

Attorney

Clarence Darrow's

Plea for Mercy

AND

Prosecutor

Robert E. Crowe's

*Demand for the
Death Penalty*

IN THE



CLARENCE DARROW

LOEB-LEOPOLD CASE — *The Crime of a Century*



ATTORNEY
CLARENCE
DARROW'S
PLEA FOR MERCY IN
THE FRANKS CASE



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PUBLISHER'S STATEMENT

The intense national interest displayed in the Franks Case, especially in the final arguments of Mr. Darrow and Mr. Crowe, and the wide demand for their speeches has led to the publication of this book.

It is peculiar of this particular case that all types of minds were interested in the case from some angle. By some strange alignment of the circumstances in the case the question of capital punishment became an issue. Perhaps this was due more or less to the social position of the defendants and the well known philosophy of the chief counsel, Mr. Darrow. In any event, the case is interesting from that standpoint and will perhaps be the basis of future arguments on that endless controversy. From this standpoint we consider the final arguments educational and this constitutes our only reason for publishing these speeches.

We are not seeking to exploit the sordidness of the case and have kept such details out of both the final arguments and the facts of the case.



Attorney Clarence Darrow's Speech in the Franks Case before Judge Caverly in the Criminal Court of Cook County, Chicago, Ill.

August 22 to 25, 1924

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

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

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

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

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

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

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

We announced to the public that no excessive use of money would be made in this case, neither for lawyers, for psychiatrists or in any other way. We have faithfully kept that promise which we made to the public. The psychiatrists, as has been shown by the evidence in this case, are receiving a per diem, and only a per diem, which is the same as is paid by the state.

The attorneys of their own motion, at their own request, have agreed to take such amount as the officers of the Chicago Bar association may think is proper in this case. If we fail in this defense it will not be for lack of money. It will be on account of money. Money has been the most serious handicap that we have met. There are times when poverty is fortunate, and this is one of those times.

Defense Handicapped by Wealth

I insist, your honor, that had this been the case of two boys of this age unconnected with families who are supposed to have great wealth that there is not a state's attorney in Illinois who would not at once have consented to a plea of guilty and a punishment in the penitentiary for life. Not one. No lawyer could have justified it. No prosecution could have justified it.

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

We are here with the lives of two boys imperiled, with the public aroused. For what? Because, unfortunately, their parents have money. Nothing else.

I told your honor in the beginning that never had there been a case in Chicago, where on a plea of guilty a boy under 21 had been sentenced to death. I will raise that age and say never has there been a case where a human being under the age of 28 or 30 has been sentenced to death. And I think I am safe in saying, although I have not examined all the records and could not, but I think I am safe in saying that never has there been such a case in the state of Illinois.

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

Why? Tell me what public necessity there is for this. Why need the state's attorney ask for something that was never asked before? Why need a judge be urged by every argument, moderate and immoderate, to hang two boys in the face of every precedent in Illinois and in the face of the progress of the last fifty—at least twenty-five—years?

Children Hanged Only in the Dark Ages

Lawyers stand here by the day and read cases from the dark ages, where judges have said that if a man had a grain of sense left, if he was barely out of his cradle, he could be hanged because he knew the difference between right and wrong. There have been boys 18, 17, 16 and 14—Brother Marshall has not half done his job. He should read his beloved Blackstone again.

I have heard in the last six weeks nothing but the cry for blood. I have heard raised from the office of the state's attorney nothing but the breath of hate.

I have heard precedents quoted which would be a disgrace to a savage race. I have seen a court urged almost to the point of threats to hang two boys, in the face of science, in the face of philosophy, in the face of humanity, in the face of experience, in the face of all the better and more humane thought of the age. Why did not my friend Mr. Marshall, who dug up from the relics of the buried past these precedents that would put a blush of shame upon the face of a savage, read this from Blackstone:

"Under 14, though an infant shall be judged to be incapable of guile *prima facie*, yet if it appeared to the court and the jury that he was capable of guile and could discern between good and evil he may be convicted and suffer death."

Thus a girl 13 has been burned for killing her mistress. Lord, how that would delight Dr. Krohn! He would lick his chops over that more than over his dastardly homicidal attempt to kill these boys. A girl of 13 was burned, because she probably didn't say "Please" to her mistress—out of my beloved Blackstone. And one boy of 10 and another of 9 years of age, who had killed her companion, were sentenced to death and he of ten actually hanged. Why? He knew the difference between right and wrong. He had learned that in Sunday school. Age does not count. Why, Mr. Savage says age makes no difference and that if this court should do what every other court in Illinois had done since its foundation and refuse to sentence these boys to death, nobody would be hanged in Illinois any more. Well, I can imagine something worse than that. So long as this terrible tool is to be used for a plaything, without thought

or consideration, in seeking to inflame the mob with the thought that a boy must be hanged, or civilization will be hanged, we ought to get rid of it and get rid of it altogether, for the protection of human life.

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

Now, your honor, I shall discuss that more in detail a little later, and I only say it now because my friend, Mr. Savage—did you pick him for his name or his ability or his learning—because my friend Mr. Savage, in as savage a speech as he knew how to make, said to this court that we plead guilty because we were afraid to do anything else. Your honor, that is true. That is true. I want to refer to one thing in passing, and then I will discuss this phase in the place where I think it belongs.

Did Not Want Boys Released

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

We have said to the public and to this court that neither the parents nor the friends, nor the attorneys would want these boys released. That they are as they are, unfortunate though it be, it is true, and those the closest to them know perfectly well that they should be permanently isolated from society. We have said that; and we mean it. We are asking this court to save their lives, which is the least and the most that a judge can do.

We did plead guilty before your honor because we were afraid to submit our cause to a jury. I would not for a moment deny to this court or to this community a realization of the serious danger we were in and how perplexed we were before we took this most unusual step. I can tell your honor why. I have found that years and experience with life tempers one's emotions and makes him more understanding of his fellow men. When my friend Savage is my age, or even of yours, he will read his address to this court with horror. I am aware that as one grows older he is less critical. He is not so sure. He is inclined to make some allowances for his fellow man. I am aware that a court has more experience, more judgment and more kindness than a jury.

And then, your honor, it may not be hardly fair to the court, because I am aware that I have helped to place a serious burden upon your shoulders. And at that, I have always meant to be your friend. But this was not an act of friendship.

Choose Judge Instead of Jury to Decide Punishment

I know perfectly well that where responsibility is divided by twelve, it is easy to say, "Away with him." But, your honor, if these boys hang, you must do it. There can be no division of responsibility here. You must do it. You can never explain that the rest overpowered you. It must be your deliberate, cool, premeditated act, without a chance to shift responsibility.

We did it, your honor. It was not a kindness to you. We placed this responsibility on your shoulders because we were mindful of the rights of our clients and we were mindful of the unhappy families who have done no wrong.

Now, let us see, your honor, what we had to sustain us. Of course, I have known your honor for a good many years. Not intimately. I could not say that I could even guess from my experience what your honor might do, but I did know something. I knew, your honor, that ninety unfortunate human beings had been hanged by the neck until dead in the city of Chicago in our history. We would not have any civilization except for those ninety being hanged, and if we cannot make it ninety-two we will have to shut up shop. Some ninety human beings have been hanged in the history of Chicago, and of those only three have been hanged on a plea of guilty, one of thirty.

I know that in the last ten years three hundred and fifty people have been indicted for murder in the city of Chicago and have pleaded guilty. Three hundred and fifty have pleaded guilty in the city of Chicago, and only one has been hanged. And my friend who is prosecuting this case deserves the honor of that hanging while he was on the bench. But this victim was forty years old.

Your honor will never thank me for unloading this responsibility upon you, but you know that I would have been untrue to my clients if I had not concluded to take this chance before a court, instead of submitting it to a poisoned jury in the city of Chicago. I did it knowing that it would be an unheard-of thing for any court, no matter who, to sentence these boys to death. And that far, so far as that goes, Mr. Savage is right. I hope, your honor, that I have made no mistake. I could have wished that the state's attorney's office had met this case with the same fairness that we have met it.

It has seemed to me as I have listened to this case, five or six times repeating the story of this tragedy, spending days to urge your honor that a condition of mind could not mitigate, or

that tender years could not mitigate, it has seemed to me that it ought to be beneath the representatives of a proud state like this to invoke the dark and cruel and bloody past to affect this court and compass these boys' deaths.

Prosecution Cold-Blooded

And your honor, I must for a moment criticize the arguments that have preceded me. I can read to you in a minute my friend Marshall's argument, barring Blackstone, and I will simply call your attention to what he left out. But the rest of his arguments and the rest of brother Savage's argument, I can sum up in a minute: Cruel, dastardly, premeditated, fiendish, abandoned and malignant heart—that sounds like a cancer—cowardly, coldblooded.

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

Cowardly? Well, I don't know. Let me tell you something that I think is cowardly, whether their acts were or not. Here is Dickie Loeb, and they object to anybody's calling him Dickie although everybody did, but they think they can hang him easier if his name is Richard, so we will call him Richard. Eighteen years old at the time. Here is Nathan Leopold, Jr., nineteen. Here are three officers watching them. They are led out and in this jail across the bridge waiting to be hanged. Not a chance to get away. Handcuffed when they get out. Not a chance. Penned like a rat in a trap and for some lawyer with physiological eloquence to wave his fist in front of his face and shout cowardly does not appeal to me as a brave act. It does not commend itself to me as a brave act or as a proper thing for a state's attorney or his assistant, for even defendants not yet hanged have some rights with an official.

Cold-blooded? But I don't know, your honor. I will discuss that a little later, whether it was cold-blooded or not. Cold-blooded? Why? Because they planned, and schemed, and arranged, and fixed? Yes. But here are the officers of justice, so-called, with all of the power of the state, with all the influence of the press, to fan this community into a frenzy of hate with all of that, who for months have been planning and scheming, and contriving, and working to take these two boys' lives. You may stand them up on a scaffold, on a trap door, and choke them to death, but that act would be infinitely more cold-blooded whether it was justified or not, than any act that these boys have committed or can commit. Cold-blooded! Let the state, who is so anxious to take these boys' lives, set an example in consideration, kind-heartedness and tenderness before they call my clients cold-blooded.

Homicide Was Distressing and Unfortunate

Now, another thing, your honor, I have heard this crime as stated—this most distressing and unfortunate homicide, as I would call it, this cold-blooded murder, as the state would call it. I call it a homicide particularly distressing because I am defending. They call it a cold-blooded murder because they want to take their lives. Call it what you will.

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

Now, your honor, I have been practicing law a good deal longer than I should have, anyhow, for forty-five or forty-six years, and during a part of that time I have tried a good many criminal cases, defending always.

It does not mean that I am better. It probably means that I am more squeamish than the other fellow. It neither means I am better or worse. It means the way I am made. I can't help it. I am like the other fellow—I don't want to help it. I have never yet tried a case where the state's attorney did not say it was the most cold-blooded, inexcusable, premeditated case that ever occurred.

If it was murder, there never was such a murder. If it was robbery, there never was such a robbery. If it was a conspiracy, it was the most terrible conspiracy that ever happened since the star chamber passed into oblivion. If it was larceny, there never was such a larceny.

Now, I am speaking moderately. All of them are the worst. Why? Well, it adds to the credit of the state's attorney to be connected with a big case. That is one thing. They can say, "Well, I tried the cold-bloodiest—is that right, cold-bloodiest?—murder case that was ever tried, and I convicted them, and they are dead;" or, "I tried the worst forgery case that was ever tried, and I won that. I never did do anything that wasn't big." Lawyers are apt to say that, anyhow.

And then there is another thing, your honor. Of course, I generally try cases before juries, and these adjectives always go well with juries: Bloody, cold-blooded, despicable, cowardly, dastardly—the whole litany of the state's attorney's office always goes well with a jury. The twelve jurors, being good themselves, think it is a tribute to their virtue if they follow the litany of the state's attorney.

I suppose it might have some effect with the court; I do not know. Anyway, those are the chances we take. When we do our best to save life and reputation, those are the chances we take. Here, our clients have pleaded guilty to the most cold-blooded murder that ever took place in the history of the world. And how does a judge dare to refuse to hang by the neck until dead two cowardly ruffians who committed the cold-est-blooded murder in the history of the world?

Was It a Cold-Blooded Murder?

Well, now, that is a good talking point. I want to give some attention to this cold-blooded murder, your honor. Was it a cold-blooded murder? Was it the most terrible murder that ever happened in the state of Illinois? Was it the most dastardly act in the annals of crime? No. I insist, your honor, that under all fair rules and measurements, this was one of the least dastardly and cruel of any that I have known anything about.

Now, let us see how we measure it. They say that this was a cruel murder, the worst that ever happened. I say that very few murders ever occurred that were as free from it as this.

Now, let's see how we measure it. There ought to be some rule to determine whether a murder is cruel or not exceedingly cruel. Of course, your honor, I admit right off that I hate killing, and I hate it no matter how it is done. Whether you shoot a man through the heart, or cut his head off with an ax, or kill him with a chisel, or tie a rope around his neck. I hate it. I always did. I always shall.

But there are degrees, and if I might be permitted to make my own rules I would say if I were estimating what was the most cruel murder I might first consider the victim, as to his suffering. Now, probably the state would not take that rule. They would say the one that had the most attention in the newspapers. In that way they have got me beat at the start. But I would say the first thing to consider was the degree of pain, to the victim. Poor little Bobby Franks suffered very little. This is no excuse for his killing.

If to hang these two boys would bring him back to life, I would say let them go, and I believe their parents would say it, too. But, "the moving finger writes, and having writ moves on; nor all your piety nor wit can lure it back to cancel half a line or change one word of it."

Robert Franks is dead, and we cannot change that. It was all over in fifteen minutes after he got into the car, and he probably never knew it or thought of it.

That does not justify it. It is the last thing I would do. I am sorry for the poor boy. I am sorry for his parents. But, it is done. Of course, I cannot say with the certainty of Mr. Savage that he would have been a great man if he had grown up. At 14 years of age I don't know whether he would or not. Savage, I suppose, is a mind reader, and he says he would. He has a fantasy, which is hanging. So far as the cruelty to the victim is concerned, you can scarce imagine one less cruel.

Now, what else would stamp it as being a most atrocious crime? First, I put the victim, who ought not to suffer, and next I would put the attitude of those who kill. How about them? What was the attitude of these two boys? It may be the state's attorney would say it was particularly cruel to the victim because he was a boy. Well, my clients are boys, too, and if it would make more serious the offense to kill a boy, it should make less serious the offense of a boy who did the killing.

What was there in the conduct of these two boys which showed a wicked, malignant and abandoned heart beyond that of anybody else who ever lived? Your honor, it is simply silly. Everybody who thinks knows the purpose of this. Counsel knows that under all the rules of the courts they have not the slightest right to ask this court to take life. Yet they urge it upon this court by falsely characterizing this as being the cruelest act that ever occurred.

What about these boys, the second cause or the second thing that would settle whether it was cruel or not? Mr. Marshall read case after case of murder and he said: "Why, those cases don't compare with yours. Yours is worse." Worse, why? What were those cases?

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

A Senseless, Motiveless Act

This is a senseless, useless, purposeless, motiveless act of two boys. Now, let me see if I can prove it. There was not a particle of hate, there was not a grain of malice, there was not an opportunity to be cruel except as death is cruel—and death is cruel.

There was absolutely no purpose in it all, no reason in it all, and no motive in it all. And yet it was the most terrible crime that ever happened. Now, let me see whether I am right or not.

I mean to argue this thoroughly, and it seems to me that there is not a chance for a court to hesitate upon the facts in this case. I want to try to do it honestly and plainly, and without any attempts at frills, or oratory, and to state the facts of this case just as the facts exist, and nothing else.

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

Your honor, if there was ever anything so foolish, so utterly futile as the motive claimed in this case, then I have never listened to it. What did Tom Marshall say? What did Joe Savage say? "The motive was to get \$10,000." they say.

Boys Did Not Need Money

These two boys, neither one of whom needed a cent, scions of wealthy people, killed this little inoffensive boy to get \$10,000. Now, let us see, first let me call your attention to the opening statement of Judge Crowe, where we heard for the first time the full details of this, after a plea of guilty, and once more published in the newspapers.

He said these two young men were heavy gamblers, and they needed the money to pay gambling debts, or on account of gambling. Now, your honor, he said this was atrocious, most atrocious and they did it to get the money because they were gamblers and needed it to pay gambling debts. What did he prove? He put on one witness, and one only, who had played bridge with both of them, in college, and he said they played for 5 cents a point. Now, I trust your honor knows better than I do how much of a game that would be. At poker I might guess, but I do not know much about bridge. But what else? He said that, in that game, one of them lost \$90 to the other one. They were playing against each other, and one of them lost \$90. Ninety dollars! Their joint money was just the same and there is not another word of evidence in this case to sustain the statement of Mr. Crowe, who pleads to hang these boys.

Your honor, is it not trifling? It would be trifling, excepting that we, your honor, are dealing in human life. And we are dealing in more than that; we are dealing in the future disaster of two families. We are dealing in placing a blot upon the escutcheon of two houses that do not deserve it, for nothing. And all that they can get out of their imagination is that there was a game of bridge and one lost \$90 to the other, and therefore they go out and commit murder. Oh, it was not within two years of that time, or a year, anyhow. What would I expect if on the part of the defense we would resort to a thing

like that? Could I expect any one to have the slightest confidence in anything we have said? Your honor knows that it is utterly absurd. The evidence was absolutely worthless. The statement was made out of whole cloth, and Mr. Crowe felt like that policeman who came in here and perjured himself, as I will show you later on, who said when he was talking with Nathan Leopold he told him that the public were not satisfied with the motive.

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

But let me go further than that. Who were these two boys? How did it happen. On a certain day they killed poor little Robert Franks. I will not go over the paraphernalia, the letter demanding money, the ransom, because I will discuss that later in another connection. But they killed him.

Risked Neck for \$5,000

These two boys. They were not to get \$10,000; they were to get \$5,000 if it worked, that is, \$5,000 apiece. Neither one could get more than five, and either one was risking his neck in the job. So each one of my clients was risking his neck for \$5,000, if it had anything to do with it, which it did not.

Did they need the money? Why, at this very time, a few months before, Dickie Loeb had \$3,000 checking account in the bank. Your honor, I would be ashamed to talk about this except that in all seriousness—all apparent seriousness they are asking to kill these two boys on the strength of this flimsy foolishness.

At that time Richard Loeb had \$3,000 checking account in the bank. He had three Liberty bonds, one of which was past due, and the interest on not one of them had been collected for three years. I said, had not been collected; not a penny's interest had been collected, and the coupons were there for three years. And yet they would ask to hang him on the theory that he committed this murder because he needed money, and for money.

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

Your honor, how far would this kind of an excuse go on the part of the defense? Anything is good enough to dump into a mess where the public are clamoring, and where the stage is set, and where loud-voiced young attorneys are talking about the sanctity of the law, which means killing people. Anything is enough to justify a demand for hanging.

How about Leopold? Leopold was in regular receipt of \$125 a month; had an automobile; paid nothing for board and clothes, expenses; he got money whenever he wanted it, and he had arranged to go to Europe and had bought his ticket and was going to leave about the time he was arrested in this case, your honor.

He passed his examination for the Harvard Law School, was going to take a short trip to Europe before it was time for him to attend the Fall term. His ticket had been bought and his father was to give him \$3,000 to make the trip.

Your honor, jurors sometimes make mistakes, and courts do, too. If on this evidence the court is to construe a motive out of this case, then I insist, your, honor, that human liberty is not safe and human life is not safe. A motive could be construed out of any set of circumstances and facts that might be imagined.

In addition to that, your honor, these boys' families were wealthy, extremely wealthy. They had been raised in luxury, they had never been denied anything, no want or desire left unsatisfied; no debts; no need of money; nothing. And yet they murdered a little boy, against whom they had nothing in the world, without malice, without reason, to get \$5,000 apiece. All right. All right, your honor, if the court believes it, if any one believes it, I can't help it.

Boys Are Mentally Diseased

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

Now, let me go on with it. What else do they claim? I want to say to your honor that you may cut out every expert in this case, you may cut out every lay witness in this case, you may decide this case upon the facts as they appear here alone; and there is no sort of question but what these boys were mentally diseased.

