to me.

Mr. McLEOD. That merely corroborates the statement made here the other day.

Mr. HOUSTON. Oh, yes.

Mr. NEWTON. They can say they would rather hang than have a life sentence, but he will take it back when he gets the sentence. I never saw one who didn't want the death sentence at first.

Mr. HOUSTON. Mr. Darrow stated the other day, "Now, take all the people in this room, or all the people you meet. If they had the choice between the death sentence and life imprisonment, they would say offhand, 'I would take the death penalty.'"

Mr. NEWTON. But wait until they get in court and the time comes; it is different. The desire in every human heart is to live.

Mr. BLANTON. And that is the reason Mr. Houston and I refused to believe this fellow Dudding, who wrote that letter. We knew it was not so.

Mr. NEWTON. Let me give you this psychology of the criminal: I had not been prosecuting attorney very long when one day a colored fellow killed his wife, and it looked to me like he was one of those fellows of low mentality. He had no friends and it looked like he didn't have that sort of mentality where you could really hold him responsible. His wife was a common-law wife, and they lived together. And his lawyer said, "What will you do for that fellow?" I said, "Well, I will recommend 25 years." The judges there always took our recommendation, and he went back, saw the man, returned and said, "That won't do. He says if you will give him a life sentence he will take it." I said, "I guess I can accommodate him on that all right. Bring him in." He brought him in and I recommended life sentence, and he seemed to be pleased with it and went on his way. It struck me so queer that that fellow wanted a life sentence rather than 25 years; and I went back to the officer who was sitting just inside the rail and I said "Officer, how long have you known that negro?" "Oh," he said, "I have seen him around the beat seven or eight years." "Do you know anything about his sanity; is he sane?" I thought if the fellow was insane I would not want to send him to the penitentiary. His lawyer was not very strong, and I always made it a rule to see that the fellow did get justice; if the jury gave him too much, to cut it down trying to neutralize the effect of a weak lawyer. But the man who has a strong defense, you can put him against strong prosecution; if the man has a weak defense I think the State ought to look out for him.

Mr. HAMMER. The prosecutor ought to look to the interest of the defendant as well as to look after the interest of State.

Mr. NEWTON. The prosecutor owes a duty to the accused just as much as to the State, and if the defendant is guilty the prosecutor ought to see that he gets his punishment.

Mr. McLEOD. As a lawyer, you will agree that is not always done?

Mr. NEWTON. I think prosecutors often run on zeal and they put in evidence when they know it is not true.

Mr. McLEOD. The police officer is supposed to protect a criminal as much as the State. But prosecutors like to win their cases, don't they?

Mr. NEWTON. In a lot of cases personality comes in.

Mr. McLEOD. Prosecutors like to win cases?

Mr. NEWTON. Some prosecutors do. I think most prosecutors are fair. I have taken man after man where the jury brought in a verdict that I thought was too severe and on my own accord cut them down.

Mr. BLANTON. It all depends on the man?

Mr. NEWTON. Yes.

Mr. BLANTON. If the prosecutor is a man of integrity and high principle he has done just what you have done; he has looked after both sides of the case.

Mr. NEWTON. Whenever you make a man feel and the public feel and his friends feel that the State is fair and firm and just and determined, then that fellow goes away and says, "I guess I got just about what is coming to me. I guess I had better start over." I inquired about this colored man and the officer said, "There is nothing that looks like he was insane." I told him what I did and offered to cut the sentence down if there was any doubt about his sanity; and he said, "That boy is wise. He gets 25 years and he has 18 years actually to serve. But if he gets a life sentence pardons come along and they all get out in 10 or 12 years." The average life sentence in Missouri is 10 or 12 years. There are the holidays, and we have these reform things coming along.

One other thing occurs to me: I remember one day I sent a fellow to the workhouse for a year. They pleaded for his wife and a whole bunch of children. He was charged with forgery, and I sent him down to the workhouse for one year on a plea. There were two old preachers, one a Methodist and one a Presbyterian. They worked in the jail, and I always had a lot of confidence in them. They pleaded that the man had a wife and eight or nine children, that there was no coal in the home and a dreadful winter. I said, "The minimum for forgery is five years, and here are three offenses." And, another thing, it is very rarely in my experience that a fellow who commits forgery ever reforms, and that it is the most recurrent crime on the calendar, and he will go to it again. So when I gave him a year I intended he should stay there for a year. They pleaded and finally got the sympathy of the judge about all these children. They said they would be responsible for him. I said, "Very well, then; if you will do it, I will recommend it if you will be responsible." The winter was one of the worst I ever saw and it was about February. All right; they were sure. He was a man 45 years old. He was brought in and paroled to their care. They told me that they would report immediately if anything happened.

About three or four weeks after that those two preachers came in one day, and I never saw men who looked so uncomfortable. They walked in and apparently didn't have their plans made; and the Presbyterian looked at the Methodist and the Methodist looked at the Presbyterian. I said, "What can I do for you?" They were embarrassed. One said, "You tell him." They said they hated to do it. They were in an awfully embarrassing position. But they had promised me they would. They said, "John Pellman is out

forging again." That was about a month after his parole and one said, "He passed a check for \$35 on me and a check for \$25 on Brother Price over there." He had forged checks on his benefactors, who had taken the responsibility.

I remember one fellow that I defended in the Ozarks, who was charged with burglary—I didn't defend him really; I got a plea for him—that is, I entered plea for him—and he was vicious about it. He said that the old man whose store they robbed, "We did rob it, all right. But I saved his life. The other fellow wanted to kill him." I made him promise that if he would get six years in the penitentiary and if we could locate the other fellow, the judge would recommend that they cut off two years and make it four years. He kept his word. He located the man in Kansas City. I went to Jefferson City at my own expense to see the governor, and the governor cut the sentence down. Then I went over to see him and told him about it, and he had a woman friend who was supposed to pay me. She never paid me. But I kept my word: I had promised that man to do that, and I did it. Well, I went over to tell him that I had gotten it cut down. "Did Mrs. Tillson ever pay you?" I said, "No; she didn't." He said, "You are the first fellow who has ever been square with me. But you will get your pay if I have to knock some son of a gun in the head." I said, "I don't want any of that kind of money." "You go straight." He said, "I don't know about that." He talked on a little bit, and he said, "I will tell you, I saved that old fellow's life down there, an old farmer living in the store, and he told on me." He had picked him out of 500 men in the Springfield courthouse. He said, "I will never make that mistake again. If a fellow ever gets a chance to look at me, he will never get a chance to tell the tale. Dead men don't talk."

There was a fellow who was a menace to society. I regretted I had done that for him, because I could see how bad he was.

One day in St. Louis the judge said, "Let us go down and look over the rogue's gallery." We went down and were looking through the pictures, hundreds of them, and I saw a familiar face—thin fellow with a glass eye. I said, "Wait a minute; there is Fuller." "Which one?" The Bertillon expert said: "That fellow; do you know him?" "Yes." "Where is he now?" "He is over in Jefferson City for burglary."

I had lost track of him, he said. He came up from the Ozark Mountains. He said, "That is it. They don't have the Bertillon system." I said, "What do you know about him?" He said, "He is one of the best house burglars in the United States. He had a term at Lansing, he had a term in Tennessee, and he had a term in Illinois." And he began to tell me his record. "And now he is in Jefferson City." About a year after that I was sitting at the table trying a case one day and John Shea, the Bertillon man, sat down at my elbow, and I turned around. He said, "I have got a late picture of your friend Fuller." I said, "Where is he?" He said, "He got three years over in Kansas. When he got out at Jefferson City he operated in Kansas City, Kans., and robbed some 25 or 30 houses, and they have sent him over there." About three and a half years later before I left—

Mr. BLANTON. Is it not a fact in your experience that every man who operates like he did if he had been apprehended he would have committed murder?

Mr. NEWTON. He told me he would.

Mr. BLANTON. He told you so?

Mr. NEWTON. He told me so—that there never would be man again that ever saw him as that old man saw him who would live to tell the tale. "I will never do it again. I made my mistake." They took that old man and so he couldn't make a noise they put cotton batting in his mouth and took a pistol barrel and pushed it down his throat, and he absolutely expressed regret when he talked to me that he hadn't killed him, and he said, "I will never do it again." And you find a lot of people who shed tears over that fellow, who want to deal with him in kindness.

Mr. BLANTON. In dealing with a man like that, Mr. Newton, as a prosecutor, do you give more consideration to the rights of the American people or to that criminal? Which is entitled to the most consideration?

Mr. NEWTON. I think the law-abiding peaceable citizen who goes along attending to his own business has a right to his life and property.

Mr. BLANTON. And the protection of the law?

Mr. NEWTON. I would not be in favor of capital punishment were it not for the fact that the man who ruthlessly and cold-bloodedly takes a human life, who does not fear the penitentiary because he knows he can get out. He thinks he can beat it under our system, just like a fellow in the Ozark Mountains some years ago. A man was driving along with his family, and he gave two young fellows a lift. And when they got down in the mountains they got the man out hunting and they shot him. Then they made some excuse to the woman and persuaded her to go out in the woods with them and shot her and hid her body in a pile of brush. They had a child 2½ years old, and one of the young fellows said when he took hold of that little 2½ year old baby in order to strike its head against a tree and burst its brains out, the child wanted to play and looked up and laughed. And he said, "That is the only regret he had." Those fellows were hanged, and the next fellow who would undertake to do a thing like that had the example.

It is not because you have a feeling against the man. But what are we going to do? Are we going to protect society?

That man who lived in Osage County. He had a right to live. There was that mother with three little babies going along through life and others who saw Frank Daly after that cold-blooded murder get out in four and a half years. They have not much to fear; most of them beat it. They get a lawyer like Darrow; if they can afford to hire a lawyer like that. Murder is too safe in this country.

Take our experience in Missouri. Nobody knows this thing any better than my friend Sager here. He was prosecuting attorney when I was his assistant. I never saw a man fight harder to maintain the dignity of the law than he did. I remember another illustration. He came in one day and said, "Boys, I want you to make that habitual act stick." We had a law in Missouri whereby if a man commits a crime and goes to the penitentiary and then gets out and commits another offense, the law fixes his punishment at the maximum for which the second offense provides. And burglary in Missouri is not less than three years, which means life as a maximum. We had a lot of ex-convicts going around committing burglary with impunity.

The boss said, "Boys, there are too many convicts operating. People are not safe with robberies and burglaries and everything going on. I want you to make that habitual stick."

I went in on the next case, qualified my jury; tried all the jury out. A fellow had broken into a cigar store—a burglar with two pals. I tried the jury out and the jury understood that under the law the legislature fixed the penalty for life. They brought in life. Then, after that I got six of those convictions. I wish you had seen the effect on ex-convicts in St. Louis. The "habitual" was hung onto them, life sentence; that is what it meant. Those fellows hunted other territory to commit depredations. It was the certainty of a long life punishment.

Mr. Sager is here and—

Mr. McLEOD. Then, it is a fact that capital punishment is class legislation for the fellow that employs Clarence Darrow and has a chance, whereas a man who can not employ Clarence Darrow has no chance at all?

Mr. NEWTON. I think it is unfortunate that we have men of that type.

Mr. McLEOD. There are a good many "Darrows" in this country.

Mr. NEWTON. And when you have got a man like that the State ought to double its efforts, the jury ought to do its duty, and the prosecution ought to be put on in proportion to the strength of the defense.

Mr. BLANTON. In reply to the chairman, in view of what he has in his mind, I want to answer that one point now: In Dallas, Tex., the home of our colleague, Mr. Summers, a negro named Oats, with the purpose of robbery, killed a man in cold blood—the most cruel, cold-blooded murder you ever heard of. He didn't have a dollar; he didn't have a lawyer. In my State the court appoints the defense counsel in a case of that kind. The court appointed counsel to represent him. During three years there were three convictions with death penalty, and each time on technicality the higher court reversed that case and sent it back. He was convicted a fourth time and given the death penalty, and the verdict was, "We, the jury, find the defendant guilty of murder as charged in the indictment and assess his punishment at death," but they failed to say "We find him guilty of murder in the first degree," although they said "We find him guilty of murder as charged in the indictment," and the indictment charged first degree, and on that one little technicality for the fourth time the higher court of Texas reversed that case and sent it back for another trial; and yet you tell me that a poor person is in danger because he can not get Clarence Darrow. That lawyer was acting without one single dollar's pay.

Mr. McLEOD. You are citing exceptional cases.

Mr. BLANTON. During the eight years I was on the bench I tried many more felony cases during that time than Darrow says he has officiated in, and I have always appointed counsel for poor people when they did not have a lawyer.

Mr. McLEOD. What kind of counsel would you appoint?

Mr. BLANTON. The very best we had at the bar.

Mr. McLEOD. They don't in other States.

Mr. HOUSTON. Mr. McLeod, they have to serve if the court appoints them.

Mr. NEWTON. I think, in answer to that, it is an unfortunate thing that some lawyers have enough hypnotism and power to carry juries off their feet and defeat justice.

I think one of the most striking pictures of that kind I ever saw—I never had it so impressed upon me and I never heard anything like occurred in the experience that our friend Sager in the trial of a policeman. He killed a man and woman in a hotel. We had a lawyer of the Clarence Darrow type, Governor Johnson, who had been 50 years at the bar. He had most marvelous powers. He was the hardest man to get a conviction against. I tried many cases against him, and he could always find the weak link in the evidence, and then he threw his weight on that one point until he could work some doubt in the mind of one juror; and then the chances were slim to get a conviction.

I remember he talked about his 50 years' experience at the bar, and I remember Sager following him. Sager said:

Gentlemen of the jury, St. Louis has not many really great landmarks. We haven't many things to show to the visitor who comes here, but one of those things is that great criminal lawyer, Charles P. Johnson. His fame has extended throughout the valley as a lawyer, as an actor, as a defender. But from whence comes that great reputation? What was it that made it possible to have his name heralded over this valley as the greatest criminal lawyer in the Middle West, as the greatest criminal lawyer west of the Mississippi? Go back over that 50 years of criminal practice at the bar of this city, and what do you find? You find his pathway strewn with the skeletons of defeated justice, and time after time murderers and highway robbers who committed every crime in cold blood have walked in and walked unpunished from the court room continuing the practice of their crimes upon other people, because juries have been swept from the pedestal of their judgment by the persuasive eloquence of Charles P. Johnson.

Are you going to overthrow your whole system because you have a few men like that? I think that is the question.

I believe the experience in England, with the few crimes they have committed there is the best evidence. We ought to have the theory of protecting the innocent; and I believe in that. I think we ought to protect and ought to sympathize with him. But the uncertainty of punishment is so great in this country and the uncertainty of serving the sentence when they get punishment is so great in this country that crime is greatly encouraged.

Mr. HOUSTON. Mr. Newton, before you close, there is one question I would like to ask you, and that is this: Is it your opinion that the change made in most of the States of prohibiting the court in charging the jury on the facts as well as the law has not had something to do with that? I don't know how it is in Missouri, but most of the States changed that and put in a constitutional provision in the last 20 years prohibiting a court to charge the jury on the facts and hold them absolutely in their charge to what the law may be as it relates to that case. I feel out of the little experience I have had—it is not so not so in Federal courts, of course.

Mr. HOUSTON. I feel sometimes we have a miscarriage of justice and the court has to sit by with hands folded.

Mr. NEWTON. I think the States make a mistake in not paying prosecuting officers salaries and getting bigger men. You always have a few of these men who get big fees that are powerful defenders, while your prosecutors come and go. There is not a criminal lawyer of any consequence—the average criminal lawyer gets his mind tainted like Darrow. What kind of a prosecutor would Darrow make?

Mr. HAMMER. He would change his viewpoint if he was prosecuting.

Mr. NEWTON. I don't think he could. I never saw a good defender who would make a good prosecutor. He can not adjust himself; and I found myself as weak as could be when I found myself on the opposite side of the case trying to defend a fellow. The attitude was not easily changed, and I was trying with fairness as an officer of the State and what I was trying to do was to do justice to the defendant and reform the other fellow—reform this fellow and the other fellow and prevent these crimes happening. But when you get on the other side you are in a different situation and I could never adjust myself to a defending lawyer as a rule, because the average criminal lawyer knows his client is guilty, and I think in your duty to the State, if I know my client is guilty I feel I ought to ask him to plead guilty and plead the mercy of the court.

Mr. HAMMER. The first requisite of a good defense counsel is to have the happy faculty of believing your client is not guilty.

Mr. NEWTON. But our rules in the criminal court and with most criminal lawyers they say, the first thing the client should do is to tell his lawyer the whole truth about it and let him prepare for you.

Mr. BLANTON. Right there, in answer to my colleague here, the Clarence Darrow of Texas is J. F. Cunningham, one of the greatest criminal lawyers of the South. He has told me that he has done just what you said then. The very first thing when he is employed he tells the client, "You tell me just exactly whether you are innocent or guilty, and tell me all the facts."

Mr. NEWTON. The really good criminal lawyers know the facts. I have had them tell me in court they will trim you if they can. But, fortunately for the State, in Missouri we have unlimited rule on cross-examination that you are not controlled and cross-examination makes it possible.

There was just one thing in Missouri I remember, we had it "hang or nothing," and then they abolished it. In two years the murders got so numerous, we had so many that the legislature had to change it and put capital punishment back.

Mr. McLEOD. If life imprisonment were a reality—if it meant life imprisonment, would you then favor having capital punishment abolished?

Mr. NEWTON. Of course, I think that is a dangerous assumption to make, because I don't think you can make it a reality; and even then I think in the real cold-blooded, ugly case, when a man goes in the house, slips in for the purpose of robbery and cuts the throat of the wife and children asleep, like some of them do, when he has got any mind—if he has a mental deficiency, we have a provision in the law to take care of that—but if he does it while sane, I think he ought to pay the penalty.

Mr. McLEOD. Even if he could have been given imprisonment for life?

Mr. NEWTON. Even if he could have been given imprisonment for life, because the fellow who goes in for life always has the hope of getting out. When a man takes the life of women and children when he is perfectly sane he should not get off with life imprisonment.

Mr. McLEOD. Which is the greatest penalty, death or life imprisonment, if it be life imprisonment in reality?

Mr. NEWTON. The real deterring penalty is the execution; that is the thing.

Mr. McLEOD. Does a man suffer more in execution or spending the rest of his life in jail?

Mr. NEWTON. I have never seen one yet in his right mind who would not prefer life imprisonment, because he will get a certain joy out of it. He will say, "I can read the books, papers, and magazines and can have my friends visit me," and a lot of them get a good deal of kick out of it. I heard a fellow who had gone to Leavenworth say it was about the finest place he had ever been in and that there were "more smart men in there than on the outside."

Mr. McLEOD. You do not believe in putting a fellow out of the way if he can be imprisoned permanently?

Mr. NEWTON. It is not the question of the defendant; it is the feeling that we are dealing with the defendant or the effect on the other fellow.

You take the case I referred to a moment ago; I told the jury:

Here is the wife made a widow and the three little children made orphans with the mortgage on their farm. That husband is over there on the hillside asleep. You can not bring Fred Harvey back to those children and that wife. You can not restore the protection of the father for the children and wife by sending this man to the gallows, but you may save 20 or 30 other women being put in the same position if you deal justice to this man.

Mr. BLANTON. Is it not a fact that there are crooks, who are men 50 or 60 years old, who commit murder where the little balance of their life in the penitentiary would not serve as punishment?

Mr. NEWTON. Yes.

Mr. HOUSTON. From your wide experience as a prosecutor, have you ever known an innocent man to be hung; that is, you afterwards learned that he was innocent after he was hung?