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

The Voice of the Mob

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

Now let us see. I do not need to ask mercy from this court—although I am willing to do it—for these clients, nor for anybody else, nor for myself. I have never yet found a person who did not need it, though. But I do not ask mercy for these boys. Your honor may be as strict in the enforcement of the law as you please, and you cannot hang these boys. You can only hang them because back of the law and back of justice and back of the common instincts of man, and back of the human feeling for the young, is the hoarse voice of the mob which says, "Hang them."

Growing Feeling Against Capital Punishment

I need ask nothing. What is the law of Illinois? If one is found guilty of murder in the first degree by a jury, or if he pleads guilty before a court, the court or jury may do one of three things: he may be hanged; he may be imprisoned for life; or he may be imprisoned for a term of not less than fourteen years. Now, why is that the law?

Does it follow from that that a court is bound to ascertain the impossible, and must necessarily measure the degree of guilt? Not at all. He may not be able to do it. A court may act from any reason or from no reason. A jury may fix any one of these penalties as they see fit. Why was this law passed? Undoubtedly in recognition of the growing feeling in all the forward-thinking people of the United States against capital punishment. Undoubtedly, through the deep reluctance of courts and juries to take human life, they left it so that the court could do as he pleased on a plea of guilty, and a jury could do as they pleased on a conviction, and find any penalty they saw fit. And without any reason whatever, without any facts whatever, your honor must make the choice, and you have the same right to make one choice as another, no matter what Mr. Justice Blackstone says. It is your honor's province, you

may do it, and I need ask nothing in order to have you do it, excepting that there is the statute. But there is more than that in this case.

We have sought to tell this court why he should not hang these boys. We have sought to tell this court, and to make this court believe, that they were diseased of mind, and that they were of tender age, both. However, before I discuss that, I ought to say another word in reference to the question of motive in this case. If there was no motive, except the senseless act of immature boys, then of course there is taken from this case all of the feeling of deep guilt upon the part of these defendants.

No Depravity on Part of Defendants

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

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

I will refer later, your honor, to the purpose of asking for the ransom which has been clearly testified to here. I simply so far wish to show that the money had nothing whatever to do with it. The inadequacy of it all, the risk taken for nothing, the utter lack of need, the senselessness of it all, shows that it had nothing whatever to do with this crime, and that the reason is the reason that has been given by the boys.

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

Act of Stealing Typewriter Had Nothing to Do With Crime

The state, in their usual effort, to magnify, distort, to force every construction against the defendants, have spoken about this act having its inception in their going to Ann Arbor to steal a typewriter. This is on a plain par with their statement that this crime was committed for the purpose of getting ten thousand dollars. What is the evidence? The getting of the typewriter in Ann Arbor had nothing to do with this offense, not

the slightest. The evidence in this case shows that they went to Ann Arbor on the 12th day of November (1923). This act was committed, as I recall it for the moment, on the 21st day of May. They went to Ann Arbor one night, after the football game in Ann Arbor; drove through in the night time.

Nobody knew they were going and nobody knew they had been there. They knew somebody had been there the next morning, because they missed things. They went there, and under the evidence in this case, purely to steal something from the fraternity house. I will explain the reason for that further on.

Among the rest of the things they took was the typewriter on which these ransom letters were written. And yet the state with its fertile imagination says: "Aha, these wonderful planners, whom Dr. Krohn has told you showed such great knowledge, such active brain, such consistent action, such plans and such schemes that they must be sane. And yet a 3-year-old child would not have done any of it."

These wonderful planners foresaw that four months later they were going to write a ransom letter to somebody, and they were going to kill a boy; nobody knew what, or who, or when, or where, or how. And in asking for a ransom they would need a typewriting machine to write it on, and so that they could not be detected they went to Ann Arbor and stole one. That was nearly six months—it was six months, was it not?—ahead of this. Now, let us see.

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

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

Of course it is impossible on the face of it, but let us see what the evidence is. They did bring a typewriter from Ann Arbor and on that typewriter they wrote this so-called ransom letter, and after the boy had been killed they threw the typewriter into the lagoon, after twisting off the letters. Why did they twist off the letters? Well, I suppose anybody knows why. Because any one who is fairly familiar with a typewriter knows that you can always detect the writing on almost every

typewriter. There will be imperfect letters, imperfect tracking, and imperfect this, that and the other, and it is a sure thing, and probably they knew it. But mark this: Leopold had had that typewriter in his house for six months. According to the testimony of the maid, he had written these letters on it. According to the testimony of his tutors he had written the dope sheets on it, numbers of them. These were still in existence.

The state's attorney got those; the typewriter could be identified without the machine at all. It was identified without the machine; all that was needed was to show that the same machine that wrote the ransom letter wrote the dope sheets and wrote the other letters. No effort made to conceal it through all these months. All the boys knew it, the maid knew it, everybody in the house knew it; letters were sent out broadcast and the dope sheets were made from it for the examination.

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

Life Plain Trail In Attempt to Cover Up

They say, in order to make out the wonderful mental processes of these two boys, that they fixed up a plan to go to Ann Arbor to get this machine, and yet when they got ready to do this act, they went down the street a few doors from their house and bought a rope; they went around the corner and bought acid; they went somewhere else nearby and bought tape; they went to the hotel and rented a room, and then gave it up, and went to another hotel, and rented one there. And Dickie Loeb left his valise in the room. What was in the valise? Why, some books from the University library with his card, left in the valise in the room. Dick Loeb went to the room, took a valise containing his library card and some books from the library, left it two days in the room, until the hotel took the valise and took the books. Then he went to another hotel and rented another room. He might just as well send his card with the ransom letter, just as well.

They went to the Rent-a-Car place and rented a car. All this clumsy machinery was gone through, without any need or anything consecutive, or any thought. I submit, your honor, that no one, unless they had an afflicted mind, together with youth, could possibly have done it.

Were Boys In Their Right Minds

But let's get to something stronger than that. Were these boys in their right minds? Let's see. Here were two boys with good intellect, one 18 and one 19. They had all the prospects that life could hold out for any of the young, one a graduate of Chicago and another of Ann Arbor; one who had passed his examination for the Harvard Law School and was about to take a trip in Europe, another who had passed at Ann Arbor, the youngest in his class, with money in the bank. Boys who never knew what it was to want a dollar, boys who could reach any position that was given to boys of that kind to reach, boys of distinguished and honorable fellows, of families of wealth and position, with all the world before them. And they gave it all up for nothing, for nothing!

They took a little companion of one of them, on a crowded street, and killed him, for nothing, and sacrificed everything that could be of value in human life upon the crazy scheme of a couple of immature lads. Now, your honor, you have been a boy; I have been a boy, and am proud of having been a boy. And we have known of other boys. The best way to understand somebody else is to put ourselves in their place.

They Could Not Reason

Is it within the realm of your imagination that a boy who was right, with all the prospects of life before him, who could choose what he would, without the slightest reason in the world would lure a young companion to his death, and take his place in the shadow of the gallows? I do not care what Dr. Krohn may say; he is liable to say anything except to tell the truth, and he is not liable to do that. There is nobody who has the process of reasoning who does not know that a boy who would do that is not right.

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

There are not physicians enough in the world if they all testified the same way to convince any thoughtful, fair-minded man that these boys are right. Was their act one of deliberation, intellectual formality, or were they driven by some force such as Dr. White and Dr. Glueck and Dr. Healy have told this court?

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

Killed for the Experience

That they were intelligent and sane and sound and reasoning is unthinkable. Let me call your honor's attention to another thing. Why did they kill little Bobby Franks? Not for money; not for spite; not for hate. They killed him as they might kill a spider or a fly—for the experience. They killed him because they were made that way. Because somewhere in the infinite processes that go to the making up of the boy or the man something slipped, and these unfortunate lads sit here hated, despised, outcasts, and the community shouting for their blood.

Are they to blame for it? There is not any man on earth can mention any purpose for it all or any reason for it all. It is one of those things that happened; and it calls not for hate but for kindness, for charity, for consideration.

Mothers of Three

I heard them talk of mothers. Mr. Savage is doing this for the mothers, and Mr. Crowe is thinking of the mothers, and I am thinking of the mothers. Mr. Savage, with the immaturity of youth and inexperience, says if we hang them there will be no more killing. My God! this world has been one long slaughter house from the beginning until today, and killing goes on and on and on, and will forever. Why not read something, why not study something, why not think instead of blindly calling for death?

Kill them! Will that prevent other senseless boys or other vicious men or vicious women? No! It would simply call upon every weak-minded person to do as they have done. I know how easy it is to talk about mothers when you want to do something cruel, as some men talk about patriotism when they want to get something. I know all about it.

But I am thinking of the mothers, too. I know that any mother might be the mother of a little Bobby Franks, who left his home and went to his school, and whose life was taken, and who never came back. I know that any mother might be the mother of Richard Loeb and Nathan Leopold, just the same.

The trouble is this, that if she is the mother of a Nathan Leopold or of a Richard Loeb, she has to ask herself this question: "How came my children to be what they are? From what ancestry did they get this strain? How far removed was the poison that destroyed their lives? Was I the bearer of the seed that brings them to death?"

Any mother might be the mother of any of them. But these two are the victims. I remember a little poem that seems to me to illustrate the soliloquy of a boy about to be hanged, a soliloquy such as these boys might make.

He says:

The night my father got me
His mind was not on me
He did not plague his fancy
To muse if I should be
The son you see.

The day my mother bore me
She was a fool, and glad
For all the pain I caused her,
Because she bore the lad
Which borne she had.

My father and my mother
Out of the light they lie.
The warrant could not find them,
So here am only I,
Must hang so high.

O, let not man remember
The soul that God forgot.
But fetch the county sheriff,
And noose me in a knot,
And I will rot.

And so the game is ended,
That should not have begun.
My father and my mother
They had a likely son,
But I have none.

Cannot Cure Social Ills By Hanging

No one knows what will be the fate of the child they get or the child they bear, and the fate of the child is the last thing they think of. This weary old world goes on, begetting with birth and with living and with death; and all of it is blind from the beginning to the end.

I do not know what it was made these boys do this mad act, but I do know there is a reason for it. I know they did not beget themselves. I know that any one of an infinite number of causes reaching back to the beginning might be working out in these boys' minds, whom you are asked to hang in malice and in hatred and injustice, because some one in the past has sinned against them.

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

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

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

Justice Calls For Mercy

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

What is my friend's idea of justice? He says to this court, whom he says he respects—and I believe he does—your honor, who sits here patiently, holding the lives of these two boys in your hands: "Give them the same mercy that they gave to Bobby Franks."

Is that the law? Is that justice? Is this what a court should do? Is this what a state's attorney should do? For God's sake, if the state in which I live is not kinder, more human, more considerate, more intelligent than the mad act of these two mad boys, I am sorry I have lived so long.

I am sorry for these fathers and these mothers. The mother who looks into the blue eyes of her little babe cannot help but wonder what will be the end of this child, whether it will be crowned with the greatest promises which her mind can imagine or whether he may meet death from the gallows.

All she can do is to raise him with care, to watch over him tenderly, to meet life with hope and trust and confidence, and to leave the rest with fate.

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

THE COURT—We will suspend until tomorrow morning at 10 o'clock.

Your honor, last night I was speaking about what is perfectly obvious in this case: that no human being could have done what these boys did excepting through the operation of a diseased brain. I do not propose to go through each step of it,

it would take too long. But I do want to call the attention of this court to some of the other acts of these boys in this terrible and weird homicide which show conclusively that there could be no reason for their conduct. I spoke about their registering at a hotel, and leaving their names behind them, without a chance to escape. I referred to these weird letters which were written and mailed after the boy was dead. I want to come down now to the actions on that afternoon. Without any excuse, without the slightest motive, not moved by money, not moved by passion or hatred, but nothing except the vague wanderings of children.

Describes Crime

They got a machine and about 4 o'clock, or a little after in the afternoon, started to find somebody, not after any one, to pick up somebody to kill. For nothing. They went over to the Harvard school. Dick's little brother was there, on the playground. He went there himself in open daylight, known by all of them; had been a pupil there himself, and he looked over the little boys.

Your honor has been in these courts for a long time; you have listened to murder cases before. Has any such case ever appeared in any of the books? Has it ever come to the human experience of any judge, or any lawyer, or any person of affairs? Never once. Ordinarily there would be no sort of question of the condition of these boys' minds. The only question is raised because their parents have money.

They first pick out a little boy named Levinson, and they trail him around, or Dick does. Now, of course, that is a hard story. It is a story that shocks one. A boy bent on killing, not knowing where he would go or who he would get, but killing somebody. Here is a little boy, and the circumstances are not opportune, and so he fails to get him.

As I think of that story of Dick trailing this little boy around there comes in my mind a picture of Dr. Krohn; for sixteen years going in and out of the courtrooms in this building and other buildings, trailing victims without any regard to the victim's name or sex or age or surrounding. But he had a motive, and his motive was cash, as I will show later. One was the mad act of a child; the other the deliberate act of a man getting his living by dealing in human blood.

He abandons that lead, Dick does, and then they see the Franks boy on the street. Dick and Nathan are in the car and they see the Franks boy, and they call to him to get into the car. It is five o'clock in the afternoon, on a thickly settled street, the houses of their friends and their companions; known

to everybody, automobiles on the street, and they take him in the car—for nothing. If there had been a question of revenge, yes; if there had been a question of hate, where no one cares for his own fate, intent only on accomplishing his end, yes. But without any motive or any reason picking up this little boy right in sight of their own homes, surrounded by their neighbors. They drive a little way on a populous street, where everybody could see, where eyes might be at every window on the street as they pass by, where they were known by every one.

They hit him over the head with a chisel and kill him and go on about their business, driving this car within half a block of Loeb's home, within the same distance of Frank's home, pass every neighbor that they knew, in the open highway, in broad daylight.

And still men will say that they have a bright intellect, and, as Dr. Krohn puts it, can orient themselves and reason as well as he can possibly, and it is the sane act of sane men.

Boys Should Have Had Medical Treatment

I say again, whatever madness and hate and frenzy may do to the human mind, there is not a single person who reasons who can believe that one of these acts was the act of men of brains that were not diseased. There is no other explanation for it. And had it not been for the wealth and the weirdness and the notoriety they would have been sent to the psychopathic hospital for examination and been taken care of instead of demanding that this court take the last pound of flesh and the last drop of blood from two irresponsible lads.

They bring the boy back in the back seat, pull him over in the back seat, wrap him in a blanket, gag him, and this funeral car starts on its route. If ever any death vehicle went over the same route or the same kind of a route driven by sane people I have never heard of it, and I fancy no one else has ever heard of it.

This car is driven for twenty miles. First down through thickly populated streets, where every one knew the boys and their families, had known them for years, till they come to the Midway and then they take the main line of a street which is traveled more than any other street on the south side except in the Loop, with automobiles that can scarcely go along on account of the number, straight down the Midway through the regular route of Jackson park, Nathan Leopold driving this car, and Dickie Loeb on the back seat and the dead boy with him. The slightest accident, the slightest misfortune, a bit of curiosity, and arrest for speeding, anything would bring destruction.

They go down the Midway, through the park, meeting hundreds of machines, in sight of thousands of eyes, with this dead boy. For what? For nothing. The mad act of the fool in King Lear is the only thing I know of that compares with it. And yet doctors will swear that it is a sane act. They know better.

They go down a thickly populated street to South Chicago, and then for three miles take the longest street to go through this city; built solid with business, with automobiles backed up on the street, with streets cars on the track, with thousands of peering eyes; one boy driving and the other on the back seat, with the corpse of poor Bobby Franks, the blood streaming from him wetting everything in the car. And they tell me that is sanity; they tell me that the brains of these boys are not diseased. You need no experts; you need no X-Rays; you need no study of the endocrines. Their conduct shows exactly what it was, and that this court has before him two young men who should be examined by a psychopathic hospital and treated kindly and with care.

Crime Has No Parallel

They get through South Chicago and they take the regular automobile road down toward Hammond. There is the same situation: hundreds of machines; any accident might encompass their ruin. They stop at the forks of the road and leave little Bobby Franks soaked with blood, in the machine, and get their dinner, or get something to eat. Your honor, we do not need to believe in miracles; we need not resort to that in order to get blood. If it were any other case there could not be a moment's hesitancy. I repeat, you may search the annals of crime and you can find no parallel. It is utterly at variance with every motive and every act and every part of conduct that influences normal people in the commission of crime. There is not a sane thing in all of this from the beginning to the end. There was not a normal act in any of it, from its inception in a diseased brain, until today, when they sit here awaiting their doom. But they say they planned. Well, what does that mean?

A maniac plans, an idiot plans; an animal plans; any brain that functions may plan, but their plans were the diseased plans of a diseased mind, of boys. Do I need to argue it? Does anybody need to more than glance at it? Is there any man with a fair intellect and a decent regard for human life, and the slightest bit of heart that does not understand this situation?

And still, your honor, on account of its weirdness, and its strangeness and its advertising, we are forced to fight. For what? Forced to plead to this court that two boys, one 18 and the other

19, may be permitted to live in silence and solitude and disgrace and spend all their days in the penitentiary. Asking this court and state's attorney to be merciful enough to let these two boys be locked up in a prison until they die. I sometimes wonder if I am dreaming. If in the first quarter of the twentieth century there have come back into the hearts of men the hate and the feeling and the lust for blood which possesses the primitive savage of primitive lands.

Life Imprisonment Sufficient Punishment

What do they want? Tell me, is a life-time for the young spent behind prison bars—is that not enough for this mad act? And is there any reason why this great public should be regaled by a hanging?

I can't understand it, your honor. It would be past belief, excepting that to the four corners of the earth the news of this weird thing has been carried, and men have been stirred, and the primitive has come back, and the intellect has been destroyed, and men have been controlled by feelings and passions and hatred which should have been dead centuries ago.

Death Penalty More Shocking than the Crime

My friend Savage pictured to you the putting of this dead boy in this culvert. Well, no one can minutely describe any killing and not make it shocking. It is shocking. It is shocking because we love life and because we instinctively draw back from death. It is shocking if death comes into a home, if it comes to a hospital. It is shocking wherever it is and however it is, and perhaps always is almost equally shocking.

But here is the picture of a dead boy, past pain, when no harm can come to him, put in a culvert, after taking off his clothes so that the evidence would be destroyed; and that is pictured to this court as a reason for hanging.

Well, your honor, that does not appeal to me as strongly as the hitting over the head of little Robert Franks with a chisel. The boy was dead.

I could say something about the death that, for some mysterious reason, the state wants in this case. Why do they want it? I don't know. To vindicate the law? Oh, no. The law can be vindicated without killing any one else. It might shock the fine sensibilities of the state's counsel that this boy was put into a culvert and left after he was dead, but, your honor, I can think of a scene that makes this pale into insignificance.

I can think, and only think, your honor, of taking two boys, one 18 and the other 19, irresponsible, weak, diseased, penning them in a cell, checking off the days and the hours and the minutes until they will be taken out and hanged.

Wouldn't it be a glorious day for Chicago? Wouldn't it be a glorious triumph for the state's attorney? Wouldn't it be a glorious triumph for justice in this land? Wouldn't it be a glorious illustration of Christianity and kindness and charity?

I can picture them, wakened in the grey light of morning, furnished a suit of clothes by the state, led to the scaffold, their feet tied, a black cap drawn over their heads, placed on a trap door, and somebody pressing a spring, so that it falls under them, and they are only stopped by the rope around their necks. It would surely expiate the placing of young Franks, after he was dead, in the culvert. That would bring immense satisfaction to some people. It brings a greater satisfaction because it is done in the name of justice.

With Wisdom Goes Mercy

I am always suspicious of righteous indignation. Nothing is more cruel than righteous indignation. To hear young men talk glibly of justice! Well, it would make me smile if it did not make me so sad. Who knows what it is? Does Mr. Savage know? Does Mr. Crowe know? Do I know? Does your honor know? Is there any human machinery for finding it? Is there any man who can weigh me and say what I deserve? Can your honor? Let us be honest. Can your honor express yourself and say what I deserve? Can your honor appraise these two young men and say what they deserve?

It may take account of infinite circumstances which a human being may not understand. If there is such a thing as justice it could only be administered by one who knew the inmost thoughts of the man to whom they were meting it out. Aye, who knew the father and mother and the grandparents and the infinite number of people back of them. Who knew the origin of every soul that went into their body, who could understand their structure and how it acted. Who could tell how the emotions that sway the human being affected that particular frail piece of clay. It means more than that. It means that you must appraise every influence that moves them, the civilization where they live, their living, their society, all society which enters into the making of a child. If your honor can do it—if you can do it—you are wise, and with wisdom goes mercy.