Mr. NEWTON. Not to be hung, because you have to have evidence that was conclusive.

Mr. HOUSTON. I mean executed.

Mr. McLEOD. Mr. Newton, just finish out that one question: We have all agreed that the choice of every criminal before apprehended for crime is that he would rather take the death penalty than life imprisonment?

Mr. BLANTON. We haven't agreed on that.

Mr. HOUSTON. Oh, no; he will take life imprisonment every time when he is up against it.

Mr. McLEOD. We all agreed practically on that.

Mr. HAMMER. I don't agree with you, and I was surprised that nobody called Mr. Darrow on it.

Mr. McLEOD. No one did call Mr. Darrow on it.

Mr. HAMMER. I know; but I think he is mistaken about that.

Mr. McLEOD. Is it not a fact that for the reason you say it is an example to the outsider who may commit crime in the future that the life imprisonment will be greater fear to him than death penalty?

Mr. NEWTON. I don't think the average man—

Mr. McLEOD (interposing). The example, now.

Mr. NEWTON. I don't think it is possible. I think the theory on which you move is an impossible theory, because there has not been any place in this country or any place in the world I have found where you could close the hope of pardon to the man who is given life imprisonment.

Mr. McLEOD. You say you think they dread the death penalty most?

Mr. NEWTON. I think I could extract a little joy still out of living. I would have books to read and plenty to eat and I would have my hope of getting out. I will tell you when it comes to sitting down and having that hood pulled over your head and going off into eternity is a powerful deterrent.

Mr. McLEOD. I say, in advance, you will agree with the statement of Mr. Darrow; nobody called him on the statement that we would all select death instead of life imprisonment.

Mr. BLANTON. I was not here. I would have called him.

Mr. McLEOD. You were invited.

Mr. BLANTON. Yes; but death in my family kept me away.

Mr. HAMMER. I was very much surprised at Mr. Darrow. I wish you had heard him. He changed my viewpoint about him very greatly. His whole theme was handled in a way that convinced me he has a kink in his mind; there is no doubt about that. After lawyers have defended so long they get in that frame of mind?

Mr. NEWTON. I think so.

Mr. HAMMER. But he gave illustrations to show that criminals preferred the death penalty to life imprisonment. I never heard the idea suggested by an intelligent man before. I want to get your viewpoint. How long did you prosecute?

Mr. NEWTON. Seven years.

Mr. HAMMER. Did you ever act as judge?

Mr. NEWTON. No; I never served as judge. Nearly all of my experience was as a prosecutor, although I have defended a great many cases.

Mr. HAMMER. Before or since?

Mr. NEWTON. Before and since. I have defended men charged with murder.

Mr. HAMMER. I have had considerable experience with criminals, and have had two or three cases in my life of the kind you spoke of. But no one ever told me they would have killed a man or I would have known he ought to be in the insane asylum. A man who would say that thing I think is of unsound mind.

Mr. NEWTON. I know the rule, "Tell your lawyer the truth and let him frame your defense."

Mr. HAMMER. Then, they won't do it half the time.

Mr. NEWTON. If they get the right lawyer—if a man ever told me he was guilty I would make him plead guilty.

Mr. McLEOD. Men who can afford great lawyers, where capital punishment is involved, need not fear, but it is different where they have got to take an assignment of counsel. The courts in most States can not pay over \$250.

Mr. HOUSTON. The court has the power to assign any member of the bar. That is a duty devolving on the court.

Mr. NEWTON. I think it an unfortunate thing that there should be men like Mr. Darrow who for pay can prevent punishment being dealt out to people. There are some men who just simply take their chance on not getting caught, and there are other men who think they have enough money and influence to hire Darrow and regard punishment with impunity. There ought to be some provision where the prosecution would be strong enough to counterbalance the de-

fense. But I think the fact of men doing that sort of thing and preventing men being punished thereby has a tendency to cause men to commit murder. I think it is unfortunate, but I do not think the system ought to be given up or the fight ought to be lost.

Mr. McLEOD. Mr. Darrow testified that he didn't get big fees and was not a rich man.

Mr. HOUSTON. In your opinion—you have had wide experience; you have come in contact with these men you have prosecuted: Isn't it a fact that a man who deliberately and cold-bloodedly plans and commits a murder is a menace to society?

Mr. NEWTON. Oh, yes. On this question about Darrow—

Mr. HOUSTON. If he has done this thing once, like fellows who killed Daly for \$6, if he had an opportunity he would do it again. He never was sorry he committed murder, but was sorry he got caught.

Mr. HAMMER. That man was a moral pervert. I think he was insane. I think his own conversation indicates he was insane and ought to have been in the criminal department of an asylum.

Mr. NEWTON. I don't think he was insane; I don't think he had any moral remorse at all.

Mr. BLANTON. With regard to the statement about big fees in the Leopold and Loeb case, which Clarence Darrow defended, I am informed he and his coworker in the defense received \$130,000 fee in that case. I would not call that a small fee.

Mr. NEWTON. I want to get Mr. Sager started.

Mr. McLEOD. Did you ever know of a wealthy man dying on the gallows?

Mr. NEWTON. Yes.

Mr. BLANTON. I do and I will give you a recent case.

Mr. NEWTON. Mr. Sager has had a lot of experience. He always picked out the bad, hard cases to prosecute. He took the laboring oar where the cases were difficult. He has been Assistant United States Attorney General, and has been at New Orleans in the last year prosecuting those big rum conspiracy cases; he has been up to Buffalo and down in Florida, and I don't know anybody better qualified than he is, and I want him to talk to you.

Mr. McLEOD. Just one last question: In the event of the exceptional case you cited here, that man didn't commit murder. In the event he didn't commit murder, he was yet a menace to society. He would have been done away with according to the testimony this morning by capital punishment or some other means, because jails are not safe. Even though he be not guilty of homicide, he was a menace to society, was he not, according to his own trend of mind?

Mr. NEWTON. I don't think a man ought to be—

Mr. McLEOD. We can not call him insane?

Mr. NEWTON. You are speaking about the case of the burglar?

Mr. McLEOD. Yes; who killed the man.

Mr. NEWTON. In the first place, he ought to have been given a life sentence and kept there, because he never reformed; and when he committed murder he ought to have been made an example of.

Mr. McLEOD. We will now be glad to hear Mr. Sager.

STATEMENT OF HON. ARTHUR N. SAGER, WASHINGTON, D. C.

Mr. McLEOD. What is your full name?

Mr. SAGER. Arthur N. Sager.

Mr. McLEOD. And your home address?

Mr. SAGER. I am now in Washington.

Mr. HOUSTON. Please state your experience, so as to make a background for your statement.

Mr. SAGER. I will do that; yes, sir. I have been practicing law for 32 years. I was elected circuit attorney of St. Louis in 1904. I served for a period beginning January 1, 1905, to January 1, 1909. I had defended many criminal cases in the country before going to St. Louis.

Mr. McLEOD. Mr. Sager, were most of those cases you defended where they had capital punishment?

Mr. SAGER. Yes.

Mr. McLEOD. Have you ever defended in cases where they did not have capital punishment?

Mr. SAGER. Yes; the only cases I have ever been connected with where death was the penalty were in the States of Arkansas and Missouri. In the Federal courts I have defended in post-office fraud cases and some other violations of law, and as Special Assistant Attorney General I prosecuted various conspiracy cases, moving picture cases, etc., in the States of Florida, New York, Louisiana, Virginia, and North Carolina.

Mr. NEWTON of Missouri. You prosecuted the Rickard case did you not?

Mr. SAGER. I did. I want to make it clear to the committee at the outset, however, that by my appearance here I am in no way representing the Department of Justice or the Government of the United States, but come solely upon my own responsibility, to express my personal views resulting from many years of experience as a lawyer in the courts. I have a background aside from my official experience which I have about covered, I think.

Mr. HAMMER. May I inquire whether you live in St. Louis?

Mr. SAGER. I am not living there now; I am living in Washington.

Mr. HAMMER. You were a criminal lawyer in practice?

Mr. SAGER. Yes; but my largest experience was in civil practice.

Mr. HAMMER. Were you ever a prosecutor?

Mr. SAGER. Yes; I was circuit attorney of St. Louis for four years as I have stated, and it was during that time that I had the pleasure of the association with Mr. Newton as assistant in my office.

Mr. McLEOD. Was it at that time that your mind was fixed as to whether or not capital punishment was the best method?

Mr. SAGER. No; I will confess very freely to you it has been only after a great many years that I have come to the final conclusion that capital punishment is the best remedy in certain cases.

As prosecuting attorney of St. Louis—I don't know whether it is from early religious training or from some temperamental attitude—I was adverse to capital punishment, and my aversion to it was so great that I never permitted but one man to hang during the time I was circuit attorney, and I regretted that.

Mr. McLEOD. Why were you opposed to capital punishment at that time?

Mr. SAGER. Yes; I say it was perhaps based on the theory of the commandment "Thou shalt not kill," and the question in my mind as to whether organized society could do something that an individual is forbidden to do.

Mr. McLEOD. You didn't think the State had a right to take life?

Mr. SAGER. I felt that way; that was my feeling, but I have come to the conclusion that the exigencies of society, the protection of society, demand and require it do many things that can not be safely delegated to an individual. You won't permit an individual to go out and avenge any wrong, no matter how grievous. Of course, I get the protection of society; I am supposed to get it, and I should get it, and I think society ought to have the right to enforce its laws.

Mr. McLEOD. Would you favor capital punishment if conviction meant life imprisonment in reality?

Mr. SAGER. Absolutely, if it meant that.

Mr. McLEOD. You would still want it?

Mr. SAGER. Absolutely; and I will cite you to the situation in England. In England and Wales there are 38,000,000 people, and in 1923 they had 151 homicides as against 10,000 in the United States with 100,000,000 people. They hang over there, and when a man is convicted in six or eight weeks he is in quicklime.

Mr. McLEOD. But they have greatly reduced capital crimes, have they not?

Mr. SAGER. Oh, certainly; social changes bring that about. However, they formerly had 150 or more crimes punishable by death. But they have done away with that. We also had 12 in Massachusetts at one time.

Mr. McLEOD. And now how many?

Mr. SAGER. Only one.

Mr. HAMMER. The procedure is different there—I don't mean to reflect at all—but they have better educated and better equipped men for judges. If we had this type of judges, we would not have these appeals that we talk about.

Mr. SAGER. If we had less "judge-made" law, less technicalities—and I could with very little preparation spend a day recounting to you the absurd and outrageous instances of senseless reversals—such as have been cited by the member of your committee from Texas, Mr. Blanton. For instance, down in Georgia they indicted a man for stealing a sow with a clip out of one ear day a slit out of the other, describing the sow, and the proof showed that the slit was out of the wrong ear and the clip also wrong. The indictment for instance, stated that the clip was out of the left ear and the slit in the right ear, and the proof showed it was just the other way; and the court held that was fatal variance; and that case was reversed.

Mr. McLEOD. It might have been, too.

Mr. SAGER. Yes; it was.

Mr. BLANTON. I want to ask you one question, Judge: If we were to attempt to ban capital punishment on religious grounds upon the commandment that "Thou shalt not kill," we would have to pass a law that this Government could not enter a war, would we not?

Mr. SAGER. Yes.

Mr. BLANTON. That would be the first law we would have to pass, because that means killing by the hundreds of thousands sometimes.

Mr. SAGER. Yes.

Mr. McLEOD. According to that argument, we would have to dispose of the police power.

Mr. HOUSTON. I will ask this question, if you will permit: In the case of an execution, there is a violation of a declared law and its penalty?

Mr. SAGER. Yes, sir.

Mr. HOUSTON. For violation of law there must be a penalty?

Mr. SAGER. The very necessities of society require it. Now, getting to your judge-made law: Mr. Newton will recall a case that I prosecuted in Missouri against Warner for bribery. I had a supreme court that was hypertechnical, and I knew exactly what I was up against all the time and that indictment was prepared with great caution. We knew we were going to have a terrific fight, because at the same time we had indicted another man named Priesmeyer. Warner belonged to one political organization (the Democratic) and Priesmeyer belonged to my organization, the Republican. So I had those two forces lined up against me in both cases, of course.

We tried Warner first. We prepared this indictment, as I say, with great care; and we proofread it three or four different times. I think you, Mr. Newton [turning to Mr. Newton] read it with me; and then Fickhizen read it to me; and then I read it back to Orrie Bishop.

Mr. NEWTON. And then you had me read it to the jury?

Mr. SAGER. Yes. The constitutional requirement in the State of Missouri was that the indictment should conclude "against the peace and dignity of the State." The typist, because the carriage of the machine had gone down to the end of the line and locked, piled up the article "the." Its in our language but not in the Latin.

After getting a conviction, which we considered a great feat in that particular case, the Supreme Court reversed it on the ground that the article "the" was omitted from the concluding clause, and it went on to state that it would leave doubt in the mind of the defendant as to the laws of which State he had offended, although the venue had been repeated again and again from the first to the last clause.

Mr. HOUSTON. Notwithstanding the letters of the word "the" were piled up on top of each other.

Mr. HAMMER. Would they hold that now?

Mr. SAGER. They do pretty much the same things now.

Mr. HAMMER. Do they require it as statutory provision that the indictment shall conclude "against the form of the statute in such cases made and provided and against the peace and dignity of the State."

Mr. SAGER. Yes. You can pass statutes in all of your States that that undertake to correct all of these technicalities and sweep them aside; and yet courts will blindly close their eyes and hold just what they have been holding for a hundred years.

Mr. HAMMER. I do not see how they can do it.

Mr. SAGER. I don't either, but they do it. I want to say this about the Warner case, because it is a very interesting thing. A girl who was confided to the care of a man who moved up from

Arkansas over the State line—she was a poor, little, scrawny thing, an orphan; her parents had died. One day she was working in the cotton fields and this man ravaged her. That fellow was prosecuted and sentenced to hang, and it was in that case they established the precedent with regard to the article "the." But they were obscure people, and that occurred in southwestern Missouri in a sparsely-settled community, and they didn't take it up. But when the Warner case came along the country was in arms and the American Bar Association took it up. That man who committed that rape never was punished; and that is the trouble. Take these reversals and the second time it is difficult to convict. We accomplished it by very hard work in election fraud cases. Every time we convicted in an election fraud case the Supreme Court would reverse it. We finally ran them out of reasons for reversals and began to get convictions, and I think we put 38 in the penitentiary during that time for which much credit is due to Mr. Newton.

Mr. Darrow has talked to you, and I have been very much more interested in that phase of the investigation than anything else. I think, as Mr. Crowe said in the Leopold-Loeb argument, that Darrow's whole philosophy of life is wrong. I think you have a clipping here I would like to show you.

Mr. BLANTON. I read it into the record.

Mr. SAGER. No; I want that newspaper clipping about that negro meeting which he addressed. That illustrates his point of view. In a speech to a meeting of negroes in Chicago he said:

If I were a colored man, I would never salute the American flag, because America has done nothing for you.

And you ought to read the answer that is made in this paper to Darrow on that subject, the answer being written by a negro, who said he would "kiss the flag."

In the Cook County jail—I would like to have that go in the record—

Mr. McLEOD. Is there any verification of those quotations?

Mr. BLANTON. It is from the Chicago Herald-Examiner.

Mr. McLEOD. I will object to that going in, for the reason that I would like to know whether it is authentic. That is a pretty broad statement to put in the record, quoting a man on something you do not know whether it is exact or not.

Mr. BLANTON. It is printed in the Chicago Herald-Examiner for January 29, 1925. It is under the head of "Letters from the people." This is a letter from quite a prominent negro.

Mr. McLEOD. Signed by some association?

Mr. BLANTON. No; it is signed "Jack Tillford, 4020 Grand Boulevard, Chicago." Here is what he says, sir:

Clarence Darrow, speaking before 2,000 negroes at the Boy's Club of Michigan Avenue, made this statement, "If I were a colored man I would never salute the flag, because America has done nothing for you but rob you."

And then this negro goes on to defend the flag against Clarence Darrow's statement.

Mr. McLEOD. And the whole thing is signed by blank association?

Mr. BLANTON. No; it is signed by Jack Tillford. This [indicating] is another matter; this is a matter pertaining to automobiles.

Mr. McLEOD. It is read in the record.

Mr. SAGER. Shortly before the arguments with respect to the sentence to be passed upon Leopold and Loeb he addressed the prisoners in Cook County jail. I recall in reading his statement he criticized the sheriff there at one time, who insisted upon all prisoners being witnesses to jail hangings. In this same jail, to the unfortunates in that jail, he made this address in part, and I want to read it [reading]:

The reason I talk to you on the question of crime, its cause and cure, is because I really do not believe in the least in crime. * * * I do not believe that there is any sort of distinction between the real moral conditions in and out of jail. One is as good as the other. * * *

There ought no to be no jails; and if it were not for the fact that the people on the outside are so grasping and heartless in their dealing with the people on the inside, there would be no such institutions as jails. * * *

But nine-tenths of you are in jail because you did not have a good lawyer; and of course you did not have a good lawyer because you did not have enough money to pay a good lawyer. There is no very great danger of a rich man going to jail.

And then he went out and made good the claim that rich men who could employ him or lawyers of his skill and ability could save their sons from the gallows.

Mr. McLEOD. Him or any other rich man?

Mr. SAGER. Oh, no. As to Darrow's personality, it is very attractive. I think it is very dangerous; I think that is the most dangerous speech that could be made. It is unwholesome.

Mr. HAMMER. If he said it. But that is awful language.

Mr. SAGER. It is awful language. It is here in this speech made by Mr. Crowe in the argument on the matter of the sentence to be imposed upon Leopold and Loeb in his presence, and, of course, uncontradicted.

Mr. NEWTON. It was made in the presence of Darrow and not challenged by him?

Mr. SAGER. Absolutely.

Mr. McLEOD. It merely brings out the fact that rich men don't get convicted.

Mr. SAGER. Rich men do.

Mr. McLEOD. Not as much.

Mr. SAGER. That is possibly true, but that is not the fault of the law; that is the fault of society; that is the fault of maudlin juries; that is the fault of sentiment—the soft-hearted and soft-headed sentiment of the American people; and the other responsibility lies with the judges of our courts.

You have got to make a distinction between a law and its enforcement. Law is one thing and enforcement is another. I will tell you that I think the possibility of hanging is a greater deterrent to rich men than it is to any other class of people, because he is not the kind of fellow who wants to walk upon the gallows, and he is not going to take a chance.

Mr. Darrow says they don't fear death, and that they prefer life imprisonment. You would only have to have my experience to know that that is absolutely wrong. They will take a plea of 99 years at any time in the world in preference to the death penalty. They will do it for social reasons. Families will insist on it to avoid disgrace.

In that case that Mr. Newton referred to—Byles—you had it right, "Daly alias Byles." The facts were as he stated, and it was only

because of his vigorous and brilliant work that Byles was convicted. Here is the other boy pleading guilty. He asked me what I would do and I said, "I will make no promise. You go in and plead guilty." And he went in and plead guilty with perspiration standing out on his forehead, and we sentenced him to 99 years in the penitentiary, and then used him as a witness against Byles, making the fight backed by powerful influences in Kansas City.

Mr. McLEOD. What happened to Byles?

Mr. SAGER. Byles was sentenced to hang, and one governor, commuted the sentence to life imprisonment; and another pardoned him in 4½ years.

You might as well call a "spade a spade" and let it be known. That is the fact.

We had to go out and exhume that poor fellow's body and get the stomach; take his body out of that little grave in the Ozarks, in Osage County, and bring the stomach in and have it analyzed in order to find out the quantum of morphine that caused death.

Mr. McLEOD. That was the fault of the governor in your State?