No one with wisdom and with understanding, no one who is honest with himself and with his own life, whoever he may be, no one who has seen himself the prey and the sport and the plaything of the infinite forces that move man, no one who has tried and who has failed, and we have all tried and we have all failed—no one can tell what justice is for someone else or for themselves, and the more they try and the more responsibility they take, the more they cling to mercy as being the one thing of which they are sure.

It is not so much mercy either, your honor. I can hardly understand myself pleading to a court to visit mercy on two boys by shutting them in a prison for life. For life! Where is the human heart that would not be satisfied with that? Where is the man or woman who understands their own life and who has a particle of feeling that could ask for more?

Capital Punishment a Custom of the Past

Any cry for more roots back to the hyena; it roots back to the hissing serpent; it roots back to the beast from whence we came. It is not a part of man. It is not a part of that feeling which, let us hope, is growing, though scenes like this sometimes make me doubt that it is growing; it is not a part of that feeling of mercy and pity and understanding of each other which we believe has been slowly raising man from his low estate. It is not a part of the finer instincts which are slow to develop; of the wider knowledge which is slow to come, and slow to assimilate when it comes. It is not part of all that makes the best there is in man. It is not a part of all that promises any hope for the future and any justice for the present.

And must I ask that these boys get mercy by spending the rest of their lives in prison, year following year, month following month, and day following day, with nothing to look forward to but hostile guards and stone walls? It ought not to be hard to get that much mercy in any court in the year 1924.

These boys left this body down in the culvert and they came back. Telephoned first; telephoned home they would be too late for supper. Here surely was an act of consideration on the part of Leopold telephoning home that he would be late for supper. Dr. Krohn says he must be able to think and act because he could do this. But the boy who through habit would telephone his home that he would be late for supper had not a tremor or a thought or a shudder at taking the life of little Bobby Franks for nothing, and he has not had one yet. He was in the habit of doing what he did, that was all; but in the presence of life and death and a cruel death, he had no tremor, and no thought. And I will talk to the court about why a little further on.

They came back. They got their dinner. They parked their bloody automobile in front of Leopold's house. They cleaned it to some extent that night and left it standing out in the street in front of their home. Oriented, of course. Oriented.

They left it there for the night, so that anybody might see and might know. They took it in the barn the next day and washed it, and then poor little Dickie Loeb—I shouldn't call him Dickie, and I shouldn't call him poor, because that might be

playing for sympathy, and you have no right to ask for sympathy in this world. You should ask for justice, whatever that might be; and only state's attorneys know. Sympathy has no place in it.

Loeb Assists Reporters in Tracing Clews

And then in a day or so we find Dick Loeb with his pockets stuffed with newspapers telling of the Frank's tragedy. We find him consulting with his friends in the club, with the newspaper reporters; and my experience is that the last person that a conscious criminal associates with is a reporter. He even shuns them more than he does a detective because they are smarter and less merciful.

But he picks up a reporter, and he tells him he has read a great many detective stories, and he knew just how this would happen and that the fellow who telephoned must have been down on Sixty-third street, and the way to find him is to go down on Sixty-third street and visit the drug stores and he would go with him. And Dick Loeb pilots them around the drug stores where the telephoning was done, and he talks about it, and he takes the newspapers, and takes them with him, and he is having a glorious time.

And yet he is perfectly oriented, in the language of Dr. Krohn. Perfectly oriented. Is there any question about the condition of his mind? Why was he doing it? He liked to hear about it. He had done something that he could not boast of directly, but he did want to hear other people talk about it, and he looked around there and helped them find the place where the telephone message was sent out. Your honor has had experience with criminals. I do not know just what it is, but your honor doubtless knows, and if you do not you might ask the state's attorney. You have had experience with criminals and you know how they act.

Was any such thing as this ever heard of before on land or sea? Does not the man who knows what he is doing, who for some reason has been overpowered and commits what is called a crime, keep as far away from it as he can? Does he not. Does he go to the reporters and help them hunt it out. There is not a single act in this case that is not the act of a diseased mind, not one. Talk about scheming. Yes, it is the scheme of disease; it is the scheme of infancy; it is the scheme of fools; it is the scheme of irresponsibility from the time it was conceived until the last act in the tragedy. And yet we have to talk about it and argue about it when it is obvious to anyone who cares to know the truth, perfectly obvious. But they must be hanged, because everybody is talking about this case and their parents have money.

Plea of Guilty Mean Lighter Sentence

Am I asking for much in this case? Let me see for a moment now. Is it customary to get anything on a plea of guilty? How about the state's attorney? Do they not give you something on a plea of guilty? How many times has your honor listened to the state's attorney come into this court, with a man, charged with robbery with a gun, which means from ten years to life, and on condition of a plea of guilty ask to have the gun charge stricken out, and get a sentence of three to twenty years, with a chance to see daylight inside of three years? How many times?

How many times has the state's attorney himself asked everything up to murder, not only with the young, but even the old? How many times have they come into this court and into every court, not only here but everywhere, and asked for it? Your honor knows. I will guarantee that three times out of four, and much more than that in murder, ninety-nine times out of one-hundred, and much more than that; I would say not twice in a thousand times have they failed to do it.

How many times has your honor been asked to change a sentence and not hold a man guilty of robbery with a gun, but give him a chance on a plea of guilty—and not a boy but a man? and how many times have you done it, your honor?

How many times have others done it, over and over and over again? And it will be done so long as justice is fairly administered; and in a case of a charge of robbery with a gun, coupled with larceny, how many times have both the robbery and the gun been waived and a plea of larceny made so, that one might be released in a year? How many times has all of it been waived and somebody given a year in the bridwell? Many, many times, because they are young, because they are immature. Many and many a time because they are boys, and youth has terrible responsibilities, and youth should have advantages; and with sane and humane people, youth, the protection of childhood, is always one of the first considerations. It is one of the first in the human heart and it is one of the first in the human mind.

How many times has rape been changed to assault and the defendant given a year, or even a bridwell sentence? How many times has mercy come even from the state's attorney's office? I am not criticizing. It should come and I am telling this court what this court knows. And yet, forsooth, for some reason here is a case of two immature boys of diseased mind, as plain as the light of day, and they say you can only get justice by shedding their last drop of blood. Why? I can ask the question easier than I can answer it. Why? Unheard of, unprecedented in this court, unknown among civilized men. And yet this court is to make an example, or civilization will fail.

I suppose civilization will survive if your honor hangs them. But it will be a terrible blow, a terrible blow. Your honor would be turning back over the long road we have travelled. And you would be turning back from the protection of youth and infancy. Your honor would be turning back from the treatment of children. Your honor would be turning back to the barbarous days which brother Marshall seems to love, when they burned people thirteen years of age. You would be dealing a staggering blow to all that has been done in the city of Chicago in the last twenty years for the protection of infancy and childhood and youth.

And for what? Because the people are talking about it. Nothing else. Just because the people are talking about it. It would not mean, your honor, that your reason was convinced. It would mean in this land o fours, where talk is cheap, where newspapers are plenty, where the most immature expresses his opinion and the more immature the harder it is that a court couldn't help feeling the great pressure of public opinion which they say exists in this case.

Coming alone in this courtroom with obscure defendants, doing what has been done in this case, coming with the outside world shut off, as in most cases, and say, I believe that these boys ought not to be at large. I believe they are immature and irresponsible, and I am willing to enter a plea of guilty and let you sentence them to life imprisonment, how long do you suppose your honor would hesitate. Do you suppose the state's attorneys would raise their voices in protest? You know it has been done too many times. And here, for the first time, under these circumstances this court is told that they must make an example.

Leniency Shown in Other Cases

Let me take some other cases. How many times has a defendant come into this court charged with burglary and larceny, and because of youth or because of something else, the state's attorney has waived the burglary and consented to a year for larceny? No more than that. Let me ask this question. How many times, your honor, have defendants come into this court—and I am not speaking of your honor's court alone; I am speaking of all the criminal courts in this country—have defendants come in charged with a burglary and larceny and been put on parole, given parole, told to go and sin no more, given another chance? It is true in almost all cases of the young except for serious aggravation.

Can you administer law without it? Can you administer what approaches justice without it? Can this court or any other court administer justice by consciously turning his heart to stone and being deaf to all the instincts which move man? Without those instincts I wonder what would happen to the human race? Without them, if a man could judge a fellow man

in coldness without taking account of their own lives, without taking account of what they knew of human life, without some understanding, how long would we have real human beings?

It has taken the world a long time for man to get even where he is today. If the law was administered without any feeling whatever of sympathy, or humanity or kindness, we would begin our long, slow journey back to the jungle that was formerly our home.

How many times has assault with intent to rob or kill been changed in these courts to assault and battery? How many times has felony been waived on assault with a deadly weapon and a man or a boy given a chance, and we are asking a chance to be shut up in stone walls for life. For life! It is hard for me to think of it, but that is the mercy we are asking from this court, which we ought not to be required to ask, and which we should have as a matter of right in this court and which I have faith to believe we will have as a matter of right.

Only One Hanged on Plea of Guilty In Illinois

Is this new? Why I undertake to say that even the state's attorney's office—and if he denied it I would like to see him bring in the records—I will undertake to say that in three cases out of four of all kinds and all degrees, leniency has been shown. Three hundred and forty murder cases in ten years with a plea of guilty in this county. All the young who pleaded guilty—every one of them—three hundred and forty in ten years with one hanging on a plea of guilty, and that a man forty years of age. And yet they say we come here with a preposterous plea for mercy.

We are not asking it. We are satisfied with justice, if the court knows what justice is, or if any human being can tell what justice is, if anybody can look into the minds and hearts and the lives and the origin of these two youths and tell what justice is, that would be enough. But nobody can do it without imagination, without sympathy, without kindliness, without understanding, and I have faith that this court will take this case, with his conscience and his judgment and his courage and save these boys' lives.

Wealth of Families and Weirdness of Crime Attracted World

Now your honor, let me go a little further with this. I have gone over some of the high spots in this tragedy. This tragedy has not claimed all the attention it has had on account of its atrocity. There is nothing to that. Why is it? There are two reasons and only two that I can see. First is the extreme wealth, reputed at least, of these families; not only the Loeb and Leopold families but the Franks family, and of course it is unusual.

And next is the fact that it was weird and uncanny and motiveless. That is what attracted the attention of the world.

They may say now, many of them, they want to hang them. I may be a poor prophet, but giving the people blood is something like giving them their dinner. When they get it they go to sleep. They may for the time being have an emotion, but they will bitterly regret it. And I undertake to say that if these two boys are sentenced to death, and are hanged, on that day there will be a pall settle over the people of this land that will be dark and deep, and at least cover every humane and intelligent person in the land.

I wonder if it will do good. I wonder if it will help the children, and there is an infinite number like these. I marveled when I heard Mr. Savage talk. I do not criticize him. He is young and enthusiastic. But has he ever read anything? has he ever thought. Was there ever any man who had studied science who has read anything of criminology or philosophy. Was there ever any man who knew himself, who could speak with the assurance with which he speaks? What about this matter of crime and punishment, anyhow?

I may know less than the rest, but I have at least tried to find out, and I am fairly familiar with the best literature that has been written on that subject in the last one hundred years.

The more men study the more they doubt the effect of severe punishment on crime. And yet Mr. Savage tells this court that if these boys are hanged there will be no more.

Mr. Savage is an optimist. He says if they are hanged there will be no more boys like these.

Public Executions In England Were Carnivals of Crime

I could give him a sketch of punishment beginning with the brute, which hurt something because something hurt it; the punishment of the savage; if a person's injured in the tribe, they must injure somebody in the other tribe; it makes no difference who it is, but somebody. If one is killed they must kill somebody else. You can trace it all down through the history of man.

You can trace the burnings, the boilings, the drawlings and quarterings, the hanging of people in England at the crossroads, carving them up and hanging them as examples for all to see.

We can come down to the last century, when nearly 200 crimes were punishable by death, and by death in every form; not only hanging—that was too humane—but burning, boiling, cutting into pieces, torturing. You can read the stories of the hangings on a high hill, and the populace for miles around coming out to the scene, that everybody might be awed into goodness.

Hanging for picking pockets—and more pockets were picked in the crowd that went to the hanging than had been known for

years. Hangings for murder—and men were murdered on the way there and on the way home. Hangings for poaching, hangings for everything, and hangings in public, not shut up cruelly and brutally in jail, out of the light of day, wakened in the night time and led forth and killed, but taken to the shire town on a high hill, in the presence of a multituude, so that they might know that the wages of sin were death.

Crimes Decreased as Sentences Were Modified

What happened? I have read the life of Lord Shaftsbury, a great nobleman of England, who gave his life and his labors toward modifying the penal code.

I have read of the slow, painful efforts through all the ages for more humanity of man to his fellow man.

I know what history says, I know what it means and I know what flows from it, so far as we can tell, which is not definitely. I know that every step has been met and opposed by prosecutors, many times by courts. I know that when poaching and petty larceny was punishable by death in England, juries refused to convict. They were too humane to obey the law, and judges refused.

I know when the delusion of witchcraft was spreading over Europe, claiming its victims by the millions, many a judge so shaped his cases that no crime of witchcraft could be punished in his court. I know that it was stopped in America because juries would no longer convict.

I know that every step in the progress of the world in reference to crime has come from the human feelings of man. It has come from that deep well of sympathy, that in spite of all our training and all our conventions and all our teaching, still flows forth in the human breast. Without it there would be no life on this weary old planet. And gradually the laws have been changed and modified, and men look back with horror at the hangings and deaths of the past.

What did they find in England? That as they got rid of these barbarous statutes crimes decreased instead of increased, and as the criminal law was modified and humanized there was less crime instead of more. I will undertake to say your honor, that you can scarcely find a single book written by a student—and I will include all the works on criminology of the past—that has not made the statement over and over again that as the penal code was made less terrible, crimes grew less frequent.

Now let us see a little about the psychology of man. It is easy, your honor, anybody can understand it if he just looks into himself. This weird tragedy occurred on the twenty-first

of May. It has been heralded broadcast through the world. How many attempted kidnapings have come since then? How many threatening letters have been sent out by weak minded boys and weak minded men since then? How many times have they sought to repeat again and again this same crime because of its actions upon the human mind? I can point to examples of killing and of hanging in the city of Chicago which have been repeated in detail over and over again, simply from the publicity of the newspapers and the public generally. Let us take this case. Let's see whether we can guess about it. And it is no guess.

Hanging Would Have Evil Influence Upon Millions

If these two boys die on the scaffold which I can never even yet bring myself to imagine, if they do die on the scaffold the details of this will be spread over the world. Every newspaper in the United States will carry a full account. Every newspaper of Chicago will be filled with the gruesome details. It will enter every home and every family.

Will it make men better or make men worse? I would like to put that to the intelligence of men, at least such intelligence as they have. I would like to appeal to the feelings of human beings so far as they have feelings—would it make the human heart softer or would it make it harder, speaking in terms not of the scientist, but of the religionist? Would it harden the heart of man or would it soften it? How many men would be colder and crueler for it? How many men would enjoy the details? And you cannot enjoy human suffering without being affected for better or for worse; those who enjoyed it would be affected for the worse.

What influence would it have upon the millions of men who would read it? More sensitive, more expressionable, more imaginative? Would it help them if your honor should do what they beg you to do? What influence would it have upon the infinite number of children who would devour its details as Dickie Loeb has enjoyed reading detective stories? Would it make them better or would it make them worse?

The question needs no answer. You can answer it from the human heart. What influence, let me ask you, would it have for the unborn babes still in their mothers' wombs? And what influence would it have on the psychology of the fathers and mothers yet to come?

Do I need to argue to your honor that cruelty only makes cruelty; that hatred only causes hatred; that if there is any way to destroy—which perhaps there is not—if there is any way to soften this human heart, which is hard enough at its best, if

there is any way to kill evil and hatred and all that goes with it, it is not through evil and hatred and cruelty; it is through charity and love and understanding?

How often do people need to be told this? Look back at the world. There is not a man who is pointed to as an example to the world who has not taught it. There is not a philosopher, there is not a religious leader, there is not a creed that has not taught it. This is a Christian community, so-called, at least it boasts of it, and yet they would hang—a Christian community.

Is Pleading For Other Lives

Let me ask this court, is there any doubt about whether these boys would be safe in the hands of the Founder of the Christian religion? It would be blasphemy to say they would not. Nobody could imagine, nobody could even think of it. And yet there are men who want to hang them for a childish act, without the slightest malice toward the world.

Your honor, I feel like apologizing for urging it so long. It is not because I doubt this court. It is not because I do not know something of the human emotions and the human heart. It is not that I do not know every feeling of logic, every page of history, every line of philosophy and religion, every precedent in this court urges this court to save life. It is not that.

I have become obsessed with this deep feeling of hate and anger that has swept across this city and this land. I have been fighting it, battling with it, until it has fairly driven me mad, until I sometimes wonder whether every righteous human emotion has not gone down in the storm.

I am not pleading so much for these boys as I am for the infinite number of others to follow, those who perhaps cannot be as well defended as they have been, those who may go down in the storm and the tempest, without aid. It is of them I am thinking, and for them I am begging of this court not to turn backward toward the barbarous and the cruel past.

Now, your honor, who are these two boys? Leopold, with a wonderfully brilliant mind—there is no question about it. Loeb, with an unusual intelligence—there is no question about that; both urged, from their very youth like hothouse plants, to learn more and more and more.

Dr. Krohn says that they are intelligent. In spite of that, it is true—they are unusually intelligent. But it takes something besides brains to make a human being who can make his way in the world. In fact, as Dr. Church and Dr. Singer regrettably admitted, brains are not the chief thing in human conduct.

There is no question about it. The things that make us live, the things that make us work or play, or move us along the pathways of life, are the emotions. They are the instinctive things. In fact, intellect is a late development in life. Long before there was such a thing, the emotional life kept the organism in existence until death. Whatever our action is, it comes from the emotion, and nobody is balanced without it. The intellect does not count so much.

Intellectually Unbalanced

Let me call the attention of the court to two or three cases. Four or five years ago the world was startled by a story of a boy of 11, the youngest boy ever turned out at Harvard, who had studied everything on earth and understood it, whose father was a physician—simply a freak. He went through Harvard much younger than anybody else. All questions of science and philosophy he could discuss with the most learned. How he got it nobody knows. It was prophesied that he would have a brilliant future. I do not like to mention his name and it is not necessary.

I met that young man a year or two ago, and he was looking for a job at \$15 a week, or at any figure. The fire had burned out. He was a prodigy, with nothing but this marvelous brain power, which nobody understood or could understand. He was just a freak. He never was a boy; he never will be a man.

Harvard had another of the same kind some years before, unbalanced, impossible—an intellectual machine. Nature works in mysterious ways.

We have all read of Blind Tom, who was an idiot, and yet a marvelous musician. He never could understand music, and he never did understand music, he never knew anything about it; and yet he could go to the piano, and play so that it would make people marvel and wonder.

How it comes nobody can explain. The question of intellect means the smallest part of life. Back of a man's nerves, muscles, heart, blood and lungs is the whole organism; and the brain is the least part in human development.

Without the emotional life he is nothing. How is it with these two boys? I insist there is not the slightest question about it. All teaching and all training appeals not only to the intellectual but to the emotional life. A child is born with no ideas of right and wrong, just a plastic brain, ready for such impressions as come to it, ready to be developed. Lying, stealing, killing are not wrong. It means nothing. Gradually his parents and his teachers tell him things, teach him habits, show him

that he may do this and he may not do that, teach him the difference between his and mine. No child knows that when he is born in the world. He knows nothing about property or property rights. They are given as he goes along. He is like the animal that wants something and goes out and gets it, kills it, operating purely from instinct, without training.

Now, the child is gradually taught, and we build up habits, and those habits are supposed to be strong enough so that they will make inhibitions against conduct when the emotions come in conflict with his duties of life. Dr. Singer and Dr. Church, both of them, admitted exactly what I am saying now.

Emotions Affect Conduct

The child knew nothing of himself about right and wrong, and the teachings built up habits, gave him ideas, so he would be able to understand certain instincts that might surge upon him, and which surge upon everybody. If the instinct is strong enough and the habit weak enough, the habit goes down before it. Both of these eminent men admit it. There can be no question about it. It is the relative strength of the instinct and the strength of the habit that is with it.