Mr. SAGER. That is the fault of the sentiment back of the governor. Governors will do the right thing if let alone.

Mr. McLEOD. A judge is governed according to the sentiment of the community?

Mr. SAGER. Yes.

Mr. McLEOD. He should be.

Mr. SAGER. He should not be. As a rule judges stand up very strictly in undertaking to follow the law.

Mr. HOUSTON. In most States the court has no jurisdiction in fixing the penalty.

Mr. SAGER. You are right. I think that the best solution of it is this: If it is left to a jury they ought to have the alternative of life imprisonment or hanging. That might be all right.

Mr. McLEOD. You believe in that?

Mr. SAGER. I believe that might be all right. I want to read you something that comes from an authority that I think is somewhat—

Mr. BLANTON. Mr. Chairman, I have got to leave and go to the House.

Mr. SAGER. Here is what Roosevelt said when they asked him to commute the sentence of death to life imprisonment—and I like the rather vigorous method of that distinguished and essentially patriotic American. [Reading:]

It is essential that punishment should not only be certain but as swift as possible. The jury did their duty by recommending the infliction of the death penalty. * * * The more we do what in us lies to secure a certain and swift justice in dealing with these cases, the more effectively do we work against the growth of that lynching spirit which is so full of evil omen for these people, because it seeks to avenge one infamous crime by the commission of another of equal infamy.

And it is in that connection I want to add a few words in conclusion.

You will recall the Springfield Mo., lynchings. When I was down there on change of venue in the case of the State of Missouri v. Louis Becker, charged with bribery, and the defense had taken a change of venue out of St. Louis on the grounds that there was too much prejudice and passion in the minds of the people of St. Louis to insure a fair and impartial trial, and I had the case—I had some influence in

designating the place it was to go, and we sent it to Greene County. At that time Springfield was the county seat, with a population of about 35,000.

The Saturday night before we were to go into this trial I had assembled the lawyer I had retained and the prosecuting attorney, whose duty it was to assist me under the statute; and we were going over this case in preparation for the trial. We heard a noise in the street, close by, in front of our hotel. It was an old-fashioned hotel, the Metropolitan, with French windows opening out like doors, and a gallery or outside balcony. I stepped out and asked Roscoe Patterson—I don't know whether he is in the House now or not.

Mr. NEWTON. He is United States attorney now.

Mr. SAGER. I asked him what it meant. He said two negroes had been arrested on the charge of assaulting a white woman and "there is a lot of feeling in this town now. There has not been much law enforcement and our people are wrought up." It is a railroad town and it was pay-day night—Saturday night—"and we are afraid something will happen to these boys. The justice decided on preliminary hearing they were not guilty, absolutely not guilty, but he consigned them to the county jail for protection against the mob; and this mob will not find these negroes in the calaboose. They are in the county jail and they are secure."

Pretty soon that crowd came back. It was 8 o'clock; the streets were brilliantly lighted, and there was menace in that crowd then; you could just feel and sense it. They went down in rather a careless way, don't you know, without any real organization. There was not a mask on a face.

When they came back there was something that meant business in their attitude. Patterson was a younger man than I. He asked me what I would do, and I said I would not let them hang those negroes; that I would get a gun and go over on the porch of that jail and kill the first man who stepped up. And I said, "Telephone the jail and let the sheriff know." Of course, we could not get the phone.

I said, "The next thing is to close the saloons. Get every saloon in this town closed."

To make the long story short, I saw three negroes hung and burned in the town square the eve before Easter.

Mr. NEWTON. They were hung up to the tower that held the Goddess of Liberty?

Mr. SAGER. On the tower in the center of the square and on the pedestal of the tower which supported the Goddess of Liberty.

Mr. McLEOD. In that State they didn't want capital punishment.

Mr. SAGER. Let me tell you what the answer was. I heard the sheriff plead with this mob. A mob starts with a punch. That is one reason, if you know one brave man can stop a mob at its inception. But when they gather momentum all the forces in the world would not stop them. The sheriff undertook to plead with them and he said, "Let the law take its course." And the roar came back, "The law does not move. There has not been a hanging in this county for 50 years, although there had been a hundred murders committed."

We got the lights turned out. A young newspaper man turned the lights off; and just the second the lights went out the bars broke

down and they had these two boys. They took them a mile away. We got out of there as quick as we could, and we stopped somewhere. We heard the noise and looked up the street, and here was this mob pouring down these streets and up the next hill in the town square. They hung those two. And then a man got up, without a mask, and he said, "Men, there is another negro in that jail who killed a man." Naming him. He was guilty. "What about him? All in favor hanging him say 'aye.'" They went over and they hung and burned him.

That is the reaction of people who get tired of the failure to punish criminals as they should be. It is the thing that is responsible for the Ku Klux Klan to a large extent.

Mr. BLANTON. What did you do with them? Did you try to get them?

Mr. SAGER. It was not my function. They indicted a lot of these men. They were brought into court, when we started our trial the following Monday. We had the militia there for a week.

Mr. BLANTON. What ought to have been done was for that sheriff to put a man with a double-barreled shotgun in every window of that jail and they would not have gone in there.

Mr. SAGER. There have been sheriffs, as you know, who have been able to do that.

Mr. McLEOD. Do you believe there has ever been an innocent man executed?

Mr. SAGER. I don't know; there might have been. It is possible.

Mr. McLEOD. Do you think there has been?

Mr. SAGER. In my experience I never knew of one. I doubt it.

Mr. McLEOD. Do you doubt that there has been an innocent execution in this country?

Mr. SAGER. I don't know. There may have been innocent men hung; I don't know.

Mr. McLEOD. You are not familiar with any cases of innocent men having been hung?

Mr. SAGER. There is more probability of innocent men having been sent to the penitentiary. But I can say in the four years of Mr. Newton's association with me we never had reason to think so.

On one occasion, that persuasive man, Governor Johnson, came to me. We had convicted a boy he had defended; and he told me I was wrong about that boy, and he gave me a story about it. I think it had been proven that the boy had spent time in a reform school, and he denied it; and he wanted me to set aside that verdict and give him another chance, and I did it. I went to the court and said there was doubt in my mind. "Let us give this boy another chance."

And when we looked up the record we found he was one of the worst boys in the country, with a long criminal record; and we erred on the side of mercy.

Jerome, who was probably the greatest prosecutor of New York City, epitomizes in this way: He says "certainty and celerity of punishment, that makes for law enforcement." And we have the experience of Missouri that repealed its capital punishment law in 1917, and then reinstated it on the statutes books in 1919 because of the great numbers of murders that followed its repeal.

You have the case in Chicago of Crowe, the prosecutor, who got a lot of judges from civil benches to come over to the criminal side and help him clean up the homicide docket with the result that a great many men were convicted and sentenced to long terms in the penitentiary, and a great many were convicted to be hung. Murder fell off 51 per cent the following year in Chicago.

Mr. Lawrence Veiller, who is running a series of articles in World's Work, tells us that in this country in 1885 for every man hung or executed there were 16.7 murders; in 1904, for every man hung there were 70 homicides; and in 1918 there was one man hung for every 90 homicides in this country.

I don't want to intrude my views after your courtesy to me, but I will be glad to answer any questions. I don't think it is the right time to make a gesture that will give aid or comfort to those who will violate the laws.

I thank you. If there is any question, I will be glad to answer it.

Mr. HAMMER. In respect to this lynching business, you speak of. I have found that the people engaged in lynching are the men who do not attend courts and do not hear the trials, and do not know whether justice is done in the courts.

Mr. SAGER. Don't think I am justifying lynching in the slightest degree. I am only citing what I believe to be the fact; that failure to enforce the law results in that.

Mr. HAMMER. I have prosecuted white men for lynching negroes.

Mr. SAGER. You are right.

Mr. HAMMER. I have seen the time when I was told I could not walk the streets, because I was trying to protect prisoners from being lynched. But I walked them all the same.

Mr. NEWTON. What effect do you think it would have on lynching if the laws involving capital punishment were effectively enforced?

Mr. SAGER. I think it would do away with it absolutely. There is no lynching in England.

Mr. HOUSTON. Hadn't you practically the same thing in the old days among the pioneers, where they were compelled to take the law into their own hands, even in horse-stealing cases?

Mr. SAGER. Yes.

Mr. HOUSTON. They used the death penalty simply to prevent it?

Mr. SAGER. It stopped it. They stopped pickpocketing in this city. This is a good illustration. I forgot the name of the judge, but pickpockets were pursuing their traffic here to an alarming degree, and they were getting just the ordinary sentence of jail for six months. In sentencing a man one day the judge said, "I want to tell you; you go down and tell these fellows in jail charged with the same offense that this punishment is going to be 15 years from now on; and that is what you are going to get." It stopped it. He got 8 or 10 and gave them 15 years in the penitentiary.

Mr. McLEOD. If there are no further questions, thank you very much. I believe Mr. Roberts wants five minutes.

STATEMENT OF JOHN ROBERTS, WASHINGTON, D. C.

Mr. McLEOD. Mr. Roberts, what is your full name?

Mr. ROBERTS. John Roberts.

Mr. McLEOD. And these letters which have just been sent up to the table are letters introducing you, from the Department of Justice, the Washington Times, and so on?

Mr. ROBERTS. Yes. I brought them in merely to show the reputation I have.

Mr. McLEOD. Is there any objection to these being inserted in the record?

Mr. HAMMER. Not a bit.

(The letters referred to are as follows:)

DEPARTMENT OF JUSTICE,
Washington, D. C., August 26, 1920.

To whom it may concern:

I have known Brother John Roberts officially and privately for about 15 years, during my entire tenure of office as pardon attorney of the Department of Justice.

Brother Roberts has been spiritual adviser to prisoners in the District Jail, both white and colored, for over 40 years, and has been the spiritual adviser of every person who has been hung in the District within that time.

In view of my official position and duty of passing upon all such cases, I have come to know Doctor Roberts intimately and I hold him in highest regard for character and true worth. One of my regrets in leaving the office of pardon attorney, as I contemplate doing, will be my failure to see him in his rounds of mercy to this department in behalf of prisoners.

I desire to leave this testimonial in order that all who may see it may know the true character of the man and extend to him the courtesy and kindness to which he is entitled.

Respectfully,

JAMES A. FINCH, *Pardon Attorney.*

THE WASHINGTON TIMES,
Washington, D. C., September 21, 1922.

Dr. JOHN ROBERTS,
35 Pierce Street NW., City.

DEAR SIR: We are glad to welcome you as a subscriber and say that the Times is particularly desirous that its home delivery service be maintained to the entire satisfaction of its subscribers. You can assist us materially toward this result if you will notify us promptly of any shortcoming.

We inclose an addressed postal card for your convenience. Will you be good enough to let us know, a week from now, if the service is satisfactory? We are inclosing a collection receipt card. Kindly keep this card in a convenient place as your carrier will ask for it each week when he collects.

Every day hundreds of new subscribers are joining our family of readers, so we take this method of making sure that delivery is started promptly and maintained regularly.

With appreciation of your interest and thanks for your cooperation, we are,

Very truly yours,

THE WASHINGTON TIMES,
M. FENSHE, *Circulation Manager.*

MARSHAL OF THE UNITED STATES,
Washington, D. C., July 10, 1925.

HON. WILLIAM C. HECHT,
United States Marshal, New York City, N. Y.

MY DEAR MR. HECHT: This letter will be presented to you by the Rev. John Roberts, of Washington, D. C., who for the past 50 years has done missionary work among the colored prisoners in the District Jail.

He is going to New York City on a visit and is desirous of going through the tombs there. If there is anything you could do to arrange for his visit, it will be much appreciated by me, as well as the marshal.

Very truly yours,

S. B. CALLAHAN, *Chief Deputy Marshal.*

Mr. HAMMER. Where were you born?

Mr. ROBERTS. I was born in Virginia.

Mr. HAMMER. What part of Virginia?

Mr. ROBERTS. Greenville County.

Mr. HAMMER. How old are you?

Mr. ROBERTS. Eighty-four.

Mr. HAMMER. Were you ever a slave?

Mr. ROBERTS. No, sir.

Mr. HAMMER. You are what they call a "free negro"?

Mr. ROBERTS. Yes, sir; free negro. I don't get any pension, although I was in the Southern Army.

Mr. HAMMER. You were not in the Southern Army?

Mr. ROBERTS. I was with the Southern Army.

Mr. HAMMER. I suppose you were only with the Southern Army as a hostler or cook. But we give them pensions in our State, North Carolina.

Mr. ROBERTS. What State?

Mr. HAMMER. North Carolina.

Mr. ROBERTS. Did you know Senator Ransome?

Mr. HAMMER. Very well; chopped cotton on his farm.

Mr. ROBERTS. You did?

Mr. HAMMER. Yes.

Mr. McLEOD. The reason we can only give you five minutes is because there are but a few minutes yet until we have to go to the House.

Mr. ROBERTS. I am opposed to capital punishment on the ground, first, that it has done no good in the District of Columbia. I have been here 52 years. I have witnessed executions from Guiteau on down.

Mr. McLEOD. How many have you witnessed—you have witnessed capital crimes for how many years?

Mr. ROBERTS. Fifty-seven. But all were not here. Some were in North Carolina, Virginia, Maryland, and then here in Washington.

Mr. McLEOD. What has been your interest in witnessing these executions?

Mr. ROBERTS. As spiritual adviser. I led five men in 1923 to the scaffold. I have been with every murderer, more or less, both white and colored, whose execution has taken place in the District of Columbia, from Gateau down to the present time. The last man I led to the scaffold was Herbert Copeland. I was the one who got him to confess the crime, and I got him to confess. Capital punishment has done no good in the District of Columbia.

Mr. McLEOD. What do you base that on? Why do you say that?

Mr. ROBERTS. Because I saw no good from it. There was one murder right after another, while a man was waiting for sentence in the jail. You take Wan, who has been there six years, and look at the murders that have been committed during that time, one right after another.

And then, another thing: A man may be hanged innocently. I believe I took a man to the scaffold who died on the scaffold who was

innocent, charged with killing Garner in Georgetown, because of the later confession of others who said they killed him.

Mr. McLEOD. Do you believe that innocent men have been hanged?

Mr. ROBERTS. Here at the jail; yes. I carried a man to the scaffold, Gregory. I believe he was innocent.

Mr. McLEOD. What do you base that belief on?

Mr. ROBERTS. He told me at the time—not taking his word, but since then the man's wife—Garner was killed—and his wife told me since, she worked in the Bureau of Engraving—"that my husband was not killed by Gregory but was killed by the woman's husband in the woods."

That is not all. I heard gunfire, and I was within 200 yards of a man who was killed. Austin Hall was tried for that murder, but he was 5 miles away, and he was tried and came very near hanging, and he would have hanged if they hadn't sent for the man. The man had nothing to do with it. He was Austin Long and not Austin Hall.

Mr. McLEOD. Do you know of any instance where the man who was innocent did hang?

Mr. ROBERTS. I believe this man, that is one, I believe Gregory was innocent.

Mr. McLEOD. Do you know of any other cases?

Mr. ROBERTS. I don't know of any other cases. I believe conscientiously he was not.

But the average man who is hanged is of the lowest intelligence. I believe men instead of being hung should be put in the insane asylum. I argued that to the President of the United States. I have been before five different Presidents—Mr. Harrison, Mr. Taft, and Mr. Wilson. I believe Gonzale was insane and stuck out with Doctor White over here that Gonzale was insane. They held he was faking. Doctor Hickling said he was faking.

Mr. McLEOD. Is he in the insane asylum?

Mr. ROBERTS. Certainly.

Mr. McLEOD. He was convicted?

Mr. ROBERTS. He was convicted to hang and President Wilson pardoned him.

Mattie Lomax—I don't like to be so personal about it—in Kentucky a man was 8 miles away when a murder was committed, and the man was killed from his room with a rifle. The accused man's key unlocked the door, and yet he was 8 miles away at the time this murder took place.

Mr. McLEOD. That is your understanding. You don't know he was 8 miles away, do you, of your own knowledge?

Mr. ROBERTS. It has been shown that he got a telegram 8 miles away. The telegram came to him and he was 8 miles away at the time.

Mr. McLEOD. Can you cite any other cases? Can you mention any other cases?

Mr. ROBERTS. I don't know of any other case where I know they were innocent of the crime. But I say it don't do any good in the District of Columbia.

Mr. McLEOD. Why?

Mr. ROBERTS. There is one crime here right after another.

Mr. McLEOD. Isn't it a fact that there are a great many homicides in the District of Columbia according to the population, which is nearly a half million?

Mr. ROBERTS. Maybe not according to the population of the people here. I think I come in touch with over 260 persons in my life who were charged with murder hand to hand, and only saw 57 of them hung. And that is not all, as I look upon it, as the dollar often strangles the poor man to death. It is hard to hang a man who has got money at his back in the District of Columbia or North Carolina or Virginia—who has got money. Now and then one may go, but it is a common thing for the under class, the ignorant class, to hang.

Mr. HOUSTON. You have been spiritual adviser, you say, of a good many of these convicted murderers. As far as you know, would they have preferred life imprisonment to hanging?

Mr. ROBERTS. I met with two who preferred, they said, to rather die on the scaffold than to have eight years in the penitentiary. Green got out; they pardoned him afterwards. He killed a man in Bloomingdale. He said to me he would not take eight years, "I would rather die on the scaffold than take eight years in the penitentiary."

Mr. McLEOD. Was that after he was convicted?

Mr. ROBERTS. He was convicted to hang and they were seeking to save him. He said, "I don't want time. I would rather die than have eight years."

Then I have had a man tell me within three hours of the execution—Copeland, who killed Dunnigan and killed two other men—he told me if it was to do over again he would do the same thing, and he didn't have three hours to live.

Mr. HOUSTON. You say in your opinion having the penalty of capital punishment in the District has not made conditions any better?

Mr. ROBERTS. Has not made conditions any better; it has done no good.

Mr. HOUSTON. In your opinion if you reduce the penalty for murder in the first degree to life imprisonment, do you think that that would make it any better?

Mr. ROBERTS. I would prefer a man to be life imprisoned rather than hang. You can hang an innocent man.

Mr. HOUSTON. Answer my question. Do you think it would make conditions any better in the District of Columbia?

Mr. ROBERTS. It would be better for the Government to send them to prison and get something out of it.

Mr. HOUSTON. I know, but would it lessen crime in your opinion if the highest penalty was life imprisonment instead of death?

Mr. ROBERTS. I don't know whether it would lessen crime or not.

Mr. McLEOD. Would it increase crime?

Mr. ROBERTS. I don't believe it would increase crime. Here, now, a man killed a man—when he is going out to rob a man, he don't expect to be caught; and then if he kills a man in the heat of passion it may be over a nickel.

Take the class of men who have committed murder and it is that class of low intelligence.

Mr. HOUSTON. Mr. Chairman, I will have to leave as I must be on the floor of the House. If this witness wants to come back again, we might let him do so.

Mr. McLEOD. Would you care to testify next Thursday?

Mr. ROBERTS. Any day.

Mr. McLEOD. This committee will now adjourn and meet again Thursday morning at 10.30, without objection.

(Thereupon the subcommittee, at 12.05 o'clock p. m., adjourned to meet Thursday, February 11, 1926, at 10.30 o'clock a. m.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
THE DISTRICT OF COLUMBIA,
Thursday, February 11, 1926.

The subcommittee met at 10.30 o'clock a. m., Hon. Clarence J. McLeod (chairman) presiding.

Mr. McLEOD. The committee will be in order.

**STATEMENT OF ROBERT McMURDY, ATTORNEY AT LAW,
CHICAGO, ILL.**

Mr. McLEOD. What is your full name?

Mr. McMURDY. Robert McMurdy.

Mr. McLEOD. Are you a jurist at the present time?

Mr. McMURDY. No, I am practicing law at Chicago.

Mr. RATHBONE. Pardon me for interrupting; you are a former judge of the Court of Claims of Illinois?

Mr. McMURDY. Yes.

Mr. RATHBONE. And a former president of the Illinois State Bar Association?

Mr. McMURDY. Yes.

Mr. RATHBONE. And the first president of the Hamilton Club of Chicago?

Mr. McMURDY. Yes.

Mr. RATHBONE. And you have taken an interest in questions of this kind for a long while past?

Mr. McMURDY. Yes.

Mr. BLANTON. On the question of qualification I should like to ask you one question, Judge. Have you ever tried a criminal when you were a judge on the bench?

Mr. McMURDY. No; the Court of Claims does not have that class of cases before it.

Mr. BLANTON. Have you ever tried anyone charged with a felony?

Mr. McMURDY. The Court of Claims has no jurisdiction in that class of cases.

Mr. BLANTON. You have never in your life sat on the bench in the trial of a criminal?

Mr. McMURDY. Never.

Mr. BLANTON. Have you ever defended a criminal?

Mr. McMURDY. Yes.

Mr. BLANTON. I mean one charged with homicide; how many?

Mr. McMURDY. Only one.

Mr. BLANTON. Just one?

Mr. McMURDY. Yes.

Mr. BLANTON. How old are you?

Mr. McMURDY. Sixty-five.

Mr. BLANTON. And in your 65 years you have never defended but one man in a homicide case?

Mr. McMURDY. That is all.

Mr. BLANTON. That is all.

Mr. McLEOD. You are a practitioner at the present time, Judge?

Mr. McMURDY. Yes.

Mr. BLANTON. Most of your business is civil business?

Mr. McMURDY. Yes. In 1912 I published a book under the title of "The Upas Tree." It was published locally in Chicago by Laird & Lee. It was on the subject of the death penalty.

It was in the form of a novel, but it incorporated all the valid arguments that I could find in all the literature on this subject. I canvassed the entire literature of the subject prior to publishing that book, and at the same time communicated with the various countries of the world through the Consular Service, to ascertain the state of the law and the application of the law in those countries.

Since that time and also before that time my attention has been riveted upon this subject, for no special reason except that it is was a hobby, and I do not suppose anybody selects a hobby deliberately.

I mention that merely to show that perhaps my words should have more weight than those of the casual observer or the casual student of a question of this character.

The idea is generally prevalent that anyone who is opposed to the death penalty is more or less of a sentimentalist; that he does not believe in punishment. But, quite the contrary, I do believe that there is a proper place for adequate punishment, and I do think that the main objection to the death penalty is the fact that it interferes with punishment, on the theory announced by Montesquieu in his Spirit of the Laws, upon which he spent 20 years and which is one of the great philosophical works of the world, that it is certainty and not severity that deters in the matter of punishment; and also upon the theory of Beccaria, who wrote a book that probably has had more influence upon the question of punishment than any other book that was ever written, Crimes and Punishment, which was written, by the way, when he was only 26 years old, and which was the beginning of the amelioration of punishments throughout the world.

Up to that time, the codes of punishment of the continental nations had been the most cruel imaginable as probably any student would remember.

The theory was that severity would deter, and along that line the most enlightened nations made their excursions.

It is very familiar to those who have studied this subject, that in Blackstone's day, according to his own statement, there were 160 crimes punishable by death; and 75 years ago in this country, there were 24 crimes punishable by death in Virginia; 32 years ago there were 35 crimes punishable by death under the Federal Code.

Of course, we have advanced in our civilization to the idea, to the conviction, to the certainty that our ideas at that time were wrong, and that should give us pause to consider whether our ideas of

maintaining the present theories with respect to the death penalty are not also wrong.

When it was proposed to abolish the death penalty for these numerous crimes in Parliament, the members rose in horror, feeling that a cataclysm would result from the amelioration of these penalties, and of course, no such result followed and my own belief is that were that to happen here, no such result will follow.

Not only were we bent on hanging or killing for numerous crimes, but we had other terrors in those days that were supposed to deter. A man had his choice sometimes of being boiled in oil or in water or in lead.

Mr. BLANTON. That never has appealed to the American people, so why discuss that?

Mr. McMURDY. Merely to show that we were wrong once and we may be wrong now on our ideas on this subject.

Of course, those ancient penalties are so well known it is not profitable to discuss them.

On the question of the deterrent effect of hanging, it is perfectly clear to any thinking mind that the penalty does not reach the subnormal. We think of it as a deterrent. It would deter us and so we conclude that it would deter the subnormal. But, of course, it is only a question of how subnormal a person must be to reach the point when he will not be affected at all by the death penalty.

Mr. BLANTON. You do not believe in the death penalty?

Mr. McMURDY. I do not.

Mr. BLANTON. Let me ask you this question. In Delaware, the day before yesterday, a negro, in a very cruel manner, assaulted a little girl, 12 years of age. She was somebody's sister and she was somebody's daughter. Suppose she had been your daughter or your sister, would you have wanted that man to have remained unhung?

Mr. McMURDY. Absolutely.

Mr. BLANTON. You would not be in favor of hanging him?

Mr. McMURDY. No; I would not, for this reason—

Mr. BLANTON (interposing). In that connection, a mob formed and there were several thousand people demanding that he be hung summarily. They were assured that if they would quiet down, he would be given a lawful trial and the law would take its course. They held themselves in abeyance. He was tried and given the death penalty and the mob dispersed. There was no mob violence. Do you not know, Judge, in your 65 years' experience in life, that if there were no death penalty in some States that mob violence would be a common occurrence when negroes—and not merely negroes but evil-minded white men—assaulted young girls?

Mr. McMURDY. I do not; I think that begs the question. The question is whether the death penalty deters.

Mr. BLANTON. You have never had any experience with criminals except in one case in your 65 years of experience in life?

Mr. McMURDY. Well, you do not have to have actual contact. You can read and study.

Mr. BLANTON. Who do you think is better prepared to speak on this question, a man who has lived 65 years and has never had any contact with criminals except in one case, or a man who has had contact with them in 35 years of experience?

Mr. McMURDY. It would depend upon circumstances. If he was a State's attorney, I should say that he was the poorest person in the world to speak on the subject.

Mr. BLANTON. Suppose he were a defense attorney, or had been a State's attorney and a judge on the bench for a number of years, so that he could look at the matter impartially from all sides.

Mr. McMURDY. His opinion ought to be valuable.

Mr. BLANTON. It ought to be more valuable than that of a man who has never had any contact of that kind?

Mr. McMURDY. Certainly.

Mr. BLANTON. That is all.

Mr. McLEOD. Would that not depend entirely upon the study that was made of this question by the individual? Suppose some man defends or tries a case, sitting as a jurist, never making a particular study of the question; he would not be as competent a man as one who has made a study of the theory of the whole question, would he?

Mr. McMURDY. No; but other things being equal, he would be better prepared than a man who had no experience whatever. But the idea of getting all of your experience by actual contact, of course, is contrary to the idea of getting the best results. We can not sweep aside all study and the results of all study, because of some experience of actual contact.

Mr. RATHBONE. It is a general and well-recognized principle of law that opinion evidence or, if you please, expert evidence may be based upon either or both of two things—either study or experience, or both; is that not true?

Mr. McMURDY. Surely. But you will find it a universal rule throughout the legislative bodies, that States' attorneys and ex-States' attorneys are in favor of hanging. I know of one States' attorney, an ex-States' attorney who is not in favor of it, but I never met any other.

You might say that that was some proof that the death penalty was a proper penalty, but on the other hand, the ministers are all in favor of hanging. I never knew but very few who were not in favor of hanging, and they certainly know less about the subject than any other class of men.

To return to my thesis, the death penalty has no effect when a man has dulled himself by the use of intoxicating liquor; and from what I have learned from assistant states attorneys with whom I have talked, a very large percentage of murders are committed when a person is more or less dulled by the use of intoxicating liquor.

Mr. BLANTON. Judge, you have been misinformed by those assistant attorneys. They did not know their subject. The educated thug is the one who never permits himself to touch a drop of liquor when he is committing a crime. He wants his every faculty clear. There is no question about that. That has been established. They will not permit a member of their gang to touch a drop of liquor until after the crime has been committed. You have been misinformed on that subject.

Mr. McMURDY. Senator Barbour, of Chicago, who was an assistant State's attorney for a long time, has a lecture in which he describes the first 13 murder cases that he had as an assistant State's attorney, and shows that in every one of them the crime was committed

because the perpetrator had been drinking to excess, intoxicating liquor.

Mr. BLANTON. Crimes are committed by men who won't drink.

Mr. McMURDY. Those are capital crimes.

Mr. BLANTON. The ones who drink before committing crime are not hardened criminals. The hardened criminals are the ones who keep their minds absolutely clear when they commit a crime.

Mr. McMURDY. The hardened criminal is subnormal, too. And then, the hardened criminal understands what anybody understands who has delved into this question, that the chances of being executed are very limited. The figures usually given are that one in 57 of those who are guilty are executed.

The criminal may not know the statistics, but he knows in general that if he gets a good lawyer, he is pretty safe.

Also, it is an indefinite thing; just as a man will go into an extrahazardous employment, knowing that a certain number of men are going to lose their lives in that extrahazardous employment when he takes employment, yet he takes the chances without much thought of the matter, because it is an indefinite thing.

Again, most crimes are committed because of an overruling power of some dominant passion; that is, most capital crimes.

We think that those people will stop and consider the possibility of an execution, but we can go back to Bacon for the philosophy of that. He said, as nearly as I can remember the words: "There is no passion in the human heart that is so weak that it does not meet and master the terror of death."

It does not require a very great deal of knowledge of human nature or of psychology to know that when a man gets in the power of a passion, that he is obsessed with it, and this idea of an indefinite penalty which will probably never reach him would not be equal to the power of the passion.

As far as statistics are concerned, they are quoted a good deal in the literature of this subject, and I never was able to obtain a valid judgment as to the real lesson that they taught.

To my mind, when all these statistics are considered, you come to this conclusion, that it does not make any difference whether the death penalty exists or whether it does not exist. The result, as far as the matter of capital crimes is concerned, is the same. That is my judgment of all of the statistics, although I do not quote any here, except perhaps that ex-Governor Dunn of Illinois, who was a great advocate of the abolition of the death penalty, took the trouble to look through the census of 1910 and found that of the 21 States having the greatest per capita number of murders not all of them had the death penalty, at least five out of six of the States which did not have the death penalty were included. That is rather persuasive. That is as far as I would want to go with statistics.

Nor do I think that it is necessary for us to consider this question of statistics, because we have a more eloquent, far more eloquent fact confronting us that you can not obscure or from which you can not get away.

Finland, for a century has had no death penalty. Have we ever heard that the people of Finland were less safe on that account? No; by no means.

Maine has had no death penalty for 40 years and they have only had two executions there in 88 years. Are the people of Maine less safe than the people of Vermont and kindred States of the same character of population? They are not.

Wisconsin, Rhode Island, and Michigan have had no executions and no death penalty by statute for over 70 years, the span of life of man. Has Wisconsin been less safe than Illinois or Minnesota? Or Rhode Island less safe than Massachusetts? Or Michigan less safe than Indiana? No. There is no sentiment whatever calling for the death penalty in those States. The people have lived there under a statute which does not provide for the death penalty and they feel they are safe and they know they are safe.

In opposition to the argument flowing from these facts, it is often stated that the death penalty is necessary to restrain the inhabitants of large cities. But there is a large city in Rhode Island—Providence. There is a large city in Wisconsin—Milwaukee. There is a very large city in Michigan—Detroit.

During the war, by a fluke, New York abolished the death penalty for two years, a fact that is not generally known. During that time did anybody ever hear that murder increased in the State of New York? It did not. It remained just the same in point of frequency as it was before.

There are 14 continental cities that are a part of countries in which the death penalty has been abolished. No one ever heard that they were unsafe; that it was necessary to impose this penalty in order to make the people safe from the crime of murder.

Iowa is sometimes named as a State that had the death penalty abolished and then restored it, on the theory that the people were dissatisfied and came to the conclusion from experience that the death penalty is necessary.

But legislation is not produced by considerations of that sort. It depends upon the complexion of the general assembly. If you get a general assembly composed largely in numbers or influence of ex-State attorneys and certain other classes, they will vote for the death penalty; and if you get a general assembly composed of another class, they will be opposed to the death penalty.

It is rather a singular thing that the dries are for the death penalty 2 to 1 and the wets are opposed to the death penalty 2 to 1; and this stratification of human minds that results from their ideas on other subjects leads people to form an idea upon this subject, so that we can not form a conclusion from that.

Colorado abolished and then restored it, but the reason for that was that there was a particularly heinous crime committed during the two years of abolition—only one that was notable. There was no holocaust, no great increase in that crime.

It was merely the fact that the people were horrified by this single crime and that led to the restoration of the penalty.

Tennessee abolished the death penalty for a couple of years by a fluke and restored it when conditions were normal in the legislature. But no one ever heard of any increase of the crime of murder in Tennessee during those two years. Of course, these instances are usually cited with the ill-considered arguments that are made on this subject on the theory that some great public danger had intervened.

Sometimes it has happened that the fears of the people have been aroused and that has produced this result, but no actual increase in the number of murders.

To advance to another argument: I suppose everybody is proud of America, with its equality of opportunity, and I think everybody who has his heart in the right place, when he considers the question of equality, would feel that above all things we must have equality of punishment. The great objection that I have heard to the death penalty is its inequality. No person of influence or of wealth is hanged.

Mr. BLANTON. Judge, I hear so many people say that, and when they do say that, it shows ignorance. I can give you the name of a man who was recently sentenced to be hanged in the district of my colleague, Judge Mansfield, who was a member of one of the richest families in the whole county. He took two girls riding in his automobile, got them drinking, and ravished one and killed the other. The jury and court sentenced him to hang and all the criminal lawyers in that part of Texas could not save him.

People are mistaken when they say that.

Mr. McMURDY. That is the second instance I have ever heard of in all my studies.

Mr. BLANTON. I can give you lots of such instances. You are not familiar with crime. Eugene Burt, from one of the most prominent families in Austin, Tex., was hung there.

Mr. McMURDY. I read with diligence and I read with a free mind. I studied deeply and long, and that is the second time I ever heard of anybody being hanged when they had money to properly defend themselves.

What do you hear from our criminal lawyers? I have talked with the greatest criminal lawyers that we have and with some who are not great.

I have in mind one particularly who had 100 murder cases in New York City. What is their record? Not one of them ever had a client hanged. That is so well known I did not suppose it would be disputed.

Out in Illinois we hang some friendless fellow, a colored man who has not any friends or some poor devil of an Italian.

Mr. BLANTON. I want to give you a case of that kind. In Dallas, Tex., the home of Congressman Sumners, a negro named Burrell Oats, with a coupling pin from a railway train, committed murder, in cold blood. They had a confession from him, but the courts would not even let them use it, because the warning, which the law prescribed must be given, was not stipulated as having been given in the confession. The negro did not have a dollar. The court appointed a man named Bassett to defend him, without any compensation, without any hope of reward at all.

Bassett tried that case four different times. There were three death sentences and convictions. He was sentenced to hang three different times and three different times Bassett had the case reversed and sent back for another trial.

The fourth time he tried the case, there was no defense at all, except technicalities, and the jury found him guilty again and gave him the death penalty. The verdict of the jury read:

We, the jury, find the defendant, Burrell Oats, guilty of murder as charged in the indictment and assess his punishment at death.

But they forgot to say, "of murder in the first degree."

Notwithstanding the fact that they had said that they had found him guilty of murder as charged in the indictment, and the indictment charged first degree murder, on that technicality for the fourth time the higher court reversed that verdict and sent it back for another trial.

Yet, you tell me that a poor man can not get justice.

Mr. McMURDY. I never made any such statement.

Mr. BLANTON. You said that a poor negro could not get it.

Mr. McMURDY. No; I said those that were poor were hanged. I did not say that the poor were always hanged. That is a different proposition altogether. Your citation had nothing at all to do with the case.

Mr. BLANTON. You said that a lawyer getting a big fee could have him acquitted.

Mr. McMURDY. That is true.

Mr. BLANTON. But in this case a lawyer without any fee got this poor negro out.

Mr. McMURDY. Surely, sometimes. I say that those that are hanged are the poor and defenseless. That does not mean that there are not some poor and defenseless who get out; that is a different proposition altogether; I submit to your judgment; isn't that so?

Mr. BLANTON. Judge, I will tell you this, that nine criminals escape where one is convicted. That is my judgment.

Mr. McLEOD. That is the unfairness of it.

Mr. BLANTON. Nine of them escape justice, when only one is convicted. That is on account of the fact that sentiment has built up a law of defenses around criminals, when it is the honest men we ought to protect in society.

Mr. McMURDY. That is very true.

Mr. BLANTON. It is so hard to convict them that nine out of every ten criminals escape.

Mr. McMURDY. That is the very point that I make, that this penalty is so severe that it increases the determination on the part of the people with sentiment, to refrain from punishing, to such a degree that they fail to convict those that ought to be convicted and who would be convicted if the penalty were less severe.

There is one other point I wish to make and then I am through.

A great deal has been said about convicting innocent men and there is a great deal of controversy on that question. Of course, there is no doubt that innocent men have been convicted.

Let us go back to the past. Were those who were convicted of witchcraft innocent? They were convicted and killed by the thousands. Were they innocent? We know they were innocent. They did not think they were in those days.

Lord Cope believed in witchcraft. Sir Thomas Brown believed in witchcraft. The best minds of the time believed in witchcraft. There was an obsession at the time and they believed they were right and because of this penalty, they took the lives of thousands of innocent people.

Nearly all murderers are convicted on circumstantial evidence. The line between circumstantial evidence and direct evidence is rather thin.

Mr. BLANTON. On that point, do you know what the court charges the jury on circumstantial evidence?

Mr. McMURDY. I do not recall at this moment.

Mr. BLANTON. You ought to study that. You will see that there is not much chance of an innocent man being convicted.

Mr. McMURDY. I must take issue with you on that, because people say, "Here is a heinous crime. The man deserves death. He ought to be hanged and if there was a worse penalty he ought to have it."

What does that imply? That implies that that man who has said that is actuated by a spirit of revenge, which is no part of punishment. We have gone so far in philosophy that now we recognize that revenge is no part of punishment. That was not recognized in the earlier days.

Mr. BLANTON. The court charges the jury that the facts and circumstances taken together must exclude every other reasonable hypothesis except the guilt of the defendant, and must establish in their mind a reasonable and a moral certainty that the accused and no one else committed the crime.

Mr. McMURDY. Beyond a reasonable doubt.

Mr. BLANTON. It is beyond any doubt. It is not a reasonable doubt when it comes to a question of circumstantial evidence. Then it must exclude every other reasonable hypothesis, other than the guilt of the defendant, and must produce in the minds of the jurors a reasonable and moral certainty of the defendant's guilt.

Mr. RATHBONE. The principle of law, as I understand it, is also that a conviction can be brought about just as clearly and certainly on circumstantial evidence alone as on direct evidence—*Slack v. Harris*, 200 Illinois, and a number of other cases have held that.

Mr. McMURDY. Certainly. How are you going to find out that this man has committed this heinous crime and must be killed because it was a heinous crime and because you have revenge in your mind?