Now, education means fixing these habits so deeply in the emotions of man that they stand him in stead when he needs them, and that is all it does mean. Now, take it here.

Suppose one sees a thousand-dollar bill and nobody present. He may have the impulse to take it. If he does not take it, it will be because his emotional nature revolts at it, through habit and through training. If the emotional nature does not revolt at it he will take it. That is why people do not commit what we call crime, that and caution.

All that education means is the building of habits so that certain conduct revolts and stops you, saves you, but without an emotional nature, you can't do it. It is impossible. Some are born without it, or practically without it. How about this case? There is no doubt about this case, your honor. There is not the slightest question. The state put on three experts—and Dr. Krohn. (Laughter). Three alienists and Dr. Krohn. Two of them, Dr. Patrick and Dr. Church, are undoubtedly able men. One of them, Dr. Church, is a man whom I have known for forty years and for whom I have the highest regard.

On Sunday, June 1, before any of the friends of these boys or their counsel could see them, while they were in the care of the state's attorney's office, they brought them in to be examined by these alienists. I am not going to discuss that in detail as I might later on. The character of the examination—I will speak of that later, but Dr. Patrick said this: "The only

thing unnatural he noted about it was that they had no emotional reaction. Yes. Dr. Church said the same. These are their alienists, not ours.

Boys Had No Emotional Reaction

And these boys could tell this gruesome story without a change of countenance, without the slightest feelings. There were no emotional reaction to it. And why haven't they? I don't know. How can I tell why?

I know what causes the emotional life. I know it comes from the nerves, the muscles, the endocrine glands, the vegetative system. I know it is the most important part of life. I know it is left out of some. I know that without it men cannot live. I know that without it they cannot go with the rest. I know they cannot feel what you feel and what I feel, that they cannot feel the moral shocks which come to men who are educated and who have not been deprived of an emotional system or emotional feelings. I know it, and every person who has honestly studied this subject knows it as well.

Is Dickie Loeb to blame because out of the infinite forces that conspired to form him, the infinite forces that were at work producing him ages before he was born, that because out of these infinite combinations he was born without it? If he is, then there should be a new definition for justice.

Is he to be blamed for what he did not have and never had? Is he to blame that his machine is imperfect? Who is to blame? I don't know. I have never been interested so much in my life in fixing blame as I have in relieving people from blame. I am not wise enough to fix it. I know that somewhere in the past that entered into him something missed. It may be defective nerves. It may be a defective heart, liver. It may be defective endocrine glands. I know it is something. I know that nothing happens in this world without a cause.

I know, your honor, that if you, sitting here in this court and in this case, had infinite knowledge you could lay your fingers on it, and I know you would not visit it on Dickie Loeb.

I asked Dr. Church and I asked Dr. Singer whether, if they were wise enough to know, they could not find the cause, and both of them said yes. I know that he and Loeb are just as they are, and that they did not make themselves.

Old and New Theories of Man's Responsibility

There are at least two theories of man's responsibility. There may be more. There is the old theory that if a man does something it is because he wilfully, purposely, maliciously and with

a malignant heart sees fit to do it. And that goes back to the possession of man by devils. And the old indictments used to read that a man being possessed of a devil, did so and so.

But why was he possessed with the devil? Did he invite him in? Could he help it? Very few half civilized people believe that doctrine any more. Science has been at work, humanity has been at work, scholarship has been at work, and intelligent people know now that every human being is the product of the endless heredity back of him and the infinite environment around him. He is made as he is and he is the sport of all that goes around as applied to him, and under the same stress and storm, you might act one way and I might act another, and poor Dickie Loeb another. Church said so and Singer said so, and it is the truth.

Take a normal boy, your honor. Do you suppose he could have taken a boy into an automobile without any reason and hit him over the head and kill him? I might just as well ask you whether you thought the sun could shine at midnight in this latitude. It is not a part of normality. Something was wrong. But I am asking your honor not to visit the grave and dire and terrible misfortunes of Dickie Loeb and Nathan Leopold upon these two boys.

I do not know where to place it. I know it is somewhere in the infinite economy of nature, if I could find it. I know it is there and to say that because they are as they are you should hang them, is brutality and cruelty, and savors of the time of fang and claw.

Now, there cannot be any question on the evidence in this case, your honor. Dr. Church and Dr. Patrick both testified that these boys have no emotional reactions in reference to this crime. Every one of the alienists on both sides has told this court, but no doubt this court already knew that the emotions furnish the urge and the drive to live. A man can get along without his intellect, and most people do, but he cannot get along without his emotions.

When they did make a brain for man, they did not make it big enough to hurt, because emotions can still hold sway. He eats and he drinks, he works and plays and sleeps, in obedience to his emotional system. The intellectual system, the intellectual part of man, acts only as a judge over his emotions, and then he generally gets it wrong, and has to rely on his instincts to save him.

Alienists Agree that Boys Are Defective

These boys—I do not care what their mind is; that simply makes it worse—are emotionally defective. Every single alienist who has testified in this case has said so. The only person,

who did not was Dr. Krohn. While I am on that subject, lest I forget the eminent doctor, I want to refer to one or two things. In the first place, all these alienists that the state called came in and heard them tell their story of this crime, and that is all they heard. Nothing else.

Now, my associate, Mr. Bachrach, might not quite have sized up my friend Judge Crowe as to his purpose for calling in those alienists. I have known the judge quite a while and I can figure out that he might have had another purpose. He might even have thought these boys were insane and had no suspicion whatever that they had diseased minds, and he might have thought that some wicked lawyer would come in and defend them on the theory that they did have diseased minds. Might not that have been the reason?

MR. CROWE—I think you have guessed it.

MR. DARROW—All right. I thought I did. Somebody might come in and claim that they are insane—which we have not done—and, therefore, he would take time by the forelock and get to the alienist first. I rather suspect that I am right about that, Walter (to Walter Bachrach); anyway, I give Bob the benefit of the doubt. He thought they might get somebody who was not as conscientious as I am and who would claim those boys were insane, and go and hire the alienists. I don't like the word, but let it go.

Now, your honor is familiar with Chicago the same as I am, and I am willing to admit right here and now that the two ablest alienists in Chicago are Dr. Church and Dr. Patrick. There may be abler ones, but we lawyers don't know them. And I will go further: If my friend Crowe had not got to them first, I would have tried to get them. There isn't any question about it at all. I said I would have tried to; I didn't say I would, and yet I suspect I would. I haven't got much doubt about it. And I say that, your honor, without casting the slightest reflection on either of them, for I really have a high regard for them, and aside from that a deep friendship for Dr. Church. And I have considerable regard for Dr. Singer. I won't go any further now.

We could not get them, and Mr. Crowe was very wise, and he deserves a great deal of credit for the industry, the research and the thoroughness that he and his staff have used in detecting this terrible crime. What I am saying is serious; he does deserve it. He worked with intelligence and rapidity. If here and there he trampled on the edges of the constitution I am not going to talk about that. If he did it, he is not the first one in that office and probably will not be the last who will do it.

A great many people in this world believe the end justifies the means. I don't know but I do myself. And that is the reason I never want to take the side of the prosecution, because I might harm an individual. I am sure the state will live anyhow.

State's Alienists Had Poor Opportunity for Examination

On Sunday afternoon before we got a chance, he got in two alienists, Church and Patrick, and also called Dr. Krohn, and they sat around hearing these boys tell their stories, and that is all.

Your honor, they were not holding an examination. They were holding an inquest, and nothing else. It had not the slightest reference to, or earmarks of, an examination for sanity, not the slightest. It was just an inquest; a little premature, but still an inquest.

What is the truth about it? What did Patrick say? He said, no, it was not a good opportunity for examination. What did Church say? I read from his own book what was necessary for an examination, and he said no, it was not a good opportunity for an examination. What did Krohn say? Fine, a fine opportunity for an examination, the best he had ever heard of, or that ever anybody had, because they were stripped naked.

WALTER BACHRACH—That the soul was naked.

MR. DARROW—Yes. Krohn is not an alienist. He is an orator. He said, because their soul was naked to them. Well, if Krohn's was naked, there would not be much to show.

But Patrick and Church said that the conditions were unfavorable for an examination, that they never would choose it, that their opportunities were poor. And yet Krohn states the contrary, who for sixteen years has not been a physician, but who has used a license for the sake of haunting these courts, civil and criminal, and going up and down the land peddling perjury.

He has told your honor what he has done, and there is not a child on the street who does not know it, there is not a judge in the court who does not know it, there is not a lawyer at the bar who does not know it, there is not a physician in Chicago who does not know it, and I am willing to stake the lives of these two boys on the court knowing it; and I will throw my own in for good measure.

What else did he say in which they disputed him? Both of them say that these boys showed no emotion, no adequate emotion. Krohn said they did. One of them fainted. They had been in the hands of the state's attorney for sixty hours. They

had been in the hands of policemen, lawyers, detectives, stenographers, inquisitors and newspaper men for sixty hours, and one of them fainted.

Ridicules State Alienist

Well, the only person who is entirely without emotion is a dead man. You cannot live without breathing—which supplies heart action—and an emotional system and some emotional responses. Krohn says, "Why, Loeb had emotion. He was polite; begged our pardon; got up from his chair." Even Dr. Krohn knows better than that. I fancy if your honor goes into an elevator where there is a lady or a female he would take off his hat. I don't. I used to, but I kind of resent it. Is that out of emotion for the lady or is it habit? You say "please" and "thank you" out of habit. Emotions haven't the slightest thing to do with it.

Mr. Leopold has good manners. Mr. Loeb has good manners. They have been taught to him. He has lived them. That does not mean that they are not absolutely lacking in emotional feeling. It means training. That is all it means. And Dr. Krohn knew it. Krohn told the story of this interview and he told almost twice as much as the other two men who sat there and heard it. And how he told it; how he told it.

When he testified my mind carried me back to the time when I was a kid, which was some time ago, and we used to eat watermelons. And I have seen little boys take a rind of watermelon and cover their whole face with water, eat it, munch it and have the best time of their lives, up to their ears in watermelon. And when I heard Dr. Krohn testify in this case, to take the blood or the lives of these two boys, I could see his mouth water with the joy it gave him, and he evinced all the delight and pleasure of myself and my young companions when we ate watermelon.

I can imagine a psychiatrist, a real one who knows the mechanics of man, who knows life and its machinery, who knows the misfortunes of youth, who knows the stress and the strain of adolescence which comes to every boy and overpowers so many, who knows the weird fantastic world that hedges around the life of a boy—I can imagine a psychiatrist who might honestly think that under the crude definitions of the law they were sane and know the difference between right and wrong.

But if he is a physician, a real physician, whose mission is the highest and holiest that can practice, to save life and minister to human suffering, to save life regardless of what the life was, to prevent suffering, regardless of whose suffering it is—and no mission could be higher than that—that if this was

his mission instead of testifying in court, and if he were called on for an opinion that might send his fellow man to doom, I could imagine him doing it.

I can imagine him doing it reluctantly, carefully, modestly, timidously, fearfully and being careful that he did not turn one hair to the right or left more than he should and giving the advantage in favor of life and humanity and mercy, but I can never imagine a real physician who cared for life or who thought of anything excepting cash, gloating over his testimony as Dr. Krohn did in this case.

Your honor, if we may adjourn now, I am afraid I won't get through and you are going to quit at 12, aren't you?

THE COURT—We will suspend now until 10:30 o'clock Monday morning.

The Mind Only Analyzed by Conduct

If the court please, I have been discussing what to my mind is shown by the commission of the act itself. Without any consideration of the lives and the training of these boys, without any evidence from experts, I have tried to make a plain statement of the facts of this case, and I believe, as I have said repeatedly, that no one can honestly study the facts and conclude that anything but diseased minds was responsible for this terrible act. Let us see how far we can account for it, your honor.

So far we have determined whether men are diseased of mind or normal in their conduct. This line of act shows disease and this line of act shows normality. We have not been able with any satisfaction to peer into the brain and see its workings, to analyze the human system and see where it has gone awry. Science is doing something but so far has done little, and we have been compelled almost entirely to make up our minds from conduct as to the condition of the minds of men.

The mind, of course, is an elusive thing. Whether it exists or not nobody can tell. It cannot be found as you find the brain. Its relation to the brain and the nervous system is uncertain. It simply means the activity of the body which is co-ordinated with what we call brain.

But when we do find from human conduct that we believe there is a diseased mind we naturally speculate on how it came about. And we wish to find always, if possible, the reason why it is so. We may find it; we may not find it, because the unknown is infinitely wider and larger than the known, both as to the human mind and as to almost everything else.

It has not been so long since the insane were supposed to be possessed of devils, and since criminals were supposed to be possessed of devils, and that wise men solved intricate questions by saying that devils possessed human beings. It has not been so very long since it was supposed that diseased persons were possessed of devils, which meant simply that they be driven out to cure the disease.

We have gone further than this. We understand that there is some connection between the workings of the mind and the workings of the body. We understand something of the physical basis of life. We understand something of the intricate mechanism which may be bad in some minute parts and cause such serious habit with human conduct.

Boys Had Promising Career

I have tried to study these two lives, the lives of these two most unfortunate boys. Three months ago, if their friends and the friends of the family had been asked to pick out the most promising boys of their acquaintance they probably would have picked these. With every opportunity, with every advantage, with a good intellectual equipment, with plenty of wealth, they would have said that these two would succeed. In a day, by an act of madness, all this is destroyed, until the best they can hope for now is a life of silence and pain, judging from their years. How did it happen? Let us take Dickie Loeb first. I do not claim to know how it happened; I have sought to find out. I know that something, or some combination of things, is responsible for this mad act. I know that there are no accidents in nature. I know that effect follows cause. I know, if I were wise enough, and knew enough about this case, I could lay my finger on it. I will do the best I can, but it is largely speculation.

The child, of course, is born without knowledge. Impressions are made upon its mind as it goes along. Dickie Loeb was a child of wealth and opportunity. Over and over in this court your honor has been asked and other courts have been asked to consider boys who have had no chance; they have been asked to consider the poor whose home had been the street, with no education and no chance; and they have done it, and done it rightfully.

But your honor, it is just as often a great misfortune to be the child of the rich as it is the child of the poor. Wealth has its misfortunes. Too much, too great opportunity and advantage given to a child has its misfortunes, and I am asking your honor to consider the rich as well as the poor, and nothing else. Can I find what was wrong? I think I can.

Loeb Had Stern Governess

Here was a boy at a tender age placed in the hands of a governess, intellectual, vigorous, devoted, with a strong ambition for the welfare of this boy. He was made to study books, as plants are grown in hothouses. He had no pleasures, such as a boy should have, except in what was gained by lying and cheating. Now, I am not criticizing the nurse. I suggest some day your honor look at her picture. It explains her fully—forceful, brooking no interference, she loved this boy, and her ambition was that he should reach the highest possible. No time to pause, no time to stop from one book to another, no time to have those pleasures which a boy ought to have to make a normal life. And what happened?

Your honor, what would happen? Nothing strange or unusual. This nurse was with him all the time except when he stole out at night, from 4 to 14—from 2 to 14 years of age, and it is instructive to read her letter to show her attitude. It speaks volumes; tells exactly the relation between these two people. He, scheming and planning as healthy boys would do, to get out from under her restraint. She putting before him the best books, which children generally do not want; and he, when she was not looking, reading detective stories which he devoured, story after story, in his young life. Of all of this there can be no question. What is the result? Every story he read was a story of crime. Every one.

We have a statute in this state, passed only last year if I recall it, which forbids minors reading stories of crime. Why? There is only one reason. Because the legislature in its wisdom thought it would have a tendency to produce these thoughts and this life in the boys who read them.

Devoured Detective Stories

The legislature of this state has given its opinion and forbidden boys to read these books. He read them day after day. He never stopped. While he was passing through college at Ann Arbor he was still reading them. When he was a senior he read them, and almost nothing else. Now, these facts are beyond excuse. He early developed the tendency to mix with crime, to be a detective; as a little boy shadowing people on the street; and as a little child going out with his fantasy of being the head of a band of criminals and directing them on the street. How did this go and develop in him. Let us see. It seems to me as natural as the day following the night.

Every detective story is a story of a detective getting the best of it, trailing some unfortunate individual through devious ways until he is finally landed in jail or stands on the gallows. They all show how smart the detective is and where the man himself fell down, every one of them. This boy early in his

life conceived the idea that there could be a perfect crime, one that nobody could ever detect; that there could be one where the detective did not land his game, a perfect crime. He had been interested in the story of Charley Ross, who was kidnaped. He was interested in these things all his life. He believed in his childish way that a crime could be so carefully planned that there would be no detection, and his idea was to plan a perfect crime. It would involve kidnaping, and involve murder. I might digress here just a moment, because my friend Savage spoke about two crimes that were committed here, kidnaping and murder.

That is, the court should hang them twice, one for each. There are more than two committed here. There are more than two crimes committed in every capital act. An attempt to extort money was committed. A conspiracy to do each was committed. Carrying arms was committed. I could probably mention half a dozen if I tried, but it is all one thing and counsel knows it is all one thing.

Is it anything new in criminal practice? Why, your honor, we have it every day in these courts. In almost any important crime the state's attorney can write indictments as long as the paper lasts, not only counts but indictments.

Take a case of burning a building for insurance, by two people. There is the crime of arson. There is the crime of burning a building to defraud an insurance company. There is conspiracy to commit arson. There is conspiracy to burn a building to defraud an insurance company. And I might mention others, all in the one act. Burglary and larceny, a number of crimes, especially if there are two. It is nothing new. This was one offense and one only. They could have made six out of it or one out of it, or two out of it. It is only one thing. Just like any other important crime.

Wanted to Commit Perfect Crime

Well, now, let's see. They wanted a complete crime. There had been growing in this brain, dwarfed and twisted as every act in this case shows it was dwarfed and twisted, there had been growing this scheme, not due to any wickedness of Dickie Loeb, for he is a child. It grew as he grew; it grew from those around him; it grew from the lack of the proper training until it possessed him. He believed he could beat the police. He believed he could plan the perfect crime. He had thought of it and talked of it for years. Had talked of it as a child; had worked at it as a child, and this sorry act of his, utterly irrational and motiveless, a plan to commit a perfect crime which must contain kidnaping and there must be ransom, or else it could not be perfect, and they must get the money.

The state, itself, in opening this case, said that it was largely for experience and for a thrill, which it was. In the end, they switched it on to the sorry, foolish, reason of getting cash. Every fact in this case shows that cash had almost nothing to do with it, except to help them commit the perfect crime; and to commit the perfect crime there must be a kidnaping, and a kidnaping where they could get money, and that was all there was of it. Now, that is the two theories of this case, and I submit, your honor, under the facts in this case there can be no question but what we are right.

This fantasy grew in the mind of Dickie Loeb almost before he began to read. It developed as a child just as kleptomania has developed in many a person and is clearly recognized by the courts. He tried from one thing and another, and, in the main, insignificant, childish things. Finally the utterly foolish and stupid and unnecessary thing of going to Ann Arbor to steal from a fraternity house, a fraternity of which he was a member.

And then came the planning for this crime. Murder was the least part of it; to kidnap and get the money, and kill in connection with it; that was the childish scheme growing up in these childish minds. And they had it in mind for five or six months, planning what? Planning where every step was foolish and childish, acts that could have been planned in an hour or a day; planning this, and then planning that, changing this and changing that; the weird actions of two mad brains.

Counsel have laughed at us for talking about fantasies and hallucinations. They have laughed at us in one breath, but admitted it in another. Let us look at that for a moment, your honor. Your honor has been a child. I well remember that I have been a child. And while youth has its advantages, it has its grievous troubles. There is an old prayer, "Let us grow old in years, but retain the heart of a child"—the heart of a child with its strong emotion, with its abundant life, with its disregard of consequences, with its living in the moment and for the moment and for the moment alone, with its lack of responsibility, with its freedom from care.

The law knows and has recognized childhood for many and many a long year. What do we know about childhood? The brain of the child is the home of dreams, of castles, of visions, of illusions and of delusions. In fact, there could be no childhood without delusions, for delusions are always more alluring than the fact. Delusions, dreams and hallucinations are a part of the warp and woof of childhood. You know it and I know it.