How are you going to find out whether he is guilty? You have got to depend on the guess of 12 or 13 men. You have got to depend upon evidence that may be perjured. You have got to depend on a thousand circumstances that could be explained but which can not be explained under the rules of evidence which are made to fit the majority of cases.

You have got to take into account that there are some circumstances that are so elusive that the answer is utterly incomprehensible.

If you will permit a personal reference, I built up a case in this book, "The Upas Tree" that I amused myself by writing. It was a perfectly plausible, rational thing. Truth is stranger than fiction. Many truthful cases, many facts have occurred which were no more singular than that, but I asked 200 people who read that book if they had figured out what was the real circumstance of that proposed murder and not one of them had ever guessed it. Of course, the explanation is given.

Mr. McLEOD. Judge, is it not a fact that you have also got to take into consideration the fact that the police department and the prosecution in the case are anxious to win their case?

Mr. McMURDY. Certainly.

Mr. McLEOD. Just as well as the defense.

Mr. McMURDY. We have this element of the innocent being executed, to take into account, and unless we are less than human, we ought not to take the life of a human being, when there are present, as we know, these accidents and circumstances which seem to point only one way.

Thank you, gentlemen.

STATEMENT OF JOHN ROBERTS, WASHINGTON, D. C.

Mr. McLEOD. You testified here before?

Mr. ROBERTS. Last Tuesday.

Mr. McLEOD. You want to conclude your argument which you made to us then?

Mr. ROBERTS. Yes, sir.

Mr. McLEOD. You can do that in three minutes?

Mr. ROBERTS. Just whatever time you give me. I am not a judge or a lawyer. I was born in the cotton fields of the South, uneducated, never had a day's schooling in my life.

Mr. McLEOD. The members of the committee present did not hear how you qualified yourself the other day. Would you state what your business is and what you can testify to regarding this bill?

Mr. BLANTON. I know what he testified to the other day.

Mr. McLEOD. You said you were a spiritual adviser to how many condemned men?

Mr. ROBERTS. I have been with 57. I led five men to the scaffold. I remember the last man who was hanged here, Copeland. I have been going to the jail for fifty-odd years. I have come in contact with more than 200 murderers in my life.

Mr. RATHBONE. In Washington?

Mr. ROBERTS. In the District Jail.

I have been here 52 years. I have been going to the jail 52 years. I have been a spiritual adviser to these criminals. I have talked with business men, and I have followed these things in court, and there are certain cases where capital punishment is dangerous. There is the danger of hanging an innocent man. Men have been hung, I believe, when they were innocent of the crime with which they were charged.

I hold a different viewpoint as to rape. I have no sympathy for a man who commits rape.

There should be no difference in the treatment given to white and colored people. You know better than I the difference there is in the trial of my race and in the trial of a white man. No white man has been hung in Washington—I mean a white man who killed a negro—in the last 50 years.

In my State of Virginia, where I was born, they did not hang a white man for killing a negro. In North Carolina, where I lived 10 years, the same things happened. Many negroes were hanged for killing a white man, but no white man was hanged. There was only one case in 50 years or 60 years where a white man was hung in the State of North Carolina for killing some old woman.

Then there is the question of people who are insane. I have been before five different Presidents on cases of men who I believed were insane and who were under the sentence of death. Some of them are now in an insane asylum. I have differed even with Doctor White, although I am not an expert, in saying that a man was insane.

One man President Wilson came to the conclusion was insane and he was sent to an insane asylum.

Mr. McLEOD. Some of the testimony you are giving us to-day is a repetition of what you gave us the other day. If you care to go further in this matter, we shall be glad to hear you again.

Mr. BLANTON. I want to ask the witness some questions. You have lived in the District for the last 50 years, you say?

Mr. ROBERTS. Fifty-two years.

Mr. BLANTON. Where did you live before you came to the District?

Mr. ROBERTS. North Carolina.

Mr. BLANTON. How long did you live there?

Mr. ROBERTS. Ten years.

Mr. BLANTON. You lived in North Carolina 10 years?

Mr. ROBERTS. Yes.

Mr. BLANTON. During that time you were a young boy, were you not?

Mr. ROBERTS. I was young, but I was old enough to be in the southern army.

Mr. BLANTON. How old were you when you left North Carolina to come here?

Mr. ROBERTS. I am 84 now.

Mr. BLANTON. You are 84 years old now?

Mr. ROBERTS. Yes. I have been here 52 years.

Mr. BLANTON. Did you ever live anywhere else besides North Carolina?

Mr. ROBERTS. I lived in Virginia. I was born in Virginia.

Mr. BLANTON. How long did you live in Virginia?

Mr. ROBERTS. About 19 years. I was there when the war commenced.

Mr. BLANTON. You lived your first 19 years in Virginia?

Mr. ROBERTS. Yes.

Mr. BLANTON. Then you lived 10 years in North Carolina?

Mr. ROBERTS. Yes.

Mr. BLANTON. Then you lived 52 years here?

Mr. ROBERTS. About 52 years.

Mr. BLANTON. During your first 19 years in Virginia, how many men were hung there that you knew of?

Mr. ROBERTS. I do not know; I could not tell now.

Mr. BLANTON. How many would you say were hung in Virginia during that period of 19 years?

Mr. ROBERTS. I do not know just now.

Mr. BLANTON. You said there were about 50 in North Carolina during those 10 years.

Mr. ROBERTS. No; I did not.

Mr. BLANTON. How many did you say?

Mr. ROBERTS. I never said 50.

Mr. BLANTON. How many would you say were hung in North Carolina during the 10 years that you lived there?

Mr. ROBERTS. I witnessed an execution there once. I was one of the men that helped to hang the man in North Carolina.

Mr. BLANTON. You helped to hang him?

Mr. ROBERTS. I was summoned, together with a hundred men, to hang him.

Mr. BLANTON. You said that you were the spiritual adviser for 57 men in the District?

Mr. ROBERTS. No; I did not say 57 men. I said 57 executions.

Mr. BLANTON. Fifty-seven executions in the District?

Mr. ROBERTS. No; not 57 executions.

Mr. BLANTON. But you said 57 executions.

Mr. ROBERTS. I witnessed 57 executions.

Mr. BLANTON. Where, in the District?

Mr. ROBERTS. Not in the District. I witnessed executions in North Carolina. I witnessed executions in Maryland, but there were 57 executions in my life.

Mr. BLANTON. How many did you witness in Washington?

Mr. ROBERTS. I think about 49, somewhere along there.

Mr. BLANTON. You witnessed 49 in Washington. How many did you witness in Maryland?

Mr. ROBERTS. I witnessed one in Maryland.

Mr. BLANTON. How many did you witness in North Carolina?

Mr. ROBERTS. I think I witnessed four in North Carolina.

Mr. BLANTON. How many in Virginia?

Mr. ROBERTS. Only one, I think.

Mr. BLANTON. Don't you know, as a matter of fact, that there have not been 49 men hanged in Washington in the last 50 years?

Mr. ROBERTS. I never said 49, either.

Mr. BLANTON. You said that you had witnessed 49 executions in Washington.

Mr. ROBERTS. I did not say 49.

Mr. BLANTON. How many did you say?

Mr. ROBERTS. About 39.

Mr. BLANTON. The stenographer's notes will show that you said 49.

Mr. ROBERTS. I did not say 49. I said 39 before.

Mr. BLANTON. There have not been 49 people hung here; do you know that?

Mr. ROBERTS. I never said 49.

Mr. BLANTON. How many did you say?

Mr. ROBERTS. I said about 39.

Mr. BLANTON. There have not been 39 hung during that time. Didn't you know that? There have not been 39 hung here.

Mr. ROBERTS. I think it was about 39.

Mr. BLANTON. You are mistaken about that, because there have not been that many people hung during that time.

Mr. McLEOD. What did you say, about 39, or did you say 39?

Mr. ROBERTS. I said about 39.

Mr. McLEOD. You meant to the best of your knowledge, is that correct?

Mr. ROBERTS. To the best of my knowledge.

Mr. McLEOD. You did make a statement that you walked to the scaffold with a certain number of men. With how many men did you walk to the scaffold, approximately, to the best of your knowledge?

Mr. BLANTON. There are records made of these things at the jail and we are going to check you up.

Mr. ROBERTS. Yes, but I witnessed 59 executions, I said, in my life, in North Carolina, Virginia, Maryland, and the District of Columbia.

Mr. BLANTON. You said you had witnessed one in Maryland, four in North Carolina and one in Virginia?

Mr. ROBERTS. I witnessed a man shot.

Mr. McLEOD. Mr. Roberts, do you have any records in your possession at your home or anywhere else as to the statements you are making now, so that they can be verified?

Mr. ROBERTS. No.

Mr. McLEOD. Is there any way you have of proving what you said?

Mr. ROBERTS. About the number?

Mr. McLEOD. About the number; yes.

Mr. ROBERTS. No; I have no record, because I never kept a record of the number.

Mr. McLEOD. Is there any way in which you can check up the statements you have made?

Mr. ROBERTS. I have been going to jail 52 years to every execution.

Mr. McLEOD. Is there any way you have of checking up the statement that you made as to the executions with which you say you are familiar? I think you made a statement here to the effect that you were familiar with 52 executions.

Mr. ROBERTS. About 39; I am sticking to that, in the neighborhood of 39.

Mr. McLEOD. Thirty-nine?

Mr. ROBERTS. And not 49.

Mr. McLEOD. That is in the District?

Mr. ROBERTS. I am talking about the District—about 39 in the District, leaving out the other three States, Maryland, Virginia, and North Carolina.

There were two men in Virginia, one was white and the other was a negro, who was hanged for rape.

Mr. McLEOD. You say that you accompanied the last man who was hung in the District to the scaffold?

Mr. ROBERTS. Copeland.

Mr. McLEOD. How long ago was that?

Mr. ROBERTS. Before Christmas. Herbert Copeland killed Lieut. David Dunigan.

Mr. McLEOD. What is your age now?

Mr. ROBERTS. I am 84 years old. I was born in 1842.

Mr. BLANTON. Mr. Chairman, Mr. Tucker, who is president of the Northeast Citizens' Association of the District, is here, and I think he ought to be heard.

Mr. McLEOD. Very well, we will hear him.

STATEMENT OF EVAN H. TUCKER, WASHINGTON, D. C.

Mr. TUCKER. Mr. Chairman, I am not representing the Northeast Washington Citizens' Association in reference to this bill. I am only talking for myself in this matter.

Mr. McLEOD. What is your full name?

Mr. TUCKER. Evan H. Tucker.

Mr. BLANTON. For how many years have you been president of the Northeast Citizens' Association?

Mr. TUCKER. Thirty-two years.

Mr. BLANTON. You have been representing the Northeast Citizens' Association for 32 years?

Mr. TUCKER. Yes.

Mr. McLEOD. Are you affiliated with that organization now?

Mr. TUCKER. I am president of it, but they have not passed on this bill.

Mr. McLEOD. You are not acting for the organization, then?

Mr. TUCKER. I am acting individually to-day. I am also a member of the Council of Social Agencies and of other sociologic organizations and charitable organizations in the District. I have interests of that sort.

There is one point I would like to make at the beginning, and that is the point of citizenship here. The committee has heard people from all over the country. They have heard from some of our transient citizens here. But I am one of the real citizens of the District. I am a native-born citizen here. I have interests in this District that these people who come to stay only for a few weeks or for a few months or a few years can not have. This is my home. My father was born here 107 years ago.

Mr. RATHBONE. May I interrupt the gentleman to say that we ought to shake hands, because I was born in the District.

Mr. TUCKER. These people who come and stay a short while and have their homes and their parents and friends in other places can not have the same feeling toward the District of Columbia that we natives, who were born here and expect to die here and be buried here, all have. It is a different feeling.

Not only that, but we have observed conditions in this District all of our lives. We have seen just how things work. These people come from all over the country. They talk about model laws for the District. A tailor might make a model coat that would not fit one man out of a hundred.

What we want in the District of Columbia are model laws that fit the District of Columbia. We do not want people to come from all over the country and inject a model law as an experiment. We do not want the District made an experiment station for the exploitation of ideas that they could not pass in their own States to save their lives. We want the best laws possible for the District of Columbia.

Mr. RATHBONE. Which side of the question, may I ask, are you on?

Mr. TUCKER. I am opposed to this bill.

Mr. RATHBONE. You are in favor of retaining the death penalty?

Mr. TUCKER. Absolutely, in the District of Columbia. I will say that some States might get along nicely without capital punishment, but we have a class of population here, a roving class of population, and I feel that for reasons which I am going to give you, we should continue to have capital punishment here.

Mr. BLANTON. Is it not a fact from your experience over a number of years here—

Mr. TUCKER. All my life.

Mr. BLANTON. All your life, and also from having been for 32 years a representative of a certain group of citizens that just as is the case with all capitals, a lot of thugs congregate in Washington as the Capital of the Nation, from all parts of the country?

Mr. TUCKER. It is a Mecca for people of that kind.

Mr. BLANTON. It is a Mecca for criminals and thugs?

Mr. TUCKER. Surely.

Mr. McLEOD. How then do you account for the comparatively small amount of crime committed in the District compared with other cities of the same size?

Mr. TUCKER. We have a pretty good share of crime; I do not know what the statistics show in regard to that.

Mr. McLEOD. Not in proportion to the population.

Mr. TUCKER. We have quite a good deal of crime here. It might be that our laws in regard to capital punishment retard others from committing crimes here.

Mr. McLEOD. Take the State of Michigan, which has not had that since 1847. They have cities the size of Detroit, with over 1,200,000 people.

Mr. TUCKER. Your population perhaps is quite different from ours. You have a much larger native population and a much less roving population than we have in the District of Columbia.

Mr. RATHBONE. It strikes me offhand that the situation in Detroit ought to be particularly adaptable to crime. All a person would have to do there, if he committed a crime, would be to go across the water to Canada and then they would have to go through a lot of extradition proceedings. It seems to me that condition would operate to make things go just the other way.

Mr. BLANTON. If you will permit me, that shows just how little you theorists know about crime. The educated criminal does not run away from crime. He does not run across the line. He wants to stay and continue to operate in the same place. He does not run away to another country.

Mr. RATHBONE. I can cite a great many famous criminal cases in which the criminals did run away.

Mr. McLEOD. I would like to ask you a question. As I understand it, your population here is about half a million?

Mr. TUCKER. Yes.

Mr. McLEOD. On what do you base your opinion when you say that this is a mecca for criminals, that it has a large percentage of crime, when a city like Detroit, with 1,200,000 population, has fully 20 per cent more crime than the District?

Mr. TUCKER. Twenty per cent?

Mr. McLEOD. I would say 20 per cent.

Mr. TUCKER. You mean to the thousand population?

Mr. McLEOD. Yes; compared to your population.

Mr. BLANTON. They are not afraid of death in Michigan, hence commit more crime there.

Mr. TUCKER. I am speaking merely from observation during my lifetime and what I have heard. My father has talked about things that happened long before I was born. He knew conditions here very well. That is the extent of my knowledge. I have not looked into statistics; I will be frank about that.

Mr. McLEOD. Is not Washington considered a rather easy-going town so far as crime is concerned? Is not that its reputation? How many capital offenses do you have in a year; do you know?

Mr. TUCKER. I do not know.

Mr. McLEOD. Do you know how many executions you have in a year?

Mr. TUCKER. We have a good many more than we ought to have. I would like to see conditions bettered instead of having anything happen that would make them worse.

Mr. McLEOD. How many executions have you had here in the last 10 years?

Mr. TUCKER. I do not know; I could not tell you. I have not looked into that.

Mr. RATHBONE. Has the gentleman considered this last case? I do not pretend to be familiar with its details, but here is a man of an alien race who has been tried twice, I believe. If he is guilty of anything, he is guilty of the most heinous crime which would merit not only the death penalty but worse, if possible. They do not inflict the death penalty. They do not convict him at all—and why? If there had not been a death penalty, is it not conceivable that it might not be otherwise? In other words, insisting upon the death penalty and the death penalty only, that being the only real punishment that they could logically and justly give him if he were guilty they defeat their own purposes. The man is not convicted of anything at all, whereas if the penalty were life imprisonment, he might have been convicted.

Mr. TUCKER. I want to say this to the gentleman from Illinois, that we have here in Washington very intelligent juries; we also have a very intelligent bench. In my whole lifetime I have never heard of a case, I never knew of a case, of an innocent person being executed; I do not believe there has ever been such a case here.

Mr. BLANTON. Mr. Tucker, in that connection I would like to disabuse the mind of my colleague on one point, that there is no case tried where the punishment has to be death and nothing else; there is always the alternative of life imprisonment connected with all cases of murder in the first degree.

Mr. RATHBONE. You will notice that my statement was a punishment that could logically and justly be imposed if the man committed the crime of which he was accused. If the law provides for the death penalty, the only logical and just punishment would be by death. The jury did not want to inflict that penalty, so it did not convict him.

Mr. BLANTON. But in 40 States the jury has the alternative of giving a man life imprisonment instead of death for murder in the first degree.

Mr. McLEOD. Forty States.

Mr. BLANTON. I believe it is 40 States.

Mr. McLEOD. Mr. Tucker, you say you have never heard of a man convicted when he was innocent and condemned to death, in the District of Columbia?

Mr. TUCKER. Not a case in which there was proof of his innocence afterwards.

Mr. McLEOD. You recall the case of this boy for whom a petition was circulated throughout the country. He was condemned to death and later the number of petitions submitted became so great that he was committed to an asylum and it was found that he had the mind of a boy and therefore was not guilty of the crime.

Mr. TUCKER. That case was one of the most deliberate murders that I ever heard of in my life.

Mr. McLEOD. He was not guilty of homicide in the full legal sense of the word.

Mr. TUCKER. He was given a very fair trial. Every point that could have been brought up was brought up, and he was convicted, but through the sentiment of a lot of people who brought in petitions, etc., he had his sentence commuted. I believe there never was a more deliberate murder committed than the case of that boy. He wanted to steal that money and he stole it from that woman.

Mr. BLANTON. Do you know of any sentiment among the real District people to do away with the death penalty?

Mr. TUCKER. Not a bit. There are three points I want to bring up, if I may have the time.

First, the death penalty as a penalty for homicide. It does seem to me that when anybody deliberately and cold-bloodedly comes up to you and murders you the proper penalty is death. I was talking to a lawyer the other day about this bill. He is a District lawyer, although he is not a native of the District. However, he said we should not legalize murder and that the death penalty by law is legalizing murder.

I said, "Now, my friend, let me ask you a question. You have a young daughter, a very nice girl. Suppose she goes out some evening to run an errand for her mother and does not come back. After a search, the next day her body is found in the woods. She has been ravished and mutilated. Do you think that man should be executed for that crime?" He said, "Why, I would shoot him full of holes." I said, "Well, now, do you think it is better to have that sort of thing done by mob violence than to have a legal trial? The man that you shoot full of holes might not be the guilty man. You have given him no trial whatever. Is that a better way of doing it?" He said, "I would do it."

The other day a certain gentleman testified before this committee. He is not a native of the District either. He is a man who came here from the outside. No member of the committee asked him this question, but going with him down the hall I asked him the same question I had asked the lawyer and he said in answer, "Why, I would shoot him."

Mr. BLANTON. The judge from Chicago who was here this morning, who said that he would not be in favor of the death penalty in a case of that kind, made a statement which I do not believe, because he has not had that happen to him. He would shoot him as quickly as anybody else, if he got the chance.

Mr. TUCKER. I said the same thing to him. He said, "Well, it does seem that in cases like that——" I said, "Now, that is exactly opposite what you told the committee. You said you were opposed to capital punishment."

If you bring those things right home to yourself, in almost every case you will admit that what I am saying is true.

Take the case of that farmer and his wife. That happened the other day. Here was a hired man who had been working for those people. He knew the run of the house and put a mask over his face, went in the house to rob it. In the course of the procedure, he found that those people recognized him. He takes a pistol and shoots them down in cold blood. What member of this committee would not say that that man ought to be executed? That was a de-

liberate, cold-blooded murder. Suppose that they were your mother and your father, or mine? What could you do? What other penalty would you impose? They suffered; they lay there for several hours and suffered great pain.

Mr. McLEOD. He should be punished, should he not?

Mr. TUCKER. Yes.

Mr. McLEOD. What punishment is greater than that of imprisonment for life?

Mr. TUCKER. Imprisonment for life sounds very good, but there are too many cases where they get out.

Mr. McLEOD. What would be your choice—life imprisonment or execution?

Mr. TUCKER. I will say in reply to that that I have lived here all my life. My father lived here before me. I have never known of a case yet of a man who was condemned to be executed who did not exert every power of his friends to have his sentence commuted to life imprisonment.

Mr. McLEOD. But I asked you a very fair question. What would you select, life imprisonment or execution?

Mr. TUCKER. I think I would take life imprisonment.

Mr. McLEOD. In preference to execution?

Mr. TUCKER. Yes, sir; I think I would.

Mr. BLANTON. Mr. Tucker, may I interpolate? It was stated this morning that rich men do not hang. In the capital of my State, Austin, the oldest family of the county was that of Doctor Burt. His son, Eugene Burt, was well educated, occupied a high position in the world, and had been reared in luxury. He killed his wife for her property and insurance. He wrapped a sheet around her and put her in an old cistern under the house. He was tried, and alienists from all parts of the country came there and testified that he was crazy. He had the best legal talent in the United States to defend him, the very best legal talent. The jury convicted him and he was hung in the capital of my State. A member of the jury made the statement that they were not willing to give him life imprisonment because they were not going to have the governor pardon any such fellow like that in two or three years.

Mr. McLEOD. If he was rich, why would he want to kill her for the insurance?

Mr. BLANTON. It is the inordinate craving for wealth. The well-to-do man wants more. His family was well to do. They fall out with their wives, they get tired of a woman, and when they think they can not get a divorce, they get rid of them sometimes.

Mr. TUCKER. That was Texas. This is the District of Columbia. My recollection is, when I was a boy a murder was committed by a young man of a very wealthy family. His family built the first big apartment house that was ever built in Washington. They were very wealthy people. This young man committed murder. I forget the circumstances of the murder, but I know all about the case. I remember that he was executed. He had the best criminal lawyer in the District of Columbia to defend him, a man of national reputation. He was an ex-Member of Congress. His name was Judge Jeremiah Wilson. I remember that very well, because he had represented the United States Government in a number of cases. He was a very noted lawyer.

His family spared no expense whatever. They did everything in the world they could in that trial to prevent his conviction, but he was convicted. After he was convicted his poor old mother went to the President of the United States, got down on her knees and begged for a commutation of that sentence. Everything that could possibly be done was done; anything that money could do was done, but that young man was hanged.

Now, tell me that class has anything to do with it here; that young man was hung just like the poorest colored man. Although he had legal talent and everything else back of him.

As a penalty, if you bring it right straight home to yourself, there is hardly a man, when it comes right down to his father or mother getting murdered, or his daughter getting murdered, who will not say that death is a just penalty for the crime.

The next point of view is as a deterrent to crime. I tell you that there is one thing people are afraid of and that is death. They do not want to be executed. I can not help thinking that it is the greatest deterrent that we have. The question was brought up in the committee a number of times about innocent people getting executed. I have already answered that question. I have never known of a case and I do not believe that there ever will be a case in this District of that kind. We have good juries and we have a good bench.

There was a charge delivered by a judge to a jury the other day that took over an hour. Every little point and every extenuating circumstance was mentioned. I tell you that unless the judge feels that that person is guilty himself, he does everything in his power in delivering his charge to the jury to prevent his being convicted.

Mr. McLEOD. That is his duty, is it not?

Mr. TUCKER. Yes; that is his duty and he does it. We have a good bench. I do not feel that there is any danger of an innocent person ever being executed. I do not think that will ever happen here.

Mr. McLEOD. Similar instructions are given in most of the other States.

Mr. TUCKER. Of course, but there is a great deal of difference in benches in different parts of the country. Judges are elected or selected politically in a good many cases, and they are a different caliber than the men we get here. We have a very high class of men on our bench, in the Supreme Court of the District of Columbia. They are appointed by the President of the United States. They are selected very carefully and are very high-class men. I do not want to spend any more time on that, however. I believe the deterrent point is one of the largest in the matter.

The next point I wanted to mention is the danger of escape of a convict who may be sentenced for life—his getting out and doing the same thing or worse again.

Take the case of Dutch Anderson and Gerald Chapman, for instance. Those two men were in prison. They escaped from prison. What did Chapman do?

He went to work and killed a man as soon as he got a chance. What does Dutch Anderson do? He goes up to a poor, innocent farmer and his wife who were riding in an automobile, and in the most cold-blooded manner shoots them down.

If those two men had been in their graves, there would have been four lives saved. He also killed an officer before he was himself

killed. There were three that he killed after he escaped and one that Gerald Chapman killed.

Suppose that poor farmer and his wife were your mother and father or mine? What would you say? Would execution be too severe a penalty for that man?

As long as a man is able to get out of prison, a criminal class like that are a danger to the community. You do not know what they are going to do. They will murder people just as quickly as looking at them. The only safe place for them for protection of the rest of the population is in the grave.

I think that is one of the strongest points in opposition to the life-imprisonment idea.

Mr. BLANTON. If you do away with the insanity plea there would not be one out of a hundred who would plead insanity.

Mr. TUCKER. I am not in favor of doing away with the insanity plea. I do not think any insane person ought to be executed.

Mr. BLANTON. I do not think there ever was one who was executed. And many sane men escape just punishment on that fraudulent plea.

Mr. TUCKER. I do not think there was in the District of Columbia, because we are very careful. As I tell you, we have good judges and we have good juries. Those points are brought up and very carefully considered.

But, gentlemen, I do feel that taking into consideration the points I have mentioned here, we would make a very big mistake to pass such a bill as this for the District of Columbia.

It might be all right for a place in Michigan or other States, but not for conditions here.

Congress make the laws for the District of Columbia. By Article I of the Constitution of the United States it is given exclusive right to make the laws. It does not say, "You shall make model laws or experimental laws to be used here to help other cities in the United States."

It means that there shall be laws to fit conditions here. That is the duty of Congress, I feel.

I hope they will not pass a law like this. I feel if they do, it will only be a year or so before you will have to pass a new law.

Mr. McLEOD. The committee will stand adjourned until Saturday at 10.30 o'clock, a. m.

(Whereupon the committee adjourned, to meet again on Saturday, February 13, 1926, at 10.30 o'clock, a. m.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Saturday, February 13, 1926.

The subcommittee met at 10.30 o'clock a. m., Hon. Clarence J. McLeod presiding.

Mr. McLEOD. The subcommittee will be in order. I believe Mr. Blanton wants to make the first statement.

STATEMENT OF HON. THOMAS L. BLANTON, REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BLANTON. I wanted to disabuse the mind of the committee, if any were of that mind, that it is an easy matter to convict even a poor man in court.

If a defendant comes into court and pleads guilty to murder, that is not the end of the matter. In most of the States the law requires the prosecuting attorney to follow that up by making out a prima-facie case of murder by competent evidence; in other words, the Government must prove the man guilty even though he confesses and pleads guilty.

Mr. HOUSTON. Let me just interject right there, Mr. Blanton: In my State a man can not plead guilty of murder in the first degree; he must be tried.

Mr. BLANTON. Yes; but even where a man pleads guilty, as my colleague knows as a prosecuting attorney, it devolves upon him first to make out a case.

Mr. McLEOD. Should you not qualify that further? You don't have to do that in Michigan.

Mr. HOUSTON. That is based on the old common-law rule.

Mr. McLEOD. Sometimes there is not even an indictment.

Mr. BLANTON. You are referring to a misdemeanor and I am talking about a case of murder.

The indictment can not even be considered by the jury as an element of guilt; it can not be considered for any purpose. It is just merely a charge that warrants trial—the fact that a man has been indicted. If the issue comes up, the court will be required to charge the jury that they can not even consider that fact against the defendant.

In 40 States, at least, I think it is a fact that after a man has been indicted for murder, the court has to bring him up and arraign him.

Mr. McLEOD. First having the information.

Mr. BLANTON. The indictment is read—it is not an information, it is an indictment. And it is sometimes a hard matter for a prosecuting attorney to get an indictment against a man. He can not just go in the grand jury room and say, "Gentlemen, I want you to indict this man." He has to produce the evidence and convince those men that an indictment is warranted.

Mr. HOUSTON. In my State, if you will let me just make this statement—of course, we are under the old common-law practice. The attorney general or his assistant is not allowed in the grand jury room.

Mr. BLANTON. Nobody except the prosecuting attorney is allowed in any State.

Mr. HOUSTON. The prosecuting attorney is not allowed there, except by request.

Mr. BLANTON. He is not?

Mr. HOUSTON. No, sir. It is purely an organization based upon the old common-law principle of a jury of his peers. But he must be indicted. We never allow the prisoner to go before the grand jury to waive immunity or anything else. He is never permitted in the grand jury room. They only consider prima facie evidence.

Mr. McLEOD. That must be different, then, in several States.

Mr. BLANTON. In the States where the common law has been changed by statute only the prosecuting attorney is permitted to go in the grand jury room with the grand jury and develop a case; and even then, when the grand jury votes on the indictment, he must not be present; and even in those States no person can be present in the grand jury room at any time other than the prosecuting attorney who has charge of such prosecutions. His assistant can not be there to help him; there can not be a special private prosecutor to help him in the grand jury room. If it develops on the trial of the case that there was such a person in the grand jury room, it would vitiate any indictment that had been found.

In States where the old common-law principle prevails, as our friend says, there no one but the grand jurors themselves can develop a case, unless they request the prosecuting attorney to come in to assist them on some matter. Then he can not be present when they vote.

Mr. McLEOD. In Michigan, cases do not have to be presented to the grand jury.

Mr. HOUSTON. You have a statutory code practice?

Mr. McLEOD. It is pretty nearly a statutory code. A man can plead guilty and be sentenced on the information.

Mr. BLANTON. After the indictment has been found and properly docketed, it must be perfect in every respect. If there is any little defect in it it is quashed; and in my experience of over 30 years in courthouses, 8 of which was as circuit judge, quite a large per cent of the indictments are quashed. What is your experience, Judge Houston? Of course, I am talking about general rules.

Mr. HOUSTON. I never had one quashed.

Mr. BLANTON. There are some extraordinarily fine prosecuting attorneys who have a high record. But to offset that there are some who have bad records. My experience, as far as the general average is concerned, and I have made a close study of it, is that there are a large per cent of the indictments quashed and have to be found over again. District attorneys come in on their own motion and ask the court to quash before the issue is ever joined.

Mr. HOUSTON. We have a long-established practice, and we have our forms that have been passed upon time and time again, and we stick strictly to those forms, and we have had enough of them so that we can describe any possible degree of assault that occasions homicide. Of course, we may put in a number of counts.

Mr. McLEOD. You are basing your statement now, aren't you, Mr. Blanton, on the State of Texas and possibly Delaware, because many States have nearly strictly statutory provisions? Therefore, they differ on the indictment.

Mr. BLANTON. Of course, I was speaking of where you have regular grand jury indictments. As to every single allegation in the indictment, the proof must absolutely correspond or there is a failure of the proof.

I want to give just a little incident I know of:

I knew a man who owned an old family carriage horse. He was known all over the country everywhere; everybody around there knew "King Cotton." A man stole the horse, and he was caught and indicted, and the indictment alleged that this horse belonged

to J. A. M. In order to prove ownership the district attorney brought in the man's son, a boy 18 years old, into court to testify, and he said:

Joe, you are the son of J. A. M.?

Yes.

Do you know this horse they call "King Cotton"?

Yes.

Do you know who owns that horse?

Yes.

Who owns him?

My mother owns him.

Well, the court who was trying that case just fell back and told the district attorney there is no use of going on with this case as there has been a failure of proof, but he sent after Mrs. Matthews and had her to state that that horse belonged, of course, to her husband; that she just merely claimed him as a carriage horse, and everybody in the country knew that that horse was her carriage horse. But the ownership was in her husband. He had bought the horse and paid for him.

So the case went to trial and the man was convicted. But it just shows you how little things can come up upon which criminals escape punishment.

With regard to justice always being met in the courthouses: The very minute the man is indicted and he is arraigned and they are getting ready for trial, a venire has been drawn and examined—the very minute that that list is available, you will see the criminal lawyer get hold of that list. And most criminal lawyers keep a record of the jurors in the county. They know what their habits are; they know what their business connections are; they know what their church affiliations are and what their fraternal affiliations are. They know who influences them and who do not. They know exactly how they can be reached along certain matters, and those criminal attorneys keep a regular record in their offices, and take that list up and study it and then begin to work on it.

Mr. McLEOD. About the prosecuting attorney in the same regard?

Mr. BLANTON. I do not believe that there ever was a prosecuting attorney that ever went beyond the fair examination of the jurors.

Mr. McLEOD. Do you believe that a prosecuting attorney when he conducts the examination of the jury knows those who is a convicting juror and knows everyone who is an acquitting juror?

Mr. BLANTON. They should know it and learn that.

Mr. McLEOD. Do they take advantage of that the same as the defense attorneys?

Mr. BLANTON. The prosecuting attorney honorably takes advantage of all information he has. For instance, he knows that there are certain men in the community who won't convict for anything. He is not going to let a man like that stay on the jury if he can help it, and he uses his peremptory challenge and challenges him.

Mr. McLEOD. And he knows who the jurors are who will convict everyone?

Mr. BLANTON. There are no jurors who will convict everyone.

Mr. HOUSTON. I never took that into consideration. I always took this into consideration, and I always tried to ascertain—of course, I knew most of the panel, to start with, having a wide ac-

quaintance, if it happened to be a man I did not know then I would look him up and find out about him.

Mr. BLANTON. The prosecuting attorney can tell about some.

Mr. HOUSTON. But as to the idea of conviction and acquittal and things of that kind, as a matter of fact I have had this experience: There are men who when they make up their minds nothing can move them; if they are with you 11 men can not move them; and if they are against you they can not be moved. I always avoid, for the sake of fairness, getting a man of that kind on the jury.

Mr. BLANTON. I want to state to the chairman, because I have high regard for him: My idea is that most of the criminal lawyers, while they won't suborn witnesses themselves, they will sit quietly by and see it done.

Mr. HOUSTON. The best I have always known were generally guilty of that practice—in other words, "manufacturing evidence."

Mr. BLANTON. Manufacturing evidence. They will tell a witness just exactly what they want to show, how far he wants to go, and when he wants to quit, and how he wants to qualify his testimony.

Mr. McLEOD. Won't the prosecuting attorney put leading questions?

Mr. BLANTON. Yes, sometimes, when the defense attorney permits it. What are leading questions but to bring out facts? But, then, he doesn't manufacture testimony; in other words, he doesn't have them go out and sit in the room and fix up testimony, dovetail the testimony.

Mr. McLEOD. Does he want to win the case as much as the defense does?

Mr. HOUSTON. It depends entirely on the character of the man. I have a man in mind now—

Mr. BLANTON. I want to say this: I am going to have to have another day unless I can use all the time here. It is going to take a whole hour and a half to bring what I want before the committee. Then I suggest we give Judge Houston an hour and a half. I want to give you my experience this morning.

Mr. McLEOD. I want you to understand now, you men have both been judges; I have not. I happen to have defended five men for homicide in the State of Michigan, and that is what I base my experience on. I have tried many criminal cases, although I practiced law only since 1919.

Mr. BLANTON. Gentlemen, as an attorney I represented many men charged with crime, several of them charged with murder. I have represented several men charged with murder where I was their only counsel; I had no assistant counsel at all. I was standing between them and the gallows.

After I went on the bench for eight years I tried men for murder, for all kinds of assaults, for rape, for burglary, for arson, for forgery, for embezzlement—for every kind of a crime you can think of almost and known to criminology.

I never sentenced a man to the penitentiary in my life but I gave him a talk before I sentenced him, and in most cases I could bring tears to his eyes before I sentenced him—to show there was good in him even yet.

Mr. McLEOD. Have you presided in homicide cases—first-degree murder?

Mr. BLANTON. Oh, yes; a number of them.

Mr. McLEOD. Did you ever condemn a man to die?

Mr. BLANTON. I will tell you of one case wherein the jury gave the defendant the death penalty. There was a man named Sam Grant. He had a man stay all night with him at his house out in the country, and he found out that this man had a small bag of \$20 gold pieces, something like 30 or 40, maybe 50—I have forgotten the exact number. The man got up the next morning and left in his little cart. Grant talked a young fellow into going in with him.

They went down the road and got behind the bushes, and as that old fellow came by they shot him in the head and killed him. Then they began spending those \$20 gold pieces and buying every kind of thing you could think of with them at the little stores, all the little neighboring stores; and that is the way they caught them. It was known that this old man had this gold. The jury gave that fellow Sam Grant the death penalty.

Mr. HOUSTON. The jury fixes the penalty?

Mr. BLANTON. Yes; in my State. I went even beyond my province as a judge to see that he got a fair, square record on appeal. The higher court did not know what I knew about his frame-up, and held I ought to have granted a new trial, and reversed me.

I tried the case again and there were 11 for hanging and 1 for life sentence, and that one juror pulled the jury over to life sentence. That boy went to the penitentiary and stayed a few years and he escaped, with two other men whom I had sentenced to the penitentiary from that county; and I wish you could know of the crimes those boys have committed since then.

I remember these two other boys had gone to a gin at night—taken a wagon to a gin and stolen seed cotton out of the gin, and would take it off and the next day take it right back to the gin from which it was stolen, and have it ginned.

Mr. McLEOD. You don't mention hundreds tried who served sentences and probably good citizens afterwards?

Mr. BLANTON. I want to say there are very few of them. You asked me if I tried homicide cases. I have tried a number of them. There is now only one man left in the penitentiary that I sentenced there as a judge for a long term of years; all the balance of them have been pardoned, every one of them.

Mr. McLEOD. Probably they deserved pardon.

Mr. BLANTON. A man named Tom Barnett killed a cattleman named Alex Sears. He had bought a bunch of cattle from Sears. He received the cattle one evening and was to pay for them when he received them. He and Sears were seen to eat supper together in a restaurant and were seen to leave in a buggy together, and just as they left this fellow Barnett stopped at a grocery store and they put a 5-gallon can of oil in his buggy. He was driving a coal-black horse in a single buggy; and one of the neighbors saw that horse drive up to a church; saw two men go in it. A woman heard a shot over there in that direction. The next morning you could trace blood from that church along the road here and there and over a bridge, just looked like a slaughter wagon had crossed the bridge. And the district attorney cut chips out of that bridge and had the blood analyzed and showed it was human blood.

That black horse was seen to drive along a certain highway toward a schoolhouse. That schoolhouse burned that night. The neighbors saw it burn. The next morning the charred remains of Sears were found in the schoolhouse. There was that 5-gallon oil can out there on the side that had not burned, that the groceryman recognized and swore that was the can he had delivered in this buggy. Just before day that morning they saw this black horse coming back. Several neighbors all along the road heard the clatter and looked out and saw it. Just before dawn this man Tom Barnett's barn burned, and the firemen as soon as they got there smelled kerosene oil, and this buggy was partially burned, but left some charred blood in the back of it. On the charred remains of Sears they found a metal check the shoemaker had given the cattleman for his boots; found suspender buttons with his tailor's name on them, and many other things to identify the remains as Sears; found his watch and various other things.