Childhood Full of Dreams and Illusions

I remember when I was a child the men seemed as tall as the trees and the trees as tall as the mountains. I can remember very well when as a little boy, I do not know how old, I swam the deepest spot in the river for the first time. I swam breathlessly and landed with as much sense of glory and triumph as Julius Cæsar when he led his troops across the Rubicon. I have been back since, and I can almost step across the same place, but it was almost an ocean then. And those who I thought were so wonderful died and left nothing behind them. I had lived in a dream. I had never know the real world which I met, to my sorrow, to my discomfort and to my disillusion, that dispelled many of my illusions years later.

The whole life of childhood is a dream and an illusion, and whether they take one shape or another shape depends not upon the dreamy boy but on what surrounds him.

As well might I have dreamed of burglars and wished to be one as to dream of policemen and wish to be a policeman. Perhaps I was lucky, too, that I had no money. We have grown to think that the misfortune is in not having it.

The terrible misfortune in this terrible case is that they had money. That has destroyed their lives. That has given them these illusions. That has caused this mad act. And if your honor shall doom them to die it will be because they are the sons of the rich. Do you suppose if they lived up here on the northwest side and had no money, with the evidence as clear in this case as it is, that any human being would want to hang them?

Wealth, excessive wealth, is a grievous misfortune in every step in life. When I hear foolish people, when I read malicious newspapers talking of excessive fees in this case, it makes me ill. That there is nothing else in life, that it is to be presumed that no man lives to whom money is not the first concern, that human instincts, sympathy and kindness and charity and logic can only be used for cash—it shows how deeply money has corrupted the hearts of all people.

Now to get to Dickie Loeb. He was a child. The books he read by day were not the books he read by night. We are all of us molded somewhat by the influences around us and to people who read, perhaps books are the most and the strongest.

I know where my life has been molded by books, amongst other things. We all know where our lives have been molded by books, amongst other things. We all know where our lives have been influenced by books. The nurse, strict and jealous and watchful, gave him one kind of books—by night he would steal off and read the other.

Do you mean to tell me that Dickie Loeb had any more to do with his making than any other product of heredity that is born upon the earth? At this period of life it is not enough to take a boy—your honor, I wish I knew when to stop talking about this question that is interesting me so much—it is not enough to take a boy filled with his dreams and his fantasies and living in an unreal world, but the age of adolescence comes on him with all the rest. What does he know?

Both of these boys are in the adolescent age, both these boys whom every alienist in this case on both sides tells you is the most trying period in the life of a child, both these boys when the call of sex is new and strange, both these boys at a time seeking to adjust their young lives to the world, moved by the strongest feelings and pasions that have ever moved men, both these boys at the time boys grow insane, at the time crimes are committed, all this added to all the rest of the vagaries—do you charge them with the responsibility that we may have a hanging, that we may deck Chicago in a holiday garb and let the people have their fill of blood, that you may put stains upon the heart of every man, woman and child on that day and that the dead walls of Chicago will tell the story of blood?

For God's sake, are we crazy? In the face of history, of every line of philosophy, against the teaching of every religionist and seer and prophet the world has ever given us, we are still doing what our barbarous ancestors did when they came out of the caves and the woods!

From the age of 15 to the age of 20 or 21 the child has the burden of adolescence, of puberty and sex thrust upon him. Girls are kept at home and carefully watched. Boys without instruction are left to work it out themselves. It may lead o excess. It may lead to disease. It may lead to pervertson. Who is to blame? Who did it? Did Dickie Loeb do it?

Your honor, I am almost ashamed to talk about it. I can hardly imagine we are in the nineteenth or the twentieth century. And yet there are men who seriously say that for what nature has done, for what life has done, for what training has done, take the boys' lives.

Parents Good But Neglected Training of Boy

Now, there is not any mystery about this case, your honor. There isn't any mystery. I seem to be criticizing their parents. They had parents who were kind and good and wise in their way. But I say to you seriously that the parents of Dickie Loeb are more responsible than he. And yet few boys had better parents.

Your honor, it is the easiest thing in the world to be a parent. We talk of motherhood and yet every woman can be a mother. We talk of fatherhood, and yet every man can be a father. Nature takes care of that. It is easy to be a parent. But to be wise and farseeing enough to understand the boy—no, there are only a very few so wise and so farseeing as that, only a few. When I think of the light way nature has of picking out parents and populating the earth, having them born and die, I cannot hold human beings to the same degree of responsibility that young lawyers hold them when they are enthusiastic in a prosecution. I know what it means.

I know there is no better citizen in Chicago than the father of this poor boy. I know there is no better woman than his mother. But I am going to be honest with this court if it is at the expense of both.

Which, think you, shaped the life of Dickie Loeb? Is there any kind of question about it? Where did it come from? A child. Was it pure maliciousness, a boy of five or six or seven—was he to blame for it? Where did he get it? He got it where we all get our ideas, and these books became a part of his dreams and a part of his life, and as he grew up his visions became hallucinations. He went out on the street and fantastically directed his companions who were not there in their various moves to complete the perfect crime. Can there be any sort of question about it?

Youth Does Things Blindly

Suppose, your honor, that instead of this boy being here in this court under request of this court that he pronounce a sentence to hang him by the neck until dead he had been taken to a pathological hospital to be analyzed and the physicians had inquired into it, what would they have said? What would they have said? There is only one thing they could possibly have said. They would have traced it all back to the gradual growth of the child.

That is not all there is to it, your honor. Youth is hard enough. The only good thing about youth is that it has no thought and no care; and how blindly we can do things when we are young.

Where is the man who has not committed a crime in his youth? Let us be honest with ourselves. Let us look into our own hearts. How many men today, lawyers and congressmen and judges and even state's attorneys who have not done something when they were young? And if they did not get caught or it was trivial it was their good fortune, wasn't it?

We might as well be honest with ourselves, your honor; before I would tie a noose around the neck of a boy I would

try to call back into my mind the emotions of youth. I would try to remember what the world looked like to me when I was a child. I would try to remember how strong were these instinctive, persistent emotions that moved my life. I would try to remember how weak and inefficient was youth in the presence of the surging, controlling feelings of the child. One that remembers it and honestly remembers it and asks himself the question and tries to unlock the door that he thinks is closed and calls back the boy, he can understand the boy.

But, your honor, that is not all there is to boyhood. Nature is strong and she is pitiless. She works in her own mysterious way and we are her victims. We have not much to do with it ourselves. Nature takes this job in hand and we play our parts. In the words of old Omar Khayyam, we are only

"Impotent pieces in the game she plays
Upon this checker board of nights and days.
Hither and thither moves, and checks and slays,
And one by one back in the closet lays."

What had this boy to do with it? He was not his own father; he was not his own mother; he was not his own grandparents. All this was handed to him. He did not surround himself with governesses and wealth. He did not make himself. And yet he is to be made to pay.

Animals Were Tried In the Past

There was a time in England, running down as late as the beginning of the last century, when judges used to convene court and call juries to try a horse, a dog, a sow for crime. I have in my library a story of judges and juries, lawyers, trying and convicting an old sow for lying down on her ten pigs and killing them. And they stuck her. What does it mean? Animals were tried.

I know that one of two things happened to this boy; that this terrible crime was inherent in his organism, and came from some ancestor, or that it came through his education and his training after he was born. Do I need to prove it?

Judge Crowe said at one point in this case, when some witness spoke about his wealth—"probably that was responsible." Perhaps the judge has forgotten. To believe that any boy is responsible for himself or his early training is an absurdity that no lawyer or judge should be guilty of today.

Somewhere this came to this boy. If it came from his heredity, I do not know where or how. None of us are bred perfect and pure, and the color of our hair, the color of our eyes, our stature, the weight and fineness of our brain, and

everything about us, could be traced with absolute certainty somewhere; if we had the pedigree, could be traced just the same in a boy as it could in a dog, a horse or a cow.

Responsibility In Ancestors and Environment

I do not know what remote ancestor may have sent down the seed that corrupted him, and I do not know through how many ancestors it may have passed until it reached Dickie Loeb. All I know is, it is true, and there is not a biologist in the world who will not say I am right. If it did not come that way, then I know that if he was normal, if he had been understood, if he had been trained as he should have been it would not have happened. Not that anybody may not slip, but I know it and your honor knows it, and every school house and every church in the land is an evidence of it. Else why build them? Every effort to protect society is an effort toward it, or why do it? Every bit of training in the world proves it—and it likewise proves it fails.

I know that if this boy had been understood, and properly trained for him—and the training he got might have been the very best for some one else—but if it had been the proper training for him, he would not have been in this courtroom today with the noose above his head.

If there is responsibility anywhere, it is back of him, somewhere in the infinite number of his ancestors, or in his surroundings, or in both. And I submit, your honor, that under every principle of natural justice, under every principle of conscience, of right, and of law, he should not be made responsible for the acts of somebody else, whether wise or unwise.

And I say this again, let me repeat, without finding fault with his parents, for whom I have the highest regard, and who doubtless did the best they could. They might have done better if they had not had any money. I do not know. Great wealth curses everybody it touches.

This boy was sent to school. His mind worked; his emotions were dead. He could learn books, but he read detective stories. There never was a time since he was old enough to move back and forth according to what seemed to be his volition, when he was not haunted with these fantasies. Never once.

They made fun of Dr. White, the ablest, and I believe, the best psychiatrist today, for speaking about this boy's mind running back to teddybears he used to play with, and in addressing somebody he would say, "You know, Teddy." Well, your honor, it is nothing but the commonplace thing of the common-

place child or the ordinary man; a set of things, emotions, thoughts, feelings, take possession of the mind and we find them recurring over and over again.

I catch myself many and many a time repeating phrases of my childhood and I have not quite got into my second childhood yet. I have caught myself doing it while I still could catch myself. It means nothing. We may have all the dreams and the visions and build all the castles we wish, but the castles of youth should be discarded with youth and when they hang over to the time boys should have wiser things and know wiser things, then it is a diseased mind.

When I was young I thought as a child, I spoke as a child, I understood as a child; but now I have put off childish things, said the psalmist twenty centuries ago. It is when these conditions of boyhood, these fantasies of youth still stay, and the growing boy is still a child in emotion, a child in feeling, a child in hallucination, that you can say that it is the dreams and the hallucinations of childhood which are responsible for his conduct. And there is not an act in all this horrible tragedy that was not the act of a child, the act of a child wandering around in the morning of life, moved by the new feelings of a boy, moved by the uncontrolled impulses which the teaching was not strong enough to take care of, moved by the dreams and the hallucinations which haunt the brain of a child.

I say, your honor, it would be the height of cruelty, of injustice, of wrong and barbarism to visit the penalty upon this poor boy. Your honor, again I want to say that all parents can be criticised, grandparents and teachers, but science is not so much interested in criticism as in finding out the causes. Some time education will be more scientific. Some time we will try to know the boy before we educate him and as we educate him. Some time we will try to know what will fit him for what he knows, instead of putting them all through the same course, regardless of who they are. This boy needed more home, needed more love, more affection, more direction, directing. He needed to have his emotions awakened. He needed to have guiding hands along the serious road that youth must travel. Had these been given him, he would not be here today.

Leopold Had Remarkable Mind But Lacked Emotion

Now, your honor, I want to speak of the other lad, Babe. Babe is somewhat older than Dick, and is a boy of remarkable mind, everybody concedes that, away beyond his years. He is a sort of freak in this direction, as in others, a boy without emotions, a boy obsessed of philosophy, a boy obsessed of learning, busy every minute of his life. He went through school quickly, he went to college young; he could learn faster than almost everybody else.

His emotional life was lacking, as every alienist witness in this case excepting Dr. Krohn has told you. He was just a half boy, an intellect, an intellectual machine going without balance and without a governor, seeking to find out everything there was in life intellectually; seeking to solve every philosophy, but using his intellect only.

Of course, his family did not understand him; few men would. His mother died when he was young; he had plenty of money; everything given that he wanted, and too much given. Both these boys with unlimited money; both these boys with automobiles; both of these boys with every luxury around them and in front of them. They grew up in that environment.

"Babe" took to philosophy: I call him "Babe" not because I want it to affect your honor, but because everybody else does. Being the youngest of the family, I suppose that is where he got his nickname. We will call him a man. Mr. Crowe thinks it is easier to hang a man than a boy, and so I will call him a man if I can think of it.

Molded by Nietzschean Philosophy

He grew up in this way. He became enamored of the philosophy of Nietzsche. Your honor, I have read almost everything that Nietzsche ever wrote. A man of wonderful intellect; the most original philosophy of the last century. A man who had made a deeper imprint on philosophy than any other man within a hundred years, whether right or wrong. More books have been written about him than probably all the rest of the philosophers in a hundred years. More college professors have talked about him. In a way he has reached more people and still he has been a philosopher of what we might call the intellectual cult.

He had a philosophy which was different from any other philosophy, of modern times at least. He believed that some time the superman would be born, that everybody was working toward the superman, and some time there would be one, and he often confronted himself with the superman.

He wrote one book called, "Beyond Good and Evil," which was a criticism of all moral precepts, as we understand them, and a treatise that the intelligent man was beyond good and evil, that the laws for good and the laws for evil did not apply to anybody who approached the superman. He wrote on the will to power. He wrote some ten or fifteen volumes on his various philosophical ideas.

Nathan Leopold is not the only boy who has read Nietzsche. He may be the only one who was influenced in the way he was influenced, and even that is not true, most likely.

I have just made a few short extracts from Nietzsche, that show the things that he has read and that influenced him, and these are short and almost taken at random. It is not how it would affect you. It is not how it would affect me. The question is how it would affect the impressionable, visionary, dreamy mind of a boy.

At seventeen, at sixteen, at eighteen, while healthy boys were playing baseball or working on the farm, or doing odd jobs, he was reading Nietzsche, a boy who never should have seen it—too early for him. But he was possessed of it, and here are some of the doctrines which Nietzsche taught.

"Why so soft, oh, my brethren? Why so soft, so unresisting and yielding? Why is there so much disavowal and abnegation in your heart? Why is there so little fate in your looks? For all creators are hard and it must seem blessedness unto you to press your hand upon millenniums and upon wax. This new table, oh, my brethren, I put over you: Become hard. To be obsessed by moral consideration presupposes a very low grade of intellect. We should substitute for morality the will to our own end, and consequently to the means to accomplish that. A great man, a man to whom nature has built up and invented in a grand style, is colder, harder, less cautious and more free from the fear of public opinion. He does not possess the virtues which are compatible with respectability, with being respected, nor any of those things which are counted among the virtues of the herd."

A contemptuous, scornful attitude to all those things which the young are taught are important in life; a fixing of new values which are not the values by which any normal child has ever yet been raised, a philosophical dream, containing more or less truth, that was not meant by anybody to be applied to life. Again he says, "The morality of the master class is irritating to the taste of the present day because of its fundamental principle that a man has obligation only to his equal; that he may act to all of lower rank and to all that are foreign, as he pleases."

In other words, man has no obligations; he may do with all other men and all other boys, and all society, as he pleases—the superman, a creation of Nietzsche, but which has permeated every college and university in the civilized world. Again, quoting from a president of a university:

Believed They Were Supermen

"Although no perfect superman has yet appeared in history, Nietzsche's types are to be found in the world careers, Alexander, Napoleon, in the wicked heroes such as the Borgias, Wagner's Siegfried and Ibsen's Brand, and the great cosmopolitan intellects, such as Goethe and Stendahl. These were the gods of Nietzsche's idolatry.

"The superman-like qualities lie not in their genius, but in their freedom from scruple.

"They rightly felt themselves to be above the law. What they thought was right, not because sanctioned by any law beyond themselves, but because they did it. So the superman will be a law unto himself. What he does will come from the will and superabundant power within him."

Your honor, I could read for a week from Nietzsche, all to the same purpose, all to the same end. Counsel have said that because a man believes in murder that does not excuse him. Quite right. But in cases like the anarchists' case, where a number of men, perhaps honestly believing in revolution and knowing the consequences of their act and knowing its illegal character, were held responsible for murder.

Of course the books are full of statements that the fact that a man believes in committing a crime does not excuse him. That is not this case, and counsel must know that that is not this case. Here is a boy of 16 or 17 becoming obsessed with these doctrines. There isn't any question about the facts. Their own witnesses tell it and every one of our witnesses tell it. It was not a casual bit of philosophy with him; it was his life. He believed in a superman. He and Dickie Loeb were the supermen. There might have been others, but they were two, and two chums. The ordinary commands of society were not for him.

Many of us read it, but know that it has no actual application to life, but not he. It became a part of his being. It was his philosophy. He lived it and practiced it; he thought it applied to him, and he could not have believed it excepting that it either caused a diseased mind or was the result of a diseased mind.

Religious Obsessions Mitigating in Capital Crimes

Now let me call your attention hastily to just a few facts in connection with it. One of the cases is a New York case, where a man named Freeman became obsessed in a very strange way of religious ideas. He read the story of Isaac and Abraham and he felt a call that he must sacrifice his son. He arranged an altar in his parlor. He converted his wife to the idea. He took his little babe and put it on the altar and cut its throat. Why? Because he was obsessed of that idea. Was he sane? Was he normal? Was his mind diseased? Was this poor fellow responsible? Not in the least. And he was discharged, because he was the victim of a delusion.

Men are largely what their ideas make them. Boys are largely what their ideas make them. Here is a boy who by day and by night, in season and out, was talking of the superman, owing

no obligations to anyone, whatever gave him pleasure he should do, believing it just as another man might believe a religion or any other philosophical theory.

You remember I asked Dr. Church about these religious cases and he said, "yes, many people go to the insane asylum on account of it, that they place a literal meaning on it and believe it thoroughly." Many of them. I asked Dr. Church, whom I again say I believe to be an honest man and intelligent man—I asked him whether the same thing might be done or might have come from a philosophical belief, and he said, if he believed it strong enough. And I asked him about Nietzsche. He said he knew something of Nietzsche, something of his responsibility for the war, for which he perhaps is not responsible. He said he knew something about the doctrine. I asked him what became of him and he said he was insane for fifteen years until the time of his death. His very doctrine is a species of insanity.

Could Gain Nothing From Crime

Here is a man, a wise man, perhaps not wise, but brilliant, a thoughtful man, who has made his impress upon the world. Every student of philosophy knows him. His own doctrines made him a maniac. And here is a young boy, in the adolescent age, harassed by everything that harasses children, who takes this philosophy and swallows it, who believes it literally, lives his life on it. It is a part of his life. It is his life. Do you suppose this mad act could have been done by him in any other way?

What did he have to get out of it? A boy with a beautiful home, with automobiles, a graduate of college, going to Europe, and then studying law at Harvard, as brilliant in intellect as any boy that you could find, a boy with every prospect that life might hold out to him, and yet he goes out and commits this weird, strange, wild mad act, that he may die on the gallows or live in a prison cell until he dies of old age.

He did it, obsessed of an idea, perhaps to some extent influenced by what has not been developed publicly in this case, perversions that were present in this case. Both signs of insanity, both together with this act, proving a diseased mind.

Is there any question about what was responsible for him? What else could be? What else?

To take a boy in his youth, with every promise that the world could hold out before him, wealth and position and intellect, yes, genius, scholarship, nothing that he could not obtain, and throw it away, and mount the gallows or go into a cell for life. It is too foolish to talk about.

Can you honor imagine a sane brain doing it? Can you imagine it coming from anything but a diseased mind? Can you

imagine it is any part of normality? And yet, your honor, you are asked to hang a boy of his age, abnormal, obsessed of dreams, visions, a philosophy that destroyed his life, when there is not any sort of question in the world as to what caused his downfall, not the slightest.

Now, I have said that, as to Loeb, if there is anybody to blame it is back of him. Your honor, there are lots of things happen in this world that nobody is to blame for. In fact, I am not very much for settling blame myself. If I could settle the blame on somebody else for this special act, I would wonder why that somebody else did it, and I know if I could find out, I would move it back another peg.

Life Inextricably Woven

I know, your honor, that every atom of life in all this universe is bound up together. I know that a pebble cannot be thrown into the ocean without disturbing every drop of water on the earth. I know that every life is inextricably mixed and woven with every other life. I know that every influence, conscious and unconscious, acts and reacts on every living organism, and that no one can fix the blame. I know that all life is a series of infinite chances, which sometimes result one way and sometimes another.

I cannot tell. I have not the infinite wisdom that can fathom it, neither has any other human brain. But I do know that if back of it is a power that made it, that power alone can tell, and if there is no power, then it is an infinite chance, which man alone cannot solve.