When they tried Tom Barnett I had to have a special squadron of officers to search every person who came in the court room. They were going to mob him; and I gave notice if any attempt was made to mob that man I was going to have those attempting it indicted and I was going to transfer the cases to the other side of the State for trial; that I was going to see that that man got a fair, square trial, that I was not going to stand for any mob law at all. That is the way I kept them from mobbing Barnett. This fellow Tom Barnett brought a receipt in there signed by this fellow Sears, and the district attorney claimed it was a forgery; and he put witnesses on to prove that was a forgery. But later on the wife of the deceased got on the stand and she swore that this was her husband's genuine signature; and it developed a little later that this receipt was signed in this old church. Barnett had taken Sears in there and at the point of a pistol, the presumption was, made him sign that receipt on that paper, and then killed him.

So you see how many ways a thug can think of to try to carry out his point.

Mr. McLEOD. He was a bad man.

Mr. BLANTON. I held that jury together for several days. There were either 10 or 11 who wanted to hang him, and either one or two men held out for life sentence; and they gave him a life sentence.

There was not any question about that record. I tried the case very carefully. It would not have been reversed; I know it would not.

The attorneys appealed it, and you speak about a fellow committing suicide. You never heard an attorney plead for a man's life in your whole born days like the able attorneys for that man did. They wanted a life sentence. They pleaded for it, and you could just see fear of hanging in that fellow's heart all the time. He was afraid somebody else would kill him, and was afraid of the law, but was not afraid of ordinary death.

But just about a week before the higher court was to pass on that case it got circulated—they did it purposely—they circulated the report that the higher court was going to reverse that case. The higher court hadn't given out anything. That night 150 people went to that jail and began battering in the door with a battering ram; and that fellow had gotten some scissors from some trusty that day, and when he heard them battering down the door he said, "Well, they

won't get me, anyhow," and he stabbed himself to death with the scissors before they shot him all to pieces.

Mr. McLEOD. Therefore, it was not death he feared, it was violence.

Mr. BLANTON. It was punishment. He did not want to be punished.

Mr. McLEOD. He punished himself.

Mr. BLANTON. What is that?

Mr. McLEOD. He took his own life.

Mr. BLANTON. He stabbed himself with the scissors. He didn't want to be punished by those who represented the law or by those who represented the dead man; he would rather kill himself. But they shot him all to pieces after they got to him.

When I was a young man in the practice of law, 25 years ago, there was a negro named John Snell. He had worked for a cattleman for years. This cattleman gave him 640 acres of land and gave him a little bunch of horses and some cattle. This negro worked hard and grubbed out some land and had him a good farm. That was just on the outside of this man Davis's ranch. The neighbors all around there were small farmers, and in that country this man John Snell was the only negro in the neighborhood, and some of those men only had 80 acres, some of them even 40 acres; and they were jealous of this negro having a section of land. They were trying their best to get rid of him. They tried to buy him out, and he wouldn't sell. He wouldn't sell because this land was given him by his old benefactor for whom he had worked so long.

They posted white-cap notices on his barn one morning that if he didn't leave in five days they showed what would happen—had a skull and crossbones and various other threats. They told him he had to leave there in five days or be killed. He came immediately to this cattleman, Mr. Ell Davis, and told him about it; and Davis went down town and bought him the finest Colt's .45 money would buy.

Davis said, "Now, John, don't you take this pistol off of your premises. You keep it on your person when on your own place. Every time you go about your premises, keep this pistol with you. Nobody has a right to run you off this place. I gave it to you. If anybody tries to run you off of the place, you shoot him, and shoot to kill." Those were his instructions.

Two days later five men rode up, and they formed a semicircle between a cotton patch, where he was picking cotton and the house; and they got down behind their horses and began shooting at him; and the first shot that was fired went right through this colored man's mouth. blood spurting everywhere. He had this pistol in his shirt here. [Illustrating.] He took it out and he shot three of those men, one right after another, killing them. And he shot twice more at the other two who were at that time running; and with that empty pistol he ran those other two fellows off his place.

Was that murder?

Mr. McLEOD. No.

Mr. BLANTON. No; that was justifiable defense, pure and simple. But one of those fellows whom he ran off, when that man was tried the first time at Throckmorton, Tex., one of these men who run off the place testified that he didn't kill his third man dead; that he just merely wounded him; and he said that after he had run them off he came back to this man lying on the ground, and the fellow got up on

his elbow and begged him not to kill him, and he said this colored fellow just cursed him and said, "I will kill you," and shot him right in the head.

That is what one of them testified. Of course, that made the case look ugly. But against that there was a little white boy who was picking cotton for this John Snell—John Snell was paying twice as much for cotton pickers as anybody else, in order to get his cotton out. This little white boy testified that that negro never did go back to this man on the ground. He said he watched him all the time; that he ran these two men off the place and started out immediately across the pasture to Ell Davis's house; and there was the testimony. The first time that case was tried at Throckmorton there were 11 men for hanging and 1 for acquittal. A man named Cox hung the jury for acquittal. That case was tried at Haskell, Tex., and there was a hung jury. It was tried at Anson, Tex., in another county, and a hung jury; and the case was transferred then to Shackelford County, my old home, where I lived. We tried that case in Shackelford County before Judge Lindsey, a very fine judge, and there were 11 men for acquittal and 1 for hanging, and Judge Lindsey said, "I am not going to let this negro be tried any more." And he dismissed the case.

You tell me that a negro can not get justice before white men? He can do it. There will always be some one there to see that he gets justice; there will always be somebody on the jury who will do that. You have to have 12 men on the jury agreeing on the verdict. There is no question in the world but what there are 9 guilty men escape to where 1 is convicted—just about 1 out of 10 are convicted even of the guilty men. That is my best, honest judgment.

Mr. McLEOD. What is the ratio of innocent men convicted?

Mr. BLANTON. I don't believe that there is one innocent man convicted in every 15 years anywhere in the United States. I do not believe there is one innocent man in 15 years convicted.

Mr. McLEOD. You mean of a capital offense?

Mr. BLANTON. Any kind of a crime that is a penitentiary offense, where there must be grand jury indictment and there must be a case made out; I don't believe there is one in 15 years in the United States, not more than one. Of course, once in a while you will find one. But I want to say this to my colleague, the chairman—

Mr. HOUSTON. Right there. In most cases where an innocent man may be convicted it is generally upon direct testimony; there is some person who does it purposely to frame him.

Mr. BLANTON. To frame him.

Mr. McLEOD. That happens more than once in 15 years, that the people are out to get some one.

Mr. BLANTON. I don't believe it happens.

Mr. McLEOD. I have seen it myself—from jealousy, from surroundings. An oath is not always sacred in a courtroom.

Mr. BLANTON. I don't believe it happens. You read about those things and see on the picture screens such things, because there is a chance for some novelist to write a good story. But it does not frequently happen. I want to tell you that the judges on the bench don't permit that. The judges on the bench are fair-minded men, and they do not permit the district attorney to do anything wrong.

Mr. McLEOD. Should they be more intelligent than they are?

Mr. BLANTON. If they do do it, there is the defense counsel who has a chance to take it to a higher court; and I want to tell you right here that the higher courts make the courts and the district attorneys hew to the line. If they don't, they reverse the cases.

I had several cases reversed when I was on the bench because I wanted to be very fair to the defendants and I gave them unusually fair records. Whenever there was any doubt about a proposition I always gave them the benefit of the doubt on the record. So they got everything coming to them in the higher court. I didn't want to be responsible for some one being punished who ought not to be punished.

Mr. McLEOD. That is a moral duty.

Mr. BLANTON. In regard to Clarence Darrow, I want you sometime to sit down and read that testimony of his. What is there about that testimony that has any weight on this proposition? Nothing. It is just a conglomeration of generalities.

He has not had what I would call a life-time experience in trying criminal cases. He has been doing too many other things. He states in his own evidence that he has tried 40 or 50 cases.

Mr. McLEOD. Homicides—that is meant for homicides. We corrected it.

Mr. BLANTON. You did not correct it? I am not going to let you correct it. He did not say "homicides"; he said "criminal cases." He did not say they were homicide cases. Mr. Reid attempted to ask him if he hadn't tried just a roomful of cases. He said, "Oh, I have tried about 40 or 50." You look at the way that evidence reads in the record, and you will see that he has tried 40 or 50 cases. But, my goodness, there are attorneys who have tried several times that many.

Mr. McLEOD. You know he has, too. That is a mistake in type-writing. I will get a deposition from him to prove that, if that will satisfy you.

Mr. BLANTON. Mr. H. A. Jung, of 5340 Harper Avenue, Chicago, Ill., is a man who is well posted, and I wrote to him through a mutual friend of mine, and here is his letter. He says [reading]:

MY DEAR MR. BLANTON: The request of a mutual friend of ours to send you a report of what I have on file regarding Mr. Clarence S. Darrow, criminal lawyer, makes me hasten to reply.

There is nothing of record in my files, or in others that I have access to, that gives out any data showing Mr. Darrow as an official or member of any subversive outfit that we are interested in.

Mr. Darrow, however, is very "clever" and may have been able to hide such connection, if any exist. He has defended all kind and manner of "destructionists," as counsel for anarchists, dynamiters, communists, syndicalists, and simple unionists, to known murderers, morons, felons, gunmen, thugs, grafters, and crooks. No doubt, in defending such as these, his great heart has always held them guiltless, even after some were convicted. No man that he has defended has ever been hung.

Clarence S. Darrow, criminal lawyer, was born at Kinsman, Ohio, April 18, 1857. Educated in Ohio public schools, studied law, and was admitted to practice in 1875. Some of his chief legal efforts have been directed against monopolies, trusts, and corporations, one notable case being that of the "Gas Trust" of Chicago back in 1909, or thereabouts. He has been active in behalf of organized labor and was hailed for a time as the chief champion of the so-called down-trodden. He served in the Illinois Legislature in 1902. He has written much along economic lines and has been active in politics. He will perhaps not deny that he is a "right wing" Socialist.

Victor Berger calls him some kind of a Socialist; he has a regular name for it, but I have forgotten what it is. I am going to get that from Berger and put it in. It is some kind of a Socialist, Berger says he is, but not altogether the kind Berger is.

At one time, on the walls of his office in a down-town skyscraper in Chicago, amongst other pictures could be found the picture of Karl Marx.

As a lawyer he is feared and respected by opposition counsel. He confesses to being a pessimist and as a boy claimed he was a relentless enemy of work. He is an ardent baseball fan. He claims his sympathy is always with the "under-dog." He is sympathetic in the extreme, has a winsome personality, and a power of eloquence in speech that has been seldom equaled.

He has been proposed lately for Democratic candidate for United States Senator from Illinois on a "wet platform." He is against the World Court. He is said to be an agnostic, but in debate recently with Bishop Francis J. McConnell, of the Methodist Episcopal Church, he said, "I don't believe or dis-believe in God."

He was chief defense counsel in the Dayton, Tenn., Scopes "ape" trial, his opponent being the late lamented William Jennings Bryan. In that trial he denounced Judge John T. Rawlston as unfair and then apologized.

He has long been a bitter opponent of capital punishment and it is said, reasoned that Leopold and Loeb, youthful murderers of little Bobby Franks, would be hung unless he defended them, nevertheless, he is said to have received the major share of \$130,000 in this case.

He has said more or less recently that he intends to devote much of his time henceforth to writing, and in that connection visited, last August, E. Haldemann, Julius, Girard, Kans., publisher.

He was counsel for Dr. Ossian Sweet and 10 other negroes of Detroit, Mich., some of whom were indicted for murder in a race case.

The Memphis, Tenn., Bar Association withdrew an invitation to Mr. Darrow to speak on June 26, 1925, but this hardly meant anything under the circumstances that prevailed at that time on account of the bitter feeling against him in Tennessee.

Back in 1912 Mr. Darrow was twice indicted at Los Angeles for bribery of a jurymen in the McNamara dynamite case, but was acquitted. He was defense counsel in this case.

He was leading counsel in the following now famous labor cases: The Eugene V. Debs railroad case, 1894; the Kidd, Oshkosh, Wis., conspiracy case, 1898; the Pennsylvania coal-strike case, 1902; and the Moyer, Haywood, and Pettibone case in 1907.

Mr. Darrow was a supporter of Robert M. La Follette and stumped for the latter in the last presidential campaign.

He is a free-thought artist advocating freedom in everything. Anyone should practice anything with freedom from restriction of any kind. Let me illustrate: Back in October, 1923, he spoke before the American Medical Liberty League and advocated that anyone should be allowed to practice medicine without restriction of any kind.

He is the author of "Crime, Its Cause and Treatment." This book treats crime from a legalistic viewpoint, although it was meant to be strictly a scientific treatise.

He denounced Ole Hanson on one occasion when defending some Red in Chicago before Judge Oscar Hebel in a sedition case. During this case, he said, according to press reports (July, 1920), "I insist that men have a right to change any law or custom or habit by a strike as well as by the ballot. The only way to get what you want is to go out and fight for it."

He was associated with Charles Recht as counsel for Benjamin Gitlow, communist, who was jailed and just recently pardoned by Governor Al Smith.

He was against the World War but was not a pacifist when we got into it. He did his part during the war.

This man is very fair to him.

He sold Liberty bonds. He went across to visit the front in August, 1918, at the invitation of the British Government.

Mr. Darrow is a venture of many moods and beliefs. He is, in my judgment, not constant to many respects. He is full of surprises and one may never know what to expect of him.

He is continually ranting about the "downtrodden" and "poor" and that the "rich" control everything.

Among some of the books he has written are *An Eye for an Eye*; *Persian Pearl* (essays); *Resist not Evil*; *Farmington* (novel).

He was at one time in his career counsel for the North Western Railroad. On October 16, 1925, a cablegram was sent to Bethlen, Prime Minister at Budapest, Hungary. This cablegram was signed by Clarence Darrow, Upton Sinclair, Robert Dunn, David Rhys Williams, Roger Baldwin, William Holly, Andrew T. McNamara, and Robert Whitaker.

The cablegram read as follows:

"Deeply concerned about reports from Berlin of torture of political prisoners and court-martial and threatened execution of more than 100, including Mathias Rakosi, people's commissar in the former revolutionary government. Carrying out such executions will arouse greatest indignation of American people. We demand that court-martial be abolished and regular civil trials be conducted and that no executions take place."

Mathias Rakosi was people's commissar in the short-lived soviet government of Hungary, under Bela Kun. Admiral Horthy was well able to handle this case, unaided by any protests from so-called uplifters and reformers, especially when these purported to speak for the American people.

You will sense the fact that I have given you a biography of Mr. Darrow in which my personal feeling is reflected; however, I have done him no injustice.

I do not believe there are any inaccuracies herein as to historical events and, as proof of my sincerity in supplying this, and believing that the scale balances, you are authorized to make whatever use you see fit of this communication.

Very truly yours,

H. A. JUNG.

Mr. McLEOD. The facts stated in that letter go to make up a good lawyer.

Mr. BLANTON. That makes a criminal lawyer.

Mr. McLEOD. A good criminal lawyer. And we have got to have them.

Mr. BLANTON. I have another report from New York on Mr. Darrow. On account of losing my brother, who died the day before, I was unable to be here when Mr. Darrow spoke. My brother died on Sunday and Mr. Darrow spoke Monday. The report went out; I heard of it—that Mr. Darrow defended men not for money, not for big fees, but more from a humanitarian standpoint. I wish you would check up the cases he has tried, and you will see there were big fees attached to them. You take, for instance, the Pennsylvania coal-strike case. He received \$10,000 in that case.

You take the Moyer, Haywood, and Pettibone cases; he received \$35,000 fee.

You take the McNamara dynamite case; he received \$48,000.

Mr. McLEOD. Perhaps it was worth it; perhaps that was a nominal fee. You can not judge that.

Mr. BLANTON. I call those pretty good fees.

Mr. McLEOD. Mr. Darrow testified here that he was not a rich man, didn't he, Judge?

Mr. BLANTON. What has he done with his money?

Mr. McLEOD. Probably he has given it to charity.

Mr. BLANTON. What is a rich man? I heard our friend from Mississippi say yesterday that he would consider a man poor until he got up to be worth \$250,000; and after he got over \$250,000 he would cease to be a poor man. Now, it is a matter as to what ideas a man has about being rich.

Mr. McLEOD. Difference as to how you are living.

Mr. BLANTON. Clarence Darrow may have had the same idea as our friend from Mississippi; and Darrow might think that a man worth \$5,000,000 would be a man in ordinary circumstances. It all depends upon the viewpoint as to what a man considers a rich man and what he considers a poor man.

Mr. McLEOD. He testified that he didn't live in lavish fashion.

Mr. BLANTON. A man, of course, who receives \$10,000 in the Pennsylvania coal strike, and the man who receives \$35,000 in the Moyer-Haywood cases, and the man who receives \$48,000 in the McNamara case, and the man who receives the greater part of \$130,000 in the Loeb-Leopold case, he is doing pretty well as a lawyer.

Mr. McLEOD. How much did the past candidate for President receive?

Mr. BLANTON. Oh, yes; and how much has the gentleman from Michigan and our friend from Delaware received for our services when we are working all the time? I work all the time and I receive \$10,000 a year, and I won't take any outside business. I could take a lot of cases down in Texas and practice and make lots of good fees; and instead of being here now before this committee meeting I could be down trying cases.

Mr. McLEOD. Don't you practice when we are not in session?

Mr. BLANTON. Oh, no; certainly not. I practiced nine months the last recess here in Washington working on Government business trying to earn my salary.

Mr. HOUSTON. I won't take any cases, because I can not do justice to them. If I happen to be down there for court, I may take an occasional case.

Mr. BLANTON. When I am working for the Government I just have one employer, and the Government is my employer.

Mr. McLEOD. It is said Hughes, the former candidate for President, does not go into the Supreme Court under \$25,000.

Mr. BLANTON. Would you call him a poor man?

Mr. McLEOD. No; but he is another example of a high-priced lawyer. There are many of them.

Mr. HOUSTON. You must take into consideration that where men try civil cases where large amounts are involved, for instance, trying a big case where \$10,000,000 is involved, the fee is fixed not always in accordance with the service rendered, but according to the amount involved.

Mr. McLEOD. One of Darrow's cases was a big coal strike. You do not know what was involved there?

Mr. BLANTON. In other words, in the Leopold and Loeb case he got thirteen times, just for trying that one case, as much as the gentleman from Michigan gets here in salary a year; in other words, he got as much in the trial of that case as you will make here in 13 years.

Mr. McLEOD. You say he and his associates.

Mr. BLANTON. He had one associate.

Mr. McLEOD. All right. His fee was in proportion to the wealth of the Leopold and Loeb families, was it not?

Mr. BLANTON. I am talking about what he received, \$130,000. The statement went out that he defended these fellows from a humanitarian standpoint; he defends them for the money there is in it.

Mr. McLEOD. In that case, for the money?

Mr. BLANTON. I want you to tell me one single poor man's case he has ever tried.

Mr. McLEOD. You don't know, Mr. Blanton, and neither do I. But I imagine there are such men, according to his testimony.

Mr. BLANTON. If I had been there I would have developed that. That is the trouble about sitting around and letting everybody testify. You take that poor old negro who testified here. That evidence is absolutely ridiculous. He first said he had witnessed 49 hangings in the District. Then he saw his mistake and saw I could check that up, then he said 39. There have not been 39 hangings during the time he mentioned. It is ridiculous. That old fellow talked through his hat, and here is a committee of Congress sitting up here and listening to such misstatements. It was absurd. I don't want to waste my time listening to such unreasonable testimony. That old man is in his dotage and talking through his hat.