Why should this boy's life be bound up with Frederick Nietzsche, who died thirty years ago, insane, in Germany? Why I don't know. I know it is. I know that no man who ever wrote a line that I read failed to influence me to some extent. I know that every life I ever touched influenced me, and I influenced them and that it is not given to me to unravel the infinite causes and say, this is I and this is you. I am responsible for so much, and you are responsible for so much.

I know—I know that in the infinite universe everything has its place and that the smallest particle is a part of all. Tell me that you can visit the wrath of fate and chance and life and eternity upon a 19-year-old boy! If you could, justice would be a misnomer and mercy would be a fraud. I might say further about Nathan Leopold—where did he get this philosophy—at college? He did not make it, your honor. He did not write these books, and I will venture to say there are at least 50,000 books on Nietzsche and his philosophy. I never counted them, but I will venture to say that there are that many in the libraries of the world.

Nietzsche's Philosophy Had Tremendous Influence

No other philosopher ever caused the discussion that Nietzsche has caused. There is not a university in the world where the professors are not familiar with Nietzsche, not one. There is not an intellectual man in the world whose life and feelings run to philosophy that is not more or less familiar with the Nietzschean philosophy. Some believe it and some do not believe it. Some read it as I do and take it as a theory, a dream, a vision, mixed with good and bad, but not in any way related to human life. Some take it seriously. The universities perhaps do not all teach it, for perhaps some teach nothing in philosophy; but they give the boys the books of the masters and tell them what they think about it and they discuss it.

There is not a university in the world of any high standing where the professors do not tell you about Nietzsche and discuss it, or where the books are not there. I will guarantee that you can go down to the University of Chicago today, in its big library, and find over a thousand volumes on Nietzsche, and I am sure I speak moderately.

If this boy is to blame for this, where did he get it? Is there any blame attached because somebody took Nietzsche's philosophy seriously and fashioned his life on it? And there is no question in this case but what that is true. Then who is to blame? The university would be more to blame than he is. The scholars of the world would be more to blame than he is. The publishers of the world—and Nietzsche's books are published by Macmillan, one of the biggest publishers in the world—are more to blame than he is.

Your honor, it is hardly fair to hang a 19-year-old boy for the philosophy that was taught him at the university. It does not meet my ideas of justice and fairness to visit upon his head the philosophy that has been taught by university men for twenty-five years.

Now, I do not want to be misunderstood about this. Even for the sake of saving the lives of my clients, I do not want to be dishonest, and tell the court something that I do not honestly think in this case. I do not think that the universities are to blame. I do not think they should be held responsible. I do think, however, that they are too large, and that they should keep a closer watch, if possible, upon the individual.

But you cannot destroy thought because, forsooth, some brain may be deranged by thought. It is the duty of the university, as I conceive it, to be the great storehouse of the wisdom of the ages, and to have its students come there and learn and choose. I have no doubt that it has meant the death of many; that we cannot help.

All Progress Marked by Calamity

Every changed idea in the world has had its consequences. Every new religious doctrine has created its victims. Every new philosophy has caused suffering and death. Every new machine has carved men while it served the world. No railroad can be built without the destruction of human life. No great building can be erected but what unfortunate workmen fall to the earth and die. No great movement but what bears its toll of life and death; no great ideal but what does good and harm, and we cannot stop because it may be harmful.

It is responsible for this boy's mad act. I have no idea in this case that this act would ever have been committed or participated in by him excepting for the philosophy which he had taken literally, which belonged to older boys and older men, and which no one can take literally and practice literally and live. It cannot be done.

So, your honor, I do not mean to unload this on that man or this man, or this organization or that organization, I am trying to trace causes. I am trying to trace them honestly. I am trying to trace them with the light I have. I am trying to say to this court that these boys are not responsible for this, and that their act was due to this and this, and this and this, and asking this court not to visit the judgment of its wrath upon them for things for which they are not to blame.

There is something else in this case, your honor, that is stronger still. Have you got those letters? (Addressing Benjamin Bachrach.) There is a large element of chance in life. I know I will die. I don't know when; I don't know how; I don't know where; and I don't want to know. I know it will come. I know that it depends on infinite chances. Do I live to myself? Did I make myself? And control my fate? Can I fix my death unless I suicide, and I cannot do that because the will to live is too strong. I know it depends on infinite chances.

Take the rabbit running through the woods, and a fox meets him at a certain fence. If the rabbit had not started when it did it would not have met the fox and would have lived longer. If the fox had started later or earlier it would not have met the rabbit and its fate would have been different.

My death will depend upon chances. It may be the breathing of a germ; it may be a pistol; it may be the decaying of my faculties and all that makes life; it may be a cancer; it may be any one of an infinite number of things, and where I am at a certain time and whether I breathe that germ, and the condition of my system when I breathe it is an accident which is sealed up in the book of fate and which no human being can open.

How did these boys happen to do this? Haven't you those letters?

MR. BACHRACH—No, I haven't got the transcript.

MR.—DARROW—Your honor, I will have to pass to something else and read that afterward.

Took Two Such Minds to Commit This Strange Crime

These boys, neither one of them, could possibly have committed this act excepting by joining. It was not the act of one; it was the act of two. It was the act of their planning, their coniving, their believing in each other, their thinking themselves supermen. Without it they could not have done it. It would not have happened.

Their parents happened to meet; some sort of chemical alchemy operated so that they cared for each other, and poor Bobby Franks' dead body was found in the culvert. Neither of them could have done it alone.

I want to call your attention, your honor, to the two letters in this case which settle this matter to my mind conclusively; not only to the condition of these boys' minds, but the terrible fate that overtook them.

Your honor, I am sorry for poor Bobby Franks, and I think anybody who knows me knows that I am not saying it simply to speak. I am sorry for the bereaved father and the bereaved mother, and I would like to know what they would do with these poor unfortunate lads who are here in this court today. I know something of them, of their lives, of their charity, of their ideas, and nobody here sympathizes with them more than I.

On the 21st day of May poor Bobby Franks, stripped and naked, was left in a culvert down near the Indiana line. I know it came through the mad act of mad boys. Mr. Savage told us that Franks, if he had lived, would have been a great man and accomplished much. I want to leave this thought with your honor before luncheon.

Bobby Franks' Death Was Act of Fate

I do not know what Bobby Franks would have been had he grown to be a man. I do not know the laws that control one's growth. Sometimes, your honor, a boy of great promise is cut off in his early youth. Sometimes he dies and is placed in a culvert. Sometimes a boy of great promise stands on a trapdoor and is hanged by the neck until he is dead. Sometimes he dies of diphteria. Death somehow pays no attention to age, sex, prospects or wealth. It pays no attention to intellect. It comes, and perhaps, perhaps—I can only say perhaps, for I never professed to unravel the mysteries of fate, and I cannot tell; but I can say

—perhaps, the boy who died at 14 did as much as if he had died at 70, and perhaps the boy who died as a babe did as much as if he had lived longer.

Perhaps, somewhere in fate and chance, it might be that he lived as long as he should. And what I want to say is this, that the death of poor little Bobby Franks should not be in vain. Would it mean anything if on account of that death, these two boys were taken out and a rope tied around their necks, and they died felons, and left a blot upon the names of their families? Would that show that Bobby Franks had a purpose in his life and a purpose in his death? No, I say this, your honor, that the unfortunate and tragic death of this weak young lad should mean something. It should mean an appeal to the fathers and the mothers, an appeal to the teachers, to the religious guides, to society at large. It should mean an appeal to all of them to appraise their children, to understand the emotions that control them, to understand the ideas that possess them, to teach them to dodge the pitfalls of life.

It should be, to the millions of mothers who have read of this case and the millions of fathers who have read of it and the brothers and sisters who have read of it, that the death of Bobby Franks will teach them to examine their own children, their own families, their own brothers, their own sisters, to see what is in them or what may be in them, or what may be avoided to prevent future tragedies like this. And society, too, should take its share of this case, and make, not two more tragedies, but use it as best it can to make life safer, to make childhood easier and safer, to do something to cure the cruelty, the hatred, the chance and the willfulness of life.

If the Court please, I have discussed somewhat in detail these two boys separately. Their coming together was a means of their undoing. Your honor is familiar with the facts in reference to their association.

They had a weird, almost impossible relationship. Leopold, with his idea of the superman, had repeatedly said that Loeb was his ideal of the superman. He had the attitude toward him that one has to his most devoted friend, or that a man has to a lover. Without the combination of these two, nothing of this sort probably could have happened.

It is not necessary for us, your honor, to rely upon words to prove the condition of these boys' minds and to prove the effect of this strange and fatal relationship between these two boys. It is mostly told in a letter which the state itself has introduced in this case. Not the whole story, but enough of it is shown, so that I take it that no intelligent, thoughtful person could fail to realize what was the relation between them and how they had played upon each other to effect their downfall and their ruin.

Letter Depicts Diseased Mind

I want to read this letter once more, a letter which was introduced by the state, and the enclosure with it, a letter dated October 9th, a month and three days before their trip to Ann Arbor, and I want the court to say in its own mind whether this letter was anything but the product of a diseased mind, and if it does not show a relation that was responsible for this terrible homicide?

This was the letter written by Leopold to Loeb. Of course they lived close together, only a few blocks from each other, saw each other every day, but Leopold wrote him this letter.

Mr. Darrow then began to read the "Dear Dick" letter into the record. He toned down a part of it that was unprintable.*

MR. CROWE—Mr. Darrow, I would suggest that you let the court read the exact language.

MR. DARROW—Where I skipped?

MR. CROWE—Yes, where you skipped, so that he will understand what the thing is about.

THE COURT—I will read the original.

MR. CROWE—I would like to have you read it now, because it will throw a light on the whole matter.

THE COURT—All right; I will read it.

MR. DARROW—Your honor can easily remember the few words I may have left out.

THE COURT—Yes.

MR. DARROW—The court remembers it. Now, I undertake to say that under any interpretation of this case, taking into account all the things your honor knows, that have not been made public, or leaving them out, there is nobody can interpret that letter excepting on the theory of a diseased mind, and with it goes this strange document which was referred to in the letter:

"I, Nathan F. Leopold Jr., being under no duress or compulsion, do hereby affirm and declare that on this, the 9th day of October, 1923, I, for reasons of my own, locked the door of the room in which I was with one Richard A. Loeb, with the intent of blocking his only feasible mode of egress, and that I further indicated my intention of applying physical force upon the person of the said Richard A. Loeb, if necessary to carry out my design, to wit to block his only feasible mode of egress."

* Note: For contents of letter see Facts of Case in back of book.

There is nothing in this case, whether heard alone by the court or heard in public, that can explain these documents, in the light of normal human beings, that throw any light upon the character of this relation, upon the kind of mind of these two boys.

I want to call your attention then to an extract from another letter by Babe, if I may be permitted to call him Babe up to the time of his death. This is written by Leopold on the Twentieth Century train, the day after the other letter was written, and in it he says,

"Now, that is all that is in point to our controversy."

MR. DARROW—The whole letter, I know, has been read, and I think your honor will probably reread it:

"But I am going to add a little more in an effort to explain my system of the Nietzschean philosophy with regard to you."

MR. DARROW—We don't need witnesses, we don't need his schoolmates, his classmates, his teacher and all the rest about his Nietzschean philosophy. It is here in this letter.

"It may not have occurred to you why a mere mistake in judgment on your part should be treated as a crime when on the part of another it should not be so considered.

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

MR. DARROW—If that is a sane expression, your honor, the rest of the world is crazy.

"Now obviously any code which conferred upon an individual or upon a group extraordinary responsibility, would be unfair and bad. Therefore, the superman is held to have committed a crime every time he errs in judgment, a mistake excusable in others. But you may say that you have previously made mistakes which I did not treat as crimes. This is true.

"To cite an example, the other night you expressed the opinion, and insisted, that Marcus Aurelius Antoninus was practically the founder of stoicism. In so doing you committed a crime. But it was a slight crime, and I chose to forgive it.

"I have, and had before that, forgiven the crime which you committed in committing the error in judgment which caused the whole train of events.

"I did not and do not wish to charge you with crime, but I feel justified in using any of the consequences of your crime for which you are held responsible, to my advantage. This and only this I did, so you see how careful you must be."

MR. DARROW—Is that the letter of a normal eighteen-year-old boy, or is it the letter of a diseased brain?

Mistake Was the Only Crime that Could be Committed

Is that the letter of boys acting as boys should, and thinking as boys should, or is it the letter of one whose philosophy has taken possession of him, who understands what the world calls crime as something that the superman may do, who believes the only crime the superman can commit is to make a mistake. He believed it. He was immature. It possessed him.

It was material in the strange weird compact that the court already knows about between these two boys by which each was to give something. Out of that compact and out of these diseased minds grew this terrible crime.

Do you tell me this was the act of a normal boy, of a boy who thinks and feels as a boy should, who has the thoughts and emotions and physical life that boys should have! There is not a thing in all of it that corresponds with normal life. There is a weird, strange, unnatural disease in all of it which is responsible for this deed.

Your honor, it seems to be beyond argument and beyond question. I submit to you it is not the evidence of these boys alone. It is proven by the writings, it is proven by every act. It is proven by their companions, and there can be no question about it.

We brought into this courtroom a number of their boy friends, whom they had known day by day, who had associated with them in the clubhouse, were their constant companions, and they tell the same stories. They tell the story that neither of these two boys was responsible for their conduct.

Maremont, whom the state first called, one of the oldest of the boys, put on by them in the first instance, said that Leopold had never had any judgment of any sort. They talked about the superman. He argued his philosophy. It was a religion with him. But as to judgment of things in life he had none.

Loeb Considered Childish at College

Developed intellectually, wanting emotionally, developed in those things which a boy does not need and should not have at his age, but absolutely void of the healthful feelings, of the healthful instincts of practical life that are necessary to the child.

We called not less than ten or twelve of both of these, all of them saying the same. Here was Dickie Loeb, who was not allowed by his companions the privileges of his class because of his childishness and his lack of judgment. Nobody denies it, and yet the state's attorney makes a play here on account of this girl, whose testimony was so important. Miss Nathan.

What did the state's attorney do in this matter? Before we ever got to these defendants they were called in before the grand jury, purported to issue subpoenas before the grand jury and the state's attorneys called into their office young boys and girls just when this question broke.

Without any friends, without any counsel; they were questioned in the state's attorney's office, and they were asked to say whether they had seen anything strange, or insane about these boys, and they said no, several of them. Not one of them had any warning, not one of them had any chance to think, not one of them knew what it meant, not one of them had a chance to recall the lives of both and they were in the presence of lawyers and policemen and officers, and still they seek to bind these young people by that.

Miss Nathan is quoted as saying that she never saw any mental disease about them, and yet she said they refused to put down all she said and directed the reporter not to take all she said; that she came in there from a sickbed without notice. She had no time to think about it, and then she told this court of her association with him, and the strange, weird, childish things he did.

One other witness, a young man, and only one other, was called in there and examined by the state's attorney on the day that this confession was made, and we placed him on the stand and he practically tells the same story, that he had no chance to think about it, he had no chance to consider the conduct of these boys.

He was called in immediately and the question was put to him, and when he was called by us and had an opportunity to consider it and know what it meant, he related to this court what has been related by every other witness in this case.

As to the condition of these boys amongst their fellows, that they were irresponsible, that they had no judgment, that they were childish, that their acts were strange, that their beliefs were impossible for boys, is beyond question in this case.

And what did they do on the other side? It was given out that they had a vast array of witnesses. They called three. A professor who talked with them only upon their law studies, and two others who admitted all we said, on cross-examination, and the rest were dismissed. So it leaves all of this beyond dispute and admitted in this case.

Now both sides have called alienists and I will refer to that for a few moments. I shall only take a little time with the alienists.

The facts here are plain; when these boys had made the confession one Sunday afternoon before their counsel or their friends had any chance to see them, Mr. Crowe sent out for four men. He sent out for Dr. Patrick, who is an alienist; Dr. Church, who is an alienist; Dr. Krohn, who is a witness, a testifier, and Dr. Singer, who is pretty good. I would not criticize him, but I would not class him with Patrick and with Church.

I have said to your honor that in my opinion he sent for the two ablest men in Chicago as far as the public knows them, Dr. Church and Dr. Patrick. I have said to your honor if Judge Crowe had not got to them first I would have tried to get them. I not only would have tried, but I say I would have succeeded.

State Alienists Might Have Testified For Defense

You heard Dr. Church's testimony. Dr. Church is an honest man, though an alienist. Under cross-examination he admitted every position which I took. He admitted the failure of emotional life in these boys; he admitted its importance; he admitted the importance of belief strongly held in human conduct.

He said himself that if he could get at it all he would understand what was back of this strange murder. Every single position that we have claimed in this case Dr. Church admitted.

Dr. Singer did the same. The only difference between them was this, it took me one question to get Dr. Church to admit it, and it took me ten to a dozen to get Dr. Singer. He objected and hedged and ran and quibbled. There could be no mistake about it, and your honor heard it in this courtroom. He sought every way he could to avoid the truth, and when it came to the point where he could not dodge any longer he admitted every proposition just exactly the same as Dr. Church admitted them. Every one of them. The value of emotional life; its effect on conduct; that it was the ruling thing in conduct, as every person knows who is familiar with psychology and who is familiar with the human system. Everybody knows it.

Could there be any doubt, your honor, but what both these witnesses, Church and Singer, or any doubt but what Patrick would have testified for us?

Now what did they do? What kind of a chance did they have? It was perfectly obvious that they had none. Church, Patrick and Krohn went into a room with these boys who had been in the possession of the state's attorney's office for more than two days, sixty hours; who were surrounded by policemen, who were surrounded by guards and detectives and state's attorneys; twelve or fifteen of them, and here they told their story.

Of course they had a friendly attitude toward them. I know my friend, Judge Crowe, had a friendly attitude because I saw divers, various and sundry pictures of Prosecutor Crowe taken with these boys. When I saw them I believed it showed friendship for the boys, but now I am inclined to think he had them taken just as a lawyer who goes up in the country fishing and has his picture taken with a string of fish, or the man who goes shooting has his picture taken with a dead animal. Here was his prey.

All right. They had been led doubtless to believe that these people were friends. They were taken there, in the presence of all this crowd. What was done? They told their story and that was all. Of course, Krohn remembered a lot that did not take place—and we would expect that of him; and he forgot much that did take place—and we would expect that of him, too.

So far as the honest witnesses were concerned, they said that not a word was spoken excepting a little conversation upon birds and the relation of the story that they had already given to the state's attorney; and from that, and nothing else, both Patrick and Church said they showed no reaction as ordinary persons should show and intimated clearly that the commission of the crime itself would put them on caution as to whether these boys were right; both admitting that the condition surrounding them made the right kind of examination impossible; both admitting, according to their own books, that they needed something else. The most they said was that at this time they saw no signs of insanity.

Alienists for State Disagree

Now your honor, there have been no experts, there have been no alienists with any chance to examine, who have testified that these boys were normal—none of them. Singer did a thing more marvellous still. He never saw these boys until he came into this court, excepting when they were brought down in violation of their constitutional rights to the office of Judge Crowe, after they had been turned over to the jailer, and there various questions were asked them, and to all of them the boys replied they respectfully refused to answer on advice of counsel. And yet that was enough for Singer.

Your honor, if these boys had gone to the office of any of these eminent gentlemen, been taken by their parents or gone by themselves and the doctors had seriously tried to find out whether there was anything wrong about their minds, how would they have done it? They would have taken them patiently and carefully. They would have sought to get their story. They would listen to it in the attitude of a father listening to its child. You know it. Every doctor knows it. In no other way could they find out, and the men who are honest in connection with this question have admitted it. And yet Dr. Krohn will testify that they had the best chance in the world, when his own associates, sitting where they did, said they did not.

Your honor, nobody's life or nobody's liberty or nobody's property should be taken from them upon an examination like that. It was not an examination. It was simply an effort to get witnesses, regardless of facts, who might at some time come into court and give testimony, to take these boys' lives.

Praises Dr. White

Now, I imagine that in closing this case Judge Crowe will say that our witnesses mainly come from abroad. That is true. And he is responsible for it. I am not blaming him, but he is responsible for it. There are other alienists in Chicago, and the evidence shows that we had them examined by numerous alienists in Chicago. We wanted to get the best. Did we get them? Your honor knows that the place a man lives does not affect him as to truthfulness or as to his ability.

We had the man who stands probably above all of them, and who certainly is far superior to anybody called upon the other side. First of all, we got Dr. White. And who is he? For many years he has been superintendent of the government hospital for the insane in Washington, a man who has written more books, delivered more lectures and had more honors and who knows this subject better than all of their alienists put together; a man who came here plainly not for money, without any fee beyond what was set by the other side, a man who knew his subject, and whose ability and truthfulness must have impressed this court.

It will not do, your honor, to say that because Dr. White is not a resident of Chicago, that he lies. No man stands higher in the United States, no man is better indorsed than Dr. White, and his appearance, his intelligence upon this witness stand shows for itself.

Who else did we get? Do I need to say anything about Dr. Healy? Is there any question about his integrity? A man who does not go into court except upon the order of the court. Your honor was connected with the Municipal Court. You know that Dr. Healy was the first man who operated with the courts in the

City of Chicago to give unfortunate youths whose minds were afflicted or who deserved it, aid. No man stands higher in Chicago than Dr. Healy. No man has done so much work in the study of adolescence. No man has either read or written or thought or worked so much with children.

No man knows the adolescent boy as well as Dr. Healy. Beginning his research and his practice in the city of Chicago and organizing this business here in the city of Chicago, finally becoming a director of the Baker Foundation in Boston and moving to Boston and connected with the courts of Boston ever since. His works are known wherever men study boys. His reputation is known all over the United States. Compare him and his reputation with Dr. Krohn. Compare it with any other witness that they called in this case. Nobody stands higher.

Dr. Glueck, who was for years the alienist at Sing Sing, connected with all the institutions in the state of New York. He is a man of eminent attainments, who would impress anybody with his worth and his learning. Nobody is his superior. And Dr. Hulbert, a young man who spent nineteen days in this examination, together with an eminent doctor in his line from Boston, who spent all his time getting every detail of these boys' lives, and these boys' structures.

Each one of these alienists took all the time he wanted for a thorough examination, without lawyers, detectives and policemen present, where they could get at the facts; and each one of them telling this court the story, the sad, pitiful story, of the unfortunate brains of these two young lads.

I submit, your honor, that there can be no question about the relative value of these two sets of alienists, there can be no question of their means of understanding, there can be no question but what White, Glueck, Hulbert and Healy knew what they were talking about, for they had every chance to find out. They are either lying to this court or their statement is true. On the other hand, not one single man called by the state had any chance to know. He was called in to see these boys, the same as they would call in a hangman: "Here are boys; officer, do your duty." And that is all there was of it.

Law of Humanity Calls For Mercy

Now, your honor, I shall pass that subject. I think all the facts of this extraordinary case, all of the testimony of these alienists, all that your honor has seen and heard, all their friends and acquaintances who have come here to enlighten this court—I think all of it shows that this terrible act was the act of immature and diseased brains, the act of children. Nobody could explain it in any other way. No one could imagine it in any other

way. It is not possible it could have happened in any other way. And I submit, your honor, that by every law of humanity, by every law of justice, by every feeling of righteousness, by every instinct of pity, mercy and charity to boys like these your honor should say that because of the condition of these boys, the condition of their minds, all of this should not be visited upon them with the vengeance that is asked by the state.

I want to discuss now another thing which this court must consider and which to my mind is absolutely conclusive in this case. That is, the age of these boys, independent of everything else. I want to discuss it more in detail than I discussed it before, and I submit, your honor, that it is not possible for any court to hang these two boys if he pays any attention whatever to the modern attitude toward children; if he pays any attention whatever to the precedents in this county; if he pays any attention whatever to the humane instincts which move ordinary men.

Hanging an Ancient Superstition

I have a list of executions in Cook county beginning in 1840, which I presume covers the first one, because I asked to have it go to the beginning. Ninety poor, unfortunate men have yielded up their lives to stop murder in Chicago, but still it goes on. Ninety men have been hanged by the neck until dead, because of the ancient superstition that in some way hanging one man keeps another from committing a crime. The ancient superstition, I say, because I defy them to point to a criminologist, a scientist, a student, who has ever said it.

Still we go on with it, as if human conduct was not influenced and brought about by the same law that everything else is brought about by, as if there was not a cause for it. We go on saying, "Hang them and it will end." Was there ever a crime without a cause? And yet all punishment proceeds upon the theory that there is no cause, and the only way to treat it is to intimidate everyone into goodness and obedience to law. We lawyers are a long way behind.

Crime has its cause. Perhaps all crimes do not have the same cause, but they all have some cause. And people today are seeking to find out the cause. We lawyers never try to find out. Scientists are studying it, criminologists are investigating it, religionists, of course, have always believed it, but we lawyers go on and on, hanging and punishing, and thinking that by general terror we can prevent crime. They used to do that with disease.

If a doctor was called on to treat typhoid fever he would probably try to find out what kind of milk or water the patient was drinking, and perhaps clean out the well so that no one else would have typhoid. But if a lawyer was called on to treat a

typhoid patient, he would give him thirty days in jail, and then he would think nobody else would ever have it. And if he got well in fifteen days, he would keep him because his time was not out, and if he was worse at the end of thirty days, he would let him go because his time was out.

Hanging Was Meant For Exhibition

Once in England they hanged children seven years of age—and not necessarily hanged them, because hanging was never meant for punishment; it was meant for an exhibition. If somebody committed crime, he would be hanged by the head or the heels, it didn't matter much which way, yes, but hanged.

Hanging was an exhibition. They were hanged on the highest hill, and hanged at the crossways, and hanged in public places, so that all men could see. If there is any virtue in hanging that is the way to do it, because you cannot awe men into goodness unless they know about the hanging. We have not grown better than the ancients.

We have grown more squeamish, we do not like to look at it, that is all. They hanged them at seven; they hanged them again at eleven and fourteen. As I remember it, we have gotten the law in Illinois up to sixteen—anyhow, we have got it up to fourteen. In some states of the Union they raised it to twenty-one. And we have raised it. We have raised it by the humanity of courts, by the understanding of courts, by the progress in science which at last is reaching the law; and in ninety men hanged in Illinois from its beginning, not one single person under twenty-four was ever hanged upon a plea of guilty. Not one.

Shows Record of Hanging in Illinois

If your honor should do this, you would run against every precedent that had been set in Illinois for almost a century. There can be no excuse for it, and no justification for it, because this is the policy of the law which is rooted in the feelings of humanity which are deep in every human being that thinks and feels. There have been two or three cases where juries have convicted boys younger than this, and where courts on convictions have refused to set aside the sentence because a jury had found it.

First, I want to call your attention, your honor, to the cases on pleas of guilty in the state of Illinois. Back of the year 1896 the record does not show ages. After that, which is the large part, probably sixty out of ninety, they all show the age. Not the age at which they are hanged, as my friend Marshall thought, but the age at the commission of the offense, as is found today.

The first hanging in Illinois—the first hanging on a plea of guilty in Illinois was May 15, 1896, when a young man twenty-four years old, a colored man, was sentenced to death by Judge Baker. Judge Baker I knew very well; a man of ability, a fine

fellow, but a man of moods. I do not know whether the court remembers him; but that was the first hanging on a plea of guilty to the credit of any man in Illinois—I mean in Chicago. I have not got the statistics of the state, but I am satisfied they are about the same, and that boy was colored, and twenty-four, either one of which should have excused him from death, but the color probably had something to do with compassing his destruction.

The next man was Julius Mannow. Now he really was not hanged on a plea of guilty though the records so show. I will state to your honor just what the facts are. Joseph Windreth and Julius Mannow were tried together in 1896 on a charge of murder with robbery. When the trial was nearly finished Julius Mannow withdrew his plea of not guilty. He was defended by Elliott. And under what he supposed was an agreement with the court he pleaded this man guilty after the case was nearly finished.

Now I am not here to discuss which was right or which was wrong. Judge Horton, who tried this case, did not sentence him, but he waited for the jury's verdict on Windreth, and they found him guilty and sentenced him to death and Judge Horton followed that sentence. Had this case come into that court on a plea of guilty it probably would have been different, perhaps not, but it really was not a question of a plea of guilty, and he was twenty-eight or thirty years old. I might say in passing as to Judge Horton: He was never noted in Chicago for his kindness and his mercy, and everybody who remembers knows that I am stating the truth.

The next man who was hanged on a plea of guilty was Daniel McCarthy, twenty-nine years old, in 1897, by Judge Stein. Well, he is dead. I am very careful about being kind to the dead, so I will say that he never knew what mercy was, at least while he lived. Whether he does now, I cannot say. Otherwise he was a good lawyer. That was in 1897.

It was twenty-two years, your honor, before anybody else was hanged in Cook county on a plea of guilty. But twenty-two years later, in 1919, Thomas Fitzgerald, a man about forty years old, sentenced for killing a little girl, pleaded guilty before my friend Judge Crowe, and he was put to death. And that is all. Since that time one other man has been sentenced to death on a plea of guilty. That was James H. Smith, twenty-three years old, sentenced by Judge Kavanagh. But we were spared his hanging through reprieve. That was in January, 1923. I could tell you why it was, and I will tell you later.

Your honor, what excuse could you possibly have for putting these boys to death? You would have to turn your back on every precedent of the past. You would have to turn your back on the progress of the world. You would have to ignore all human sentiment and feeling, of which I know the court is full. You would

have to do all this if you would hang boys of eighteen and nineteen years of age who have come into this court and thrown themselves upon your mercy. I might do it, but I would want good reason for it, which does not exist and cannot exist in this case, unless publicity, worked-up feeling, strong feeling, mad hate, is the reason, and I know it is not. It is due to the cruelty that has paralyzed the hearts of men growing out of the war. We are used to blood, your honor. It used to look mussy and make us feel squeamish.

War Paralyzed Hearts of Man

But we have not only had it shed in bucketsful, we have it shed in rivers, lakes and oceans, and we have delighted in it, we have preached it, we have worked for it, we have advised it, we have taught it to the young, encouraged the old, until the world has been drenched in blood, and it has left its stains of blood upon every human heart and upon every human mind, and has almost stifled the feelings of pity and charity in humanity that have their natural home in the human heart.

You may go over every hanging, and if your honor shall decorate the gallows with these two boys your honor will be the first in Chicago who has ever done such a deed. And I know you will not.

Your honor, I must hasten along, for I will close tonight. I know I should have closed before. Still there seems so much that I would like to say. I will spend a few more minutes on this record of hangings.

There was one boy nineteen years old, Thomas Schultz, who was convicted by a jury and executed. There was one boy who has been referred to here, eighteen, Nicholas Viani, who was convicted by a jury and executed. No one else under twenty-one, your honor, has been convicted by a jury and sentenced to death. Now, let me speak a word about these.

Schultz was convicted in 1912. Viani was convicted in 1920. Of course, I believe it should not have happened, but your honor knows the difference between a plea of guilty and a verdict.

It is easy enough for a jury to divide the responsibility by twelve. They have not the age and the experience, and the charity which is born of age and experience.

It is easy for some state's attorney to influence some juries. I don't know who defended the poor boy, but I guarantee it was not the best lawyers at the bar, but doubtless a good lawyer prosecuted him, and when he was convicted the court said he had rested his fate with his jury, and he would not disturb the verdict. That is all there is to it.

I do not know whether your honor, humane and considerate as I believe you to be, would have disturbed a jury verdict in this case, but I know that no judge in Cook county ever himself upon a plea of guilty passed judgment of death in a case below the age of twenty-three, and nobody below the age of twenty-four, and only one at the age of twenty-four was ever hanged.

Viani I have looked up, and I don't care who did it or how it was done, it was a shame and disgrace that an eighteen-year-old boy should be hanged, in 1920, or a nineteen-year-old boy should be hanged, in 1920, and I am assuming it is all right to hang somebody, which it is not. I have looked up the Viani case because my friend Marshall read a part where it said that Viani pleaded guilty. He did not say it positively, because he is honest, and he knew there might be a reason. Viani was tried and convicted—I don't remember the name of the judge—in 1920.

There were various things working against him. It was in 1920, after the war. Most anything might have happened after the war, which I will speak of later, and not much later, for I am to close tonight. He was convicted in 1920. There was a band of Italian desperadoes, so-called. I don't know. Sam Cardinelli was the leader, a man forty years of age. But their records were very bad.

This boy should have been singled out from the rest. If I had been defending him, and he had not been, I never would have come into court again. But he was not. He was tried with the rest. I have looked up the records, and I find that he was in the position of most of these unfortunates; he did not have a lawyer.

Your honor, the question of whether a man is convicted or acquitted does not always depend on the evidence or entirely on the jury. The lawyer has something to do with it. And the State always has—always has at least moderately good lawyers. And the defendants have, if they can get the money; and if they cannot, they have nobody. Viani, who was on trial with others for his life, had a lawyer appointed by the court. Ed Raber, if I am rightly informed, prosecuted. He had a fine chance, this poor Italian boy, tried with three or four others. And prosecuted by one of the most relentless prosecutors Chicago has ever known. This boy was defended by somebody whose name I never heard, who was appointed by the court.

Hanging Boys Would Be Turning Back to Barbarism

Your honor, if in this court a boy of eighteen and a boy of nineteen should be hanged on a plea of guilty, in violation of every precedent of the past, in violation of the policy of the law to take care of the young, in violation of all the progress that has been made and of the humanity that has been used in the

care of the young; in violation of the policy of placing boys in reformatories instead of prisons—if your honor in violation of all that and in the face of all the past should stand out here in Chicago alone to hang a boy, then we are turning our faces backward toward the barbarism which once possessed the world.

If your honor can hang a boy of eighteen, some other judge can hang him at seventeen, or sixteen, or fourteen. Some day, some day, if there is any such thing as progress in the world, if there is any spirit of humanity that is working in the hearts of men, some day they will look back upon this as a barbarous age which deliberately turned the hands of the clock backward, which deliberately set itself in the way of all progress toward humanity and sympathy, and committed an unforgivable act.

Yet your honor has been asked to hang, and I must refer here for a minute to something which I dislike to discuss. I hesitated whether to pass it by unnoticed or to notice it, but I felt that I must say something about it, and that was the testimony of Gortland, the policeman. He came into this court, the only witness who said that young Leopold told him that he might get into the hands of a friendly judge and succeed.

Your honor, that is a blow below the belt. There isn't a word of truth in his statement, as I can prove to your honor in two minutes. It was carved out of the air, to awe and influence the court and place him in a position where if he saved life someone might be malicious enough to say he was a friendly judge, and, if he took it, the fear might invade the community that he did not dare do it.

I know, your honor, that your honor knows there is only one way to do in this case, and I know you will do it. You will take this case, with your judgment and your conscience, and settle it as you think it should be settled. I may approve or I may disapprove, or Judge Crowe may approve or disapprove or the public may approve or disapprove, but you must satisfy yourself, and you will.

Questions Policeman's Testimony

Now, let me take Gortland's testimony for a minute: and I am not going over the record. It is all here. He swore that on the night after the arrest of these two boys, Nathan Leopold told him in discussing the case, that a friendly judge might save him. He is the first man who testified for the state that any of us cross-examined, if you remember. They called witness after witness to prove something that did not need to be proved under a plea of guilty. Then this came, which to me was a poisoned piece of perjury, with a purpose, and I cross-examined him:

Q—Did you make any record? A—Yes, I think I did.

Q—Where is it? A—I think I have it.

Q—Let me see it. A—Yes.

MR. DARROW—There was not a word or a syllable upon that paper.

Q—Did you make any other? A—Yes.

Q—When did you make it? A—Within two or three days of the occurrence.

Q—Let me see that.

MR. DARROW—He said he would bring it back later.

Q—Did you make another? A—Yes.

Q—What was it. A—A complete report to the chief of police.

Q—Is it in there? A—I think so.

Q—Will you bring that. A—Yes.

He brought them both into this court. They contained, all those documents together, a complete or almost complete copy of everything that happened, but not one word, not one word. He deliberately said he made that record within a few days of the time it occurred, and that he told the office about it within a few days of the time it occurred. And what did he say?

Then he came back in answer to my cross-examination, or not in answer to my cross-examination, but in answer to Mr. Crowe's question, and he said he never told Judge Crowe about it until the night before Judge Crowe made his opening statement in this case. Six weeks after he heard it, six weeks after he made the report, long after the time he said he made a record of it, there was not a single word or syllable in anything he wrote about this matter.

What could he say about it, your honor? I am sorry to discuss it; I am sorry to embarrass this court. But what can I do? I want your honor to know that if in your judgment you think these boys shall hang, we will know it is your judgment. It is hard enough, God knows, for a court to sit where you sit, with the eyes of the world upon you, in the fierce heat of public opinion, for and against. It is hard enough, without any lawyer making it harder. I assure you it is with deep regret that I even mention what I said, and I will say no more about it, excepting that that statement was a deliberate lie, made by that policeman, and his own evidence shows it.

War Breeds Crime

Now, your honor, I have spoken about the war. I believed in it. I don't know whether I was crazy or not. Sometimes I think perhaps I was. I approved of it; I joined in the general cry of madness and despair. I urged men to fight. I was safe because

I was too old to go. I was like the rest. What did they do? Right or wrong, justifiable or unjustifiable—which I need not discuss today—it changed the world.

For four long years the civilized world was engaged in killing men. Christian against Christian, barbarians uniting with Christians to kill Christians; anything to kill. It was taught in every school, aye in the Sunday school. The little children played at war. The toddling children on the street.

Do you suppose this world has ever been the same since? How long, your honor, will it take for the world to get back in its human emotions to where it stood before the war? How long will it take the calloused heart of man before the scars of hatred and cruelty shall be removed?

We read of killing one hundred thousand in a day; probably exaggerated, but what of it? We read about it and we rejoiced in it; it was the other fellows who were killed. We were fed on flesh and drank blood. Even down to the prattling babe. I need not tell your honor this, because you know; I need not tell you how many upright, honorable young boys have come into this court charged with murder, some saved and some sent to their death, boys who fought in this war and learned to place a cheap value on human life. You know it and I know it. These boys were brought up in it. The tales of death were in their homes, their playgrounds, their schools; they were in the newspapers that they read; it was part of the common frenzy—what was a life? It was nothing. It was the least sacred thing in existence and these boys were trained to this cruelty. It will take fifty years at least to wipe it out of the human heart, if ever. I know this, for I have studied those things, that after the Civil War in 1865, crimes of this sort increased, marvelously increased. No one needs to tell me that crime has no cause. It has as definite a cause as any other disease, and I know that out of the hatred and bitterness of the Civil War crime increased as America had never known it before.

I know that growing out of the Napoleonic wars there was an era of crime such as Europe had never seen before. I know that Europe is going through it today; I know it has followed every war; and I know it has influenced these boys so that blood was not the same blood to them that it would have been if the world had not been bathed in blood.

I protest against the crimes and mistakes of society being visited upon them. All of us have our share in it. I have mine. I cannot tell and I shall never know how many words of mine might have created harshness in place of love and kindness and charity. Your honor knows that in this very court crimes of violence have increased growing out of the war. Not necessarily by those who fought, but by those that learned that blood was cheap

and human life was cheap and if the state could take it why not the individual?

There are causes for this terrible crime. There are causes, as I have said, for everything that happens in the world. War is a part of it; education is a part of it; birth is a part of it; money is a part of it: all concentrated to wreak the destruction of these two poor boys.

Now, your honor, I suppose I would never close if I did not see that I should. Has the court any right to consider anything but these two boys? Yes. The state says that your honor has a right to consider the welfare of the community, as you have.

If the welfare of the community would be benefited by taking these lives, well and good. I think it would work evil that no one could measure. Has your honor a right to consider the families of these two defendants?

I have been sorry, and I am sorry for the bereavement of Mr. and Mrs. Franks, and the little sister; for those broken ties that cannot be mended. All I can hope and wish is that some good may come from it. But as compared with the families of Leopold and Loeb, they are to be envied. They are to be envied, and everyone knows it.

Have Little to Hope For In Prison

I do not know how much salvage there is in these two boys. I hate to say it in their presence, but what is there to look forward to? I do not know but what your honor would be merciful if you tied a rope around their necks and let them die; merciful to them, but not merciful to civilization and merciful to those who would be left behind. I do not know; to spend the balance of their days in prison is mighty little to look forward to, if anything. Is it anything?

They may have the hope as the years roll around they might be released. I do not know. I will be honest with this court. I have tried to be from the beginning.