Then, you take the newspaper reporter who came in here and attempted to testify, this publicity man here the other day; and when I pinned him down he admitted he could not even get up here in the press gallery, to which there are nearly 500 honorable reporters accredited. If he is a publicity man and if he has got standing, he can get a card in the press gallery; and he said he didn't do it because he could not swear he made his living wholly by being a reporter. If you will check it up, you will find that they won't let him in there.

Mr. McLEOD. Before you read that letter, your opinion was fixed even before you received it what you thought of Darrow. You didn't have any regard for Darrow.

Mr. BLANTON. For the man's brains, yes; I have high regard for Darrow's brains.

Mr. McLEOD. And his personality?

Mr. BLANTON. But I don't admire what you call the "Clarence Darrows." I don't admire them as citizens. I think that Clarence Darrow epitomized his whole life in that little last paragraph of his book Farmington that he wrote and which I quoted in the record, and which I will now quote:

All my life I have been planning and hoping and thinking and loitering and waiting;

All my life I have been getting ready to do something worth while; I have been waiting

For the summer and waiting for the fall; I have been waiting for the winter and waiting for the spring.

I have been waiting for the night and waiting for the morning; waiting and dawdling and dreaming until the day is almost spent and the twilight close at hand.

That epitomizes his whole life; he has kept criminals from hanging; yes.

Mr. McLEOD. That is something.

Mr. BLANTON. He has made big fees; yes. But crooks and murderers and morons have escaped justice. Think of all the woe that they have caused in the world, and the widows and little orphan children who have been made fatherless and husbandless because of the crooks he has defended.

That is what I think of Darrow. I do not think his life has been worth while as a good citizen—a man who takes that side of it, a man who flatly says, "I won't admit that I believe in God."

Mr. McLEOD. But the murders would have been committed just the same, although they were not executed.

Mr. BLANTON. He has kept justice from being administered; he is thwarting justice, and therefore he has probably incited others to commit crime. I want to say this to you: There never has been a murderer yet who has committed murder, who is an educated crook, but what has considered this question of hanging before he has committed his crime.

Mr. McLEOD. Just the other day, February 6, a Washington paper—do you want to read that in the record—"Condemned man upholds capital punishment." There is a clipping I would like to insert in the record, without objection [exhibiting newspaper clipping to the subcommittee].

(The newspaper clipping referred to is as follows:)

[Friday, February 5]

CONDEMNED MAN UPHOLDS CAPITAL PUNISHMENT—SLAYER, FIVE MINUTES BEFORE GOING TO CHAIR. SAYS DEATH BETTER THAN LIFE IN PRISON

OSSINING, N. Y.—Just before Matthew Wasser, of Buffalo, was electrocuted at Sing Sing last night, he declared himself opposed to abolition of capital punishment.

Wasser, 37, was convicted of taking part in a fatal holdup at Niagara Falls.

Five minutes before he entered the death chair, Wasser said he was "a legally innocent man," but hoped the electric chair would never be abolished, because death was better than enduring life imprisonment.

Ernest Mimma, colored, convicted of slaying a policeman, also was put to death.

Mr. BLANTON. You have inserted that, not I. Some fellow wrote that up who feels like you do in this case, probably, to influence this committee. Whenever you put it up to a man whether he wants the public to hang him or he wants the murdered man's widow to come in and shoot him, he will do anything to keep that from happening. He doesn't want that punishment. It is the worst punishment that they can think of, and I want to tell you right now that we want to quit putting them in the penitentiary when they ought to be hung. There are those two criminals, Leopold and Loeb—

Mr. McLEOD. Do you object to putting it in?

Mr. BLANTON. I don't want to put it in in connection with my own testimony, but you may.

Mr. HOUSTON. When we put the statement in we ought to be sure it is true.

Mr. McLEOD. It is from a Washington paper. How about these other statements?

Mr. HOUSTON. I read another account in another paper that differed from this.

Mr. McLEOD. It is by the United Press.

Mr. BLANTON. Do you know who wrote it?

Mr. McLEOD. The United Press wrote it.

Mr. BLANTON. Is there any man's name attached to it, or anybody you can hold responsible?

Mr. McLEOD. It comes from Sing Sing, Ossining, N. Y.

Mr. HOUSTON. Mr. Chairman, I read another account, my recollection is from the account I read the reason was not because, as given, but because the man who commits murder deserves punishment; that is my recollection of it from the account I read.

Mr. BLANTON. You see reports in papers twisted and torn; for instance, your own article that you had in the paper, was that correct?

Mr. McLEOD. I think so.

Mr. BLANTON. Were you correctly quoted?

Mr. McLEOD. I didn't read the papers. I know I wrote the letter.

Mr. HOUSTON. Mr. Chairman, that is a case, if I remember right, where this man's father was convicted and hung for murder and was the last man executed in that county. This boy was taken after his father's death, adopted, and raised under a different name. But he was the son of the man.

Mr. McLEOD. That is another story.

Mr. HOUSTON. Exactly.

Mr. McLEOD. That story is in the record. Why should not this story go in the record?

Mr. REID. May I interrupt you to say why this is in the record?

Mr. McLEOD. Yes.

Mr. REID. The judge's statement went in in rebuttal of this.

Mr. McLEOD. Without objection, that will go in that same place.

Mr. BLANTON. It might be correct and it might not. An article in the New York Times of March 9, 1913, states that Clarence Darrow was accused of bribing a juror in the McNamara trial. The jury reported inability to agree March 8. In a previous trial he was unanimously found innocent. In the second trial, eight for conviction and four for acquittal.

Darrow had admitted that he had paid money to Guy Biddinger, a Chicago detective working for the prosecution in the McNamara case.

In the New York Times of Sunday, December 21, 1913, it is stated that the bribery charge was dismissed, since the evidence was not deemed sufficient to convict.

In the testimony before the Industrial Relations Commission, May 17 and 18, 1915, found in volume 11 of the testimony—I want to quote just an excerpt or two:

On page 10797 this colloquy occurred—Mr. Weinstock is questioning Darrow:

Mr. WEINSTOCK. Do you regard public opinion as of any value to organized labor in striving for its objectives?

Mr. DARROW. I think it is the greatest force and value.

Page 10803 he says:

Public opinion is the greatest force there is in the country, and always has been.

You say, Mr. McLeod, there are how many States that have abolished capital punishment?

Mr. McLEOD. Six.

Mr. BLANTON. Six; there are six States that have abolished capital punishment; there are 42 States which have not.

Mr. HOUSTON. How many States have abolished it and restored it? Have you that?

Mr. BLANTON. I want to make this point. Mr. Darrow says public opinion ought to prevail, when he was answering Mr. Weinstock. If the public opinion of 42 States is for capital punishment and in only 6 States the public is against it, do my friend from Michigan and my friend from Illinois think we ought to abolish capital punishment for the poor helpless people of the District of Columbia

who can not prevent it, as against public opinion in 42 States out of the 48?

Mr. REID. On that day you would never strive to get any reform.

Mr. Chairman, at the proper time I want to move to strike out all reference personal to Mr. Darrow, which has been put in this record or attempted to be put in this record. As I understand it, this is not a case for or against Darrow, but for or against capital punishment. I have no objections to certain arguments of our own being put in, but I don't think this record should be encumbered with that, and I want to reserve that motion until the full committee is here.

Mr. BLANTON. On page 10803 of this testimony given before the Industrial Relations Commission May 18, 1915, Mr. Harriman is questioning Darrow:

Mr. HARRIMAN. Will you give us your definition of a fair social system?

Mr. DARROW. I think a state of society where everybody who is able to work and is willing to work, where one can find opportunity to employ his labor, and where people practically get the same reward for the same amount of time, would come about as near being a fair industrial system as you could get.

Now, on page 10806, he says:

There is no such thing as the open shop, really. There is a union shop and a nonunion shop. * * * The open shop is simply a back door to put the union man out.

On page 10813, now, with reference to violence, direct violence in a state to secure an objective, Mr. Weinstock asked Mr. Darrow this question:

Do you believe that the structural iron workers were justified in resorting to violence, in dynamiting properties, and imperiling human life and destroying human life in order to establish the union shop?

Mr. DARROW. Well, I do not know.

That is his answer.

Gentlemen, the reason I have taken up Mr. Darrow especially and have introduced evidence about him, reliable evidence from one of the prominent citizens of Chicago, who is well known throughout the United States—than whom in the business world there is not any man in Chicago much better known than is Mr. Jung—the reason I have done that is that Darrow is held up here as the outstanding exemplar of the proposition of abolishing capital punishment. He has been in favor of it for years; he has been preaching it; he has been writing about it; he has been pushing it on the others; he has been instrumental in helping some other parties in States to secure that kind of a law, and I think it only fair that we should know something about the man's character and characteristics.

Mr. REID. He has demonstrated his sincerity of belief in his practice of the law.

Mr. BLANTON. Any man who defends criminals will want to prevent the death penalty occurring; no man wants his clients hung. I can state just like Mr. Darrow, I represented criminals for 15 years. But I didn't represent them possibly in the way Darrow did. But I did represent them; and I never have had a client hung.

Mr. REID. Have you ever had any that ought to have been hung?

Mr. BLANTON. I was very much worried for fear that possibly one of them deserved it.

Mr. REID. That is what I was wondering when I think of defense lawyers.

Mr. BLANTON. I was worried considerably about whether or not the jury should have hung him.

Mr. REID. But you represented him to your full ability?

Mr. BLANTON. I represented him in getting a good, fair, and square trial, not that I would try to induce a juror to do something that was wrong. I presented his side of the case; I saw that he got the benefit of every doubt the law gave him; I saw he got a fair, square trial, and he was convicted once and—

Mr. REID. Sentenced to hang?

Mr. BLANTON. No; he was not. He was given 25 years, but he was afterwards pardoned. He served about two years and was pardoned. But it was a case of two neighbors who got mad at each other over the settlement of their accounts—I get mad sometimes, but I would not hurt the hair on the head of anybody. I get mad with people—I got mad here with my colleague from Illinois, but I would not harm the hair of his head. Men should not allow their passions to get the better of them.

Mr. REID. Let me ask you right there—

Mr. BLANTON. They get mad; but they ought to cool their anger.

Mr. REID. Mr. Blanton, if your man hadn't hanged, suppose he had been killed in that case, as you say, a quarrel between two men. The jury might have found within their legal right that the man should have hanged.

Mr. BLANTON. They could have hung him. But the first time I tried that case at Albany, Tex., there were 11 men for acquittal and 1 for hanging; and one man hung that jury, otherwise he would have been acquitted.

The case was before Judge Calhoun, transferred from Albany to Baird in Callahan County and tried there, and there they gave him 25 years in the penitentiary, after 11 men had once voted to acquit him. So you see—

Mr. HOUSTON. Maybe you had more influence with the jurors in your own home county?

Mr. BLANTON. I knew how to pick a jury there; I knew the men.

Mr. HOUSTON. Did you see where in New York they confessed perjury and one or two men were electrocuted—did you notice that in the paper the other day?

Mr. BLANTON. I didn't notice it, because our newspaper reporter friends get hard up and they sit down and write all kinds of stories for us to read. They know we have got to have some kind of stories to read, and they write them.

Mr. REID. I don't blame them. But we ought to have these things considered. I didn't mean to interrupt you, either.

Mr. BLANTON. But, gentlemen, I think it would be useless for us to report a bill of this kind, because you would not get anywhere on the House floor. A motion would be made to strike out its enacting clause, and there would be about a five to one vote for striking out the enacting clause according to my prediction. What is the use of wasting the time of the House with bills of this character?

Mr. HOUSTON. Who would want it?

Mr. BLANTON. That is all I have to say.

Mr. REID. Mr. Chairman, I am going to have the State's attorney of Cook County, Ill., and the State's attorney of New York, and these other people on this side, and I would like to know—

Mr. McLEOD. In opposition to the bill?

Mr. REID. Yes.

Mr. BLANTON. I want to state this to the gentleman from Illinois, because he was not here the other day: In my judgment, in States where there are many colored people—when I am saying this I want to say I am not unfriendly to the colored people; I think there are about 4,000 negroes in my district, and I believe I get the vote of all of them; I have their confidence; they believe in me; I am not anything but their good friend when I am speaking. But in States where you have lots of colored people, such as you have in Washington, where about one-fourth of the population is colored, just as sure as you abolish the death penalty in States of that kind, you are going to have colored brutes—that is what they are; they are not imbeciles and they are not men who ought to be in asylums, but they are just brought up with that kind of vicious ideas, you are going to have colored brutes attacking poor white girls who are Government workers here to such an extent that you could not let one walk down a dark street or alley or woodland part of the District without being attacked. They attack them here in the face of the death penalty once in a while, but if you ever remove that death penalty in the District of Columbia and in States such as Maryland, you are going to have a terrible proposition whenever a negro brute ravishes a white girl; a mob will attack him and hang him. You are not going to stop that.

Mr. McLEOD. That is a prediction.

Mr. HOUSTON. Are there any Southern States that have abolished capital punishment?

Mr. McLEOD. I don't see why the South cares much, because they have capital punishment whether it is the law or not.

Mr. BLANTON. Let me tell you this: That idea is wrong—

Mr. REID. And Delaware—

Mr. BLANTON. My State last year didn't have a single lynching case.

Mr. McLEOD. But there are many in the South, are there not, Mr. Blanton?

Mr. BLANTON. My State last year did not have a single case of lynching.

Mr. REID. That is a point that ought to be considered.

Mr. BLANTON. And my State is as big as seven of the smallest States put together.

Mr. McLEOD. They will execute whether they abolish it in the South or not, will they not?

Mr. BLANTON. I will tell you what they will do: If they abolish capital punishment and you let a colored brute ravish a white girl he will be mobbed, and the colored people will join in that just as well as the white people will, because a brother and a father is not going to let anybody ravish his girl and get away with it.

Mr. REID. Which other States are there that have abolished it?

Mr. McLEOD. The States of Minnesota, Wisconsin, Michigan, the two Dakotas, and one other—and Vermont.

Mr. REID. As the gentleman from Texas says, we are up against a condition, not a theory.

Mr. McLEOD. I have not got the figures; they are in the record somewhere.

Mr. HOUSTON. Of course, several have abolished it and restored it.

Mr. REID. What have we got on that?

Mr. McLEOD. I have got the whole thing in my officesomewhere.

Mr. REID. I think we ought to have both sides represented and I am trying to get the States' attorneys from Illinois and New York. They hang them and electrocute them right along.

Mr. McLEOD. That is about their only remaining portion to be heard. I think we have completed the hearing as far as we can other than what you are suggesting now.

Mr. REID. We have a man in Chicago who committed a crime of murder. Then he went to New York and committed murder. Well, Illinois has the death penalty and then he went to New York where they have the death penalty and committed a murder, and he is now under sentence of death in New York, and the New York authorities would like to take him and electrocute him. It didn't seem to make much difference, but New York electrocutes on the least provocation.

Mr. HOUSTON. I saw a pamphlet the other day issued by the Prisoners Relief Association which stated that 40 per cent of the crimes committed since the war were committed by ex-soldiers.

Mr. REID. Here is the proposition, there should be every side and every phase of the question covered, because this testimony will be taken to every school and college in the country where they debate this question, and I think it is only fair to everybody that we have both sides covered.

Mr. McLEOD. I don't know what further effort we can make to get the people here. We have invited them.

Mr. REID. You never sent an invitation to Mr. Crowe. He would come. Every school and every college debates this, and they want your report.

Mr. McLEOD. It is debated now in the District.

(Thereupon informal discussion took place which the reporter was directed not to record.)

Mr. BLANTON. We might as well settle the question Mr. Reid raised about the matter, and add Mr. Jung to the list to be invited.

Mr. HOUSTON. I understood he wanted to raise that before the full committee.

Mr. BLANTON. What I mean is this, if the committee should strike this matter out, which I do not think they would do, it would be very unfair, and I would want Mr. Jung from Chicago to come.

Mr. REID. That is the point I make.

Mr. BLANTON. You would want him to come here and make his statement.

Mr. REID. Yes.

Mr. McLEOD. It will save getting a deposition from Mr. Darrow if you will concede the fact that in his testimony he said he had tried so many homicides instead of felony cases.

Mr. BLANTON. Mr. Reid, if you will note the testimony. Mr. Reid asked him, "You have tried a great number of cases?" And Mr. Darrow said, "I have tried, I presume, between 40 and 50."

Mr. McLEOD. He meant homicides.

Mr. BLANTON. Let the record stand.

Mr. HOUSTON. As one member of the committee, I am perfectly willing that he should have an opportunity to correct that testimony.

Mr. McLEOD. Unquestionably, he has tried more than 50 felony cases.

Mr. HOUSTON. I don't think it is necessary to have a deposition; I would be one who would be willing to let him correct it.

Mr. BLANTON. Certainly, let him correct it. I will state this, Mr. McLeod: Just write a letter and let him give you the statement as to the number of felony cases he has tried, and let the letter go in the record.

Mr. HOUSTON. I thought they were hanging cases; I didn't examine the record.

Mr. BLANTON. But, let him state, as I for one would like to know if he has not tried more than 40 or 50 felony cases, I can show him a number of lawyers who have tried four or five times as many as he has. Take J. F. Cunningham, of our State, who has been trying felony cases the last 40 years; or take old Buck Walton, of Austin, or W. L. Crawford, of Dallas, Tex., when they were alive, they have tried, I suppose, four or five times as many as Darrow.

Mr. McLEOD. Up to three or four years ago, Mr. Darrow was in court every day, and was strictly a criminal lawyer. He is 69 years old, as was brought out.

Mr. REID. The point I make is that you ought not to close these hearings until you hear from States that have capital punishment. The record will be incomplete and you won't get anywhere on the floor until you have the whole matter presented.

Mr. BLANTON. Is it the intention of the chairman and the gentleman from Illinois to try to vote this bill out?

Mr. REID. You get me wrong; I have taken no side on this thing.

Mr. BLANTON. Is it the intention of the chairman to try to get the bill on the floor of the House?

Mr. McLEOD. Yes; that is my intention.

Mr. HOUSTON. If it is the purpose to report it out, we ought to have all the information gathered by this committee germane to the subject.

Mr. REID. Don't you think both sides should be presented in the record?

Mr. HOUSTON. Surely.

Mr. McLEOD. We will now stand adjourned subject to call.

(Thereupon, at 12.10 o'clock p. m., the subcommittee adjourned to meet at the call of its chairman.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE
ON THE DISTRICT OF COLUMBIA,
Saturday, February 27, 1926.

The subcommittee met at 10 o'clock a. m., Hon. Clarence J. McLeod (chairman of the subcommittee) presiding.

Mr. McLEOD. The meeting will come to order. I believe there is a desire for action in reference to H. R. 4498, the capital punishment bill?

Mr. BLANTON. In order to have a matter of record, I ask for a roll call.

Mr. McLEOD. Those in favor of reporting out H. R. 4498 will signify by saying aye.

(The roll was called with the following results:)

Mr. McLeod, Mr. Reid, and Mr. Rathbone voted aye; Mr. Blanton and Mr. Houston voted no.

Mr. McLEOD. The vote stands three in favor of reporting the bill out and two opposed. The ayes have it.

Mr. BLANTON. I give notice, Mr. Chairman, that I will oppose the bill on the floor and file a minority report in case the full committee should vote this bill out.

(The subcommittee then proceeded to the consideration of other business.)