I know that these boys are not fit to be at large. I believe they will not be until they pass through the next stage of life, at forty-five or fifty. Whether they will be then, I cannot know. I am sure of this: that I won't be here to help them. So, so far as I am concerned, it is over. I would not tell this court that I would not hope that some time when life and age has changed their bodies, as it does, and has changed their emotions, as it does, I would not say that they would not be safe, I would be the last person on earth to close the door of hope to any human being that lived, and least of all my clients.

Nothing But the Night

But what have they to look forward to? Nothing. And I here think of the stanzas of Housman:

"Now, hollow fires burn out to black
And lights are fluttering low;
Square your shoulders and lift your pack
And leave your friends and go.
Don't ever fear, lads, naught's to dread;
Look not to left nor right.
In all the endless road you tread
There is nothing but the night."

I don't care, your honor, whether the march begins at the gallows or when the gates of Joliet close upon them, there is nothing but the night, and that is enough for any human being to ask. But there are others. Here are these two families, who have led an honest life, who will bear the name that they bear, and future generations will bear the name that they bear.

Here is Leopold's father—and this boy was the pride of his life. He watched him, he cared for him, he worked for him, he was brilliant and accomplished, he educated him, and he thought fame and position awaited him, as it should have. It is a hard thing for a father to see his life's hopes crumbling into the dust. Should he be considered? Should his brothers be considered? Is is going to do society any good or make your life safe or any human being's life safer that it should be handed down from generation to generation that this boy, their kin, died upon the scaffold?

And Loeb's, the same. The faithful uncle and brother, who have watched here day by day, while his father and his mother are too ill to stand this terrific strain, waiting for a message which means more to them than it seems to mean to you or me. Have they got any rights? Is there any reason, your honor, why their proud name and all the future generations that bear it shall have this bar sinister attached to it? How many boys and girls, how many unborn children will feel it? It is bad enough as it is, God knows. It is bad enough, however it is. But it's not death by the scaffold. It's not that. And I ask, your honor, in addition to all I have said, to save two honorable families from a disgrace that never ends, and which could be of no avail to any human being that lives.

Now, I must say a word more and then I will leave this with you where I should have left it long ago. None of us are unmindful of the public; courts are not; and juries are not. We placed this in the hands of a trained court, thinking that he would be less mindful than a jury. I canhot say how people feel. I have stood here for three months as somebody might stand at the seacoast trying to sweep back the tide. I hope the seas are

subsiding and the wind is falling and I believe they are, but I wish to make no false pretense to this court.

People Who Do Not Think Will Applaud Hanging

The easy thing and the popular thing to do is to hang my clients. I know it. Men and women who do not think will applaud. The cruel and the thoughtless will approve. It will be easy today, but in Chicago and reaching out over the length and breadth of the land more and more are the fathers and mothers, the humane, the kind and the hopeful, who are gaining an understanding, are asking questions not only about these boys, but about their own. These will join in no acclaim at the death of these boys. These would ask that the shedding of blood be stopped, and that the normal feelings of man resume their sway. And as the days and the months and the years go on, they will ask it more and more. But, your honor, what they ask cannot count. I know the easy way.

I know your honor stands between the future and the past. I know the future is with me, and what I stand for here; not merely for the lives of these two unfortunate lads, but for all boys and all girls; all of the young, and as far as possible, for all of the old. I am pleading for life, understanding, charity and kindness, and the infinite mercy that forgives all. I am pleading that we overcome cruelty with kindness and hatred with love. I know the future is on my side. Your honor stands between the past and the future. You may hang these boys; you may hang them by the neck till they are dead. But in doing it you will turn your face toward the past. In doing it you are making it harder for every other boy. In doing it you are making it harder for unborn children. You may save them and it makes it easier for every child that some time may sit where these boys sit. It makes it easier for every human being with an aspiration and a vision and a hope and a fate.

Is Pleading For the Future

I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men. When we can learn by reason and judgment and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man.

I feel that I ought to apologize for the length of time I have taken. This may not be as important as I think it is, and I am sure I do not need to tell this court, or to tell my friend Mr. Crowe, that I would fight just as hard for the poor as for the rich.

If I should succeed in saving these boys' lives and do nothing for the progress of the law, I should feel sad, indeed. If I can succeed, my greatest award and my greatest hope and my greatest compensation will be that I have done something for the tens

of thousand of other boys, for the other unfortunates who must tread the same way that these poor youths have trod, that I have done something to help human understanding, to temper justice with mercy, to overcome hate with love.

I was reading last night of the aspiration of the old Persian poet, Omar Khayyam. It appealed to me as the highest that I can envision. I wish it was in my heart and I wish it was in the heart of all, and I can end no better than to quote what he said:

"So I be written in the Book of Love,
I do not care about that Book above.
Erase my name or write it as you will,
So I be written in the Book of Love."



PROSECUTING
ATTORNEY

ROBERT
CROWE'S

ARGUMENTS FOR THE DEATH
PENALTY IN THE FRANKS CASE





**PROSECUTING ATTORNEY ROBERT CROWE'S
ARGUMENTS FOR THE DEATH PENALTY
IN THE FRANKS CASE BEFORE JUDGE
CAVERLY IN THE CRIMINAL COURT
OF COOK CO., CHICAGO, ILL.**

July 26, 11 a. m. to August 28, 11:30 a. m.

Before entering into a discussion of the case at bar, I desire to express to your honor our appreciation for the uniform courtesy and patience with which you have treated myself and the representatives of my office. Before going into a discussion of the merits of the case, there is a matter that I would like to refer to.

The distinguished gentleman whose profession it is to protect murder in Cook county, and concerning whose health thieves inquire before they go out to commit crime, has seen fit to abuse the state's attorney's office, and particularly my assistants, Mr. Marshall and Mr. Savage, for their conduct in this case. He has even objected to the state's attorney referring to two self-confessed murderers, who have pleaded guilty to two capital offenses, as criminals. And he says that Marshall has no heart or if he has a heart that it must be a heart of stone; and that Savage was probably selected on account of his name and not on account of his attainments. That they have dared to tell your honor that this is a cold-blooded murder they have violated all the finer sensibilities of this distinguished attorney whose profession it is to protect murder in this community, by representing this crime as a dastardly, cruel, premeditated crime.

It is their business, if they refer to this case at all; but Bachrach in his closing argument said that I haven't any right after a plea of guilty has been entered and the evidence presented—I haven't any right to talk to your honor, that this case should be taken under advisement by you. With merely the plea of the defense the state's attorney ought to go back to his office; he has no business to argue on behalf of the people of the state of Illinois at all. Their arguments must go uncontradicted and without a reply.

We ought not to refer to these two young men, the poor sons of multimillionaires, with any coarse language. Savage and Marshall should have come up here and tried them with kindness and with consideration.

I can imagine, your honor, when this case was called for trial and your honor began to warn these two defendants of the consequences of their plea, and when you said we may impose the death penalty, Savage and Marshall both rushing up and saying, "Now, Judge, now, Judge, not so fast. We don't intend to be cruel in this case. We don't intend to be harsh. We want to try these boys, these kiddies, with kindness and consideration."

Your honor ought not to shock their ears by such a cruel reference to the laws of this state, to the penalty of death. Why, don't you know that one of them has to shave every day of the week, and that is a bad sign? The other one only has to shave twice a week, and that is a bad sign. One is short and one is tall, and it is equally a bad sign in both of them. When they were children they played with Teddy bears. One of them has three moles on his back. One is over-developed sexually and the other not quite so good.

My God, if one of them had a hare lip I suppose Darrow would want me to apologize for having had them indicted.

Can you imagine Savage and Marshall making a plea of that sort to your honor, and, saying, "Instead of sending these two mad boys, who are wandering around in the dark, instead of sending them for life to prison, parole them to us. Marshall will take Dickie and Savage will take Babe. And we will try to get them out of this fantasy life. We will try to wake them up, out of their dreams?"

I know what your honor would have said if they had pursued that line of conduct. You would have said, "Mr. Sheriff, search these men, find out how much money they have in their pockets." And if they had any money in their pockets your honor would tell the sheriff to take them out to the psychopathic hospital and you would send for me and say, "My God, Crowe, send up somebody who has got some brains to prosecute a murder case in my courtroom."

If we are cold-blooded, we have planned according to Mr. Darrow for three months, and we have conspired to take the lives of two little boys who are wandering around in dreamland. We have been held up to the world as men who desire blood, who have no kindly instincts within our hearts at all.

I do not believe that it is fair to Tom Marshall. Tom Marshall has lived in this community for years. He is a kindly man in private life; he is a man of family, he enjoys the respect and confidence of every person who has been fortunate enough to

know him. Joe Savage is a decent man, a clean living man, a man of kindly instincts. He is a man of family also, and he enjoys the confidence and respect of everybody in this community.

I do not believe that even Mr. Darrow, who has known me for years, or any other person who knows me, would tell you that Bob Crowe is a cruel, vicious, heartless monster. I am a man of family; I love my children, four of them, and I love my wife, and I believe they love me. I have never been cruel or vicious to any living person in my life.

I have never prosecuted any person for any wrong that he did me personally, and I have been grievously wronged in the past. I have never sued any person for any debt he owed me, although I have some debts now owing to me. I believe in God—and that is a fault in this case, a fault not only to the two murderers, but a fault to the master pleader whose profession it is to protect murder in this county. I believe in the laws of this state.

There is nothing personal in this prosecution with me. If I were not a state's attorney or if I were not on the bench, I would have absolutely no feeling in my heart against these two as individuals. When they were in my care and custody, where it was a matter of man to man, I treated them with kindness and consideration. That is the sworn testimony in this case, that while they were in my custody they were treated with kindness and consideration.

When I first got Leopold's name as a possible owner of these glasses, when I got the name of a lady of this county of respectability and refinement, when I got the name of a prominent lawyer, who might have been the owner of these glasses, I treated all three of them with kindness and consideration. I did not bring them in to the state's attorney's office, so that their names would be headlined across the newspapers, connected with this terrible crime, where they would have their pictures taken by every newspaper in the country.

I brought them over to the La Salle hotel so that if none of them had any connection with this case no disgrace or no notoriety would have attached to them. I think the state's attorney of this county is just as kindly a man as the paid humanitarian, the man who believes in doing his fellow citizens good—after he has done them good and plenty. But when I fastened this crime upon these defendants, then I had a duty to perform, a sworn duty to perform, the same as your honor has.

I have a right to forgive those who trespass against me, as I do, in the hope that I in the hereafter will be forgiven my trespasses; as a private citizen I have that right and as a private citizen I live that religion. But as a public official, elected by the

people, charged with the duty of enforcing the laws of my country, I have no right to forgive those who violate their country's laws. It is my duty to prosecute them.

Your honor has no right to forgive those who trespass against the state of Illinois. You have a right, and I know you do forgive those who trespass against John R. Caverly, but sitting here as the chief justice of this great court, you have no right to forgive anybody who violates the law. You have got to deal with him as the law prescribes.

And I want to say to you, your honor, in this case, with the mass of evidence presented by the state, if a jury were sitting in that box and they returned a verdict and did not fix the punishment at death, every person in this community, including your honor and myself, would feel that that verdict was founded in corruption.

And I will tell you why. I have taken quite a trip during the last four or five weeks. I thought I was going to be kept in Chicago all summer trying this case, and that most of my time would be spent in the Criminal court building. And I find that I have been mistaken. I did come up to your honor's courtroom five weeks ago, and after I was there a little while Old Doc Yak—is that his name, the man from Washington? Oh, Dr. White—Dr. White took me by the hand and led me into the nursery of two poor, rich young boys, and he introduced me to a teddy bear. Then he told me some bedtime stories, and after I got through listening to them he took me into the kindergarten and he presented to me little Dickie and Babe, and he wanted to know if I had any objection to calling them that, and I said no, if he had no purpose.

And after he had wandered between the nursery and the kindergarten for quite a while, I was taken in hand by the Bachrach brothers and taken to a psychopathic laboratory, and there I received quite a liberal education in mental diseases, and particularly what certain doctors did not know about them.

The three wise men from the east, who came on to tell your honor about these little babes, and being three wise men brought on from the east they wanted to make the picture a little more perfect, and one of them was sacrilegious enough to say this pervert, this murderer, this kidnaped thought that he was the Christ child and that he thought that his mother was the Madonna, without a syllable of evidence any place to support the blasphemous and sacrilegious statement.

Who said that this young pervert ever thought he was the Christ child? He has proclaimed since he was eleven years of age that there is no God. "The fool in his heart hath said there is no God." I wonder now, Nathan, (addressing the defendant, Nathan Leopold Jr.) whether you think there is a God or not. I

wonder whether you think it is pure accident that this disciple of Nietzschean philosophy dropped his glasses or whether it was an act of Divine Providence to visit upon your miserable carcasses the wrath of God in the enforcement of the laws of the state of Illinois.

Well, if your honor please, after the Bachrachs had completed my education in the psychopathic laboratories, then my good friend, Clarence Darrow, took me on a Chautauqua trip with him, and visiting various towns, we would go to social settlements, such as the Hull house, and Clarence would expound his peculiar philosophy of life, and we would meet with communists and anarchists, and Clarence would regale them with his philosophy of the law, which means there ought not to be any law and there ought not to be any enforcement of the law.

And he even took me to Springfield, where he argued before the legislature that you ought to abolish capital punishment in the state of Illinois. I don't know whether the fact that he had a couple of rich clients who were dangerously close to the gallows prompted that trip or not. I know when he was a member of the legislature he did not abolish it or introduce a bill for that purpose.

Yes, and he even on this tour criticized the state's attorney of this county severely because he in a humane way wanted to correct the law so that men of this sort could be dealt with before somebody lay cold in death, and that the children of this community might be protected.

If your honor please, when I occupied the position your honor graces, I had an unfortunate man come before me. He was a man of my own race, of my own faith. I don't know whether his pineal gland was calcified or ossified. I don't know whether he had club feet or not, and I did not inspect his back to find out whether he had a couple of moles on him. I don't know whether he developed sexually at fourteen or sixteen. I knew under the law he had committed a dastardly crime; he had taken a little six-year-old girl, a daughter of the poor, and he was a poor man, and he outraged her and he took her into the basement and he covered her over with coal. He did not even have the decency or the heart to put a handkerchief over that little dead face as he heaped the coal on it.

The law says in extreme cases death shall be the penalty. If I were in the legislature I might vote against such a law.

I don't know. But as a judge, I have no right to set aside that law. I have no right to defeat the will of the people as expressed by the legislature of Illinois. I have no right to be a judicial anarchist, even if Clarence Darrow is an anarchistic advocate.

He says that hanging does not stop murder. I think he is mistaken. From the time Thomas Fitzgerald expiated his crime upon the gallows I have not heard of any little tot in Chicago who met a like fate to that which Janet Wilkinson met. He says hanging does not stop murder. I will direct your honor's attention to the year 1920, when Judge Kavanagh, Judge Bren-tano, Judge Barrett and Judge Scanlan came over here at my request and from the fifth day of May until the first day of July tried nothing but murder cases.

In addition to the many men that they sent to the penitentiary for manslaughter or a term of years for murder, in that brief period of less than sixty days, fifteen men were sentenced to death in the Criminal court of Cook county. The records of the police department, the records of the Chicago Crime Commission, show that as the result of that murder fell 51 per cent in Cook county during the year of 1920.

We had a time here when every night in every newspaper there was a column devoted to the number of automobiles stolen. We established an automobile court and I presided in it and after we had sent several hundred to penal institutions for stealing automobiles, the Rolls Royce became just as safe as the flivver on the streets of Chicago.

We had a reign of terror inaugurated here for years by criminals who dominated labor unions. They were above and beyond the law. They laughed at it and spat in its face, just the same as these two poor young sons of multimillionaires. Forty-one of them were convicted in the courts of Cook county. The building industry, that had been strangled for years, began to revive and take on life and we have not heard anything more of the Maders, or the Murphys, or the Walshs since. Punishment in jail does not deter crime? Why are there so few violations of the laws of the United States? When a man files his income tax schedule why does he hire an auditor to see that he makes no mistake? And yet he goes over on his personal property before the board of assessors and board of review and conceals millions. Why? Because when you get into the United States court, your honor, where having violated the laws of the United States, if you are guilty, no plea of mercy, however eloquent or by whom delivered, will cheat the law there.

You have heard a lot about England. Well, I was never very enthusiastic about England myself. That is due to heredity in me. I never had any liking or respect for her laws as they applied to my ancestors and people in an adjoining isle; but I have learned to have a wholesome respect for the manner in which they enforce the laws of England in England.

There murder is murder; it is not a fantasy. There, justice is handed out swiftly and surely, and as a result there are fewer murders in the entire kingdom of Great Britain yearly than there are in the city of Chicago.

The police of England do not carry weapons. What would happen to the Chicago police if, after giving notice, they all went out one night without a weapon?

May it please the court, we have heard considerable about split personalities in this case, and I was somewhat surprised to learn that my old friend, the humanitarian, who has acted as the kindly old nurse in this case for the two babes who are wandering in dreamland, also possessed a split personality. I have heard so much of the milk of human kindness that ran out in streams from his large heart that I was somewhat surprised to know that he had so much poison in his system also.

It is wrong, if your honor please, for the state's attorney and his two assistants to refer to these two perverts, these two atheists, these two murderers in language that they can understand.

We ought to treat them with kindness, we ought to treat them with consideration. But it is all right for Mr. Darrow to take an honorable physician, who has for years enjoyed the confidence of the people of this community, who has enjoyed the confidence of all the judges and the various state's attorneys in the past and characterize him without a shred of evidence, without the slightest foundation, as a peddler of perjury, and herald that cruel charge broadcast over this land. Where is there anything in this case that warrants Clarence Darrow in making such an infamous charge against Dr. Krohn?

I would suggest that if they want mercy and charity they practice a little bit of it. Treat them with kindness and consideration? Call them babes, call them children? Why, from the evidence in this case they are as much entitled to the sympathy and mercy of this court as a couple of rattle snakes, flushed with venom, coiled and ready to strike. They are entitled to as much mercy at the hands of your honor as two mad dogs are entitled to, from the evidence in this case.

They are no good to themselves. The only purpose that they use themselves for is to debase themselves. They are a disgrace to their honored families and they are a menace to this community. The only useful thing that remains for them now in life is to go out of life and go out of it as quickly as possible under the law.

As I said, we had been traveling considerable since this trial began. We have been through dreamland; we have been through the nursery. When I came into this case I thought the playthings of these two—their playtoys—were bloody chisels, robes and gags, guns and acid.

And one of these wise men from the east told me I was mistaken, that their play toys are Teddy bears, soldiers' uniforms, policemen's uniforms and the toys that all healthy-minded children delight to play with.

We have been in psychopathic laboratories, we have been in hospitals, we have been before the legislature, and we have been addressing meetings of communists and expounding a doctrine I consider as dangerous as the crime itself.

I think it is about time we got back to the Criminal court. I think it is about time that we realize that we are before the chief justice of this court, and that we are engaged not in experimenting, not in philosophical discussions, but we are back here trying the murder case of the age; a case the very details of which not only astonish but fill you with horror.

"Oh," but Mr. Darrow says, "these poor little sons of multi-millionaires; it is their wealth that is their misfortune; if it was not for their wealth there would be no interest in this case."

And yet, fifty years ago, Charlie Ross was kidnaped, not the son of a multimillionaire. He was never found, and yet we all, even those of us born many years after, still talk about the case of Charlie Ross. There is something in the nature of the crime itself that arrests the attention of every person in the land.

A child is stolen. The heart of every father, the heart of every mother, the heart of every man who has a heart, goes out to the parents of the child.

Bobby Franks was kidnaped, and when we had not the slightest notion of who was guilty of the dastardly crime, the papers were full of it. It was the only topic of conversation. It remained the only topic of conversation for a week before the state's attorney of this county called in Nathan Leopold, Jr. Their wealth, in my judgment, has not anything to do with this, except it permits a defense here seldom given to men in the Criminal court.

Take away the millions of the Loebs and the Leopolds, and Clarence Darrow's tongue is as silent as the tomb of Julius Caesar. Take away their millions, and the "wise men from the east" would not be here, to tell you about fantasies, and Teddy bears and bold, bad boys, who have their pictures taken in cowboy uniforms. Take away their money, and what happens? The same thing that has happened to all the other men who have been tried in this building, who had no money. A plea of guilty, a police officer sworn, a coroner's physician sworn, the parents of the murdered boy sworn and a sentence.

I used to wonder what the poet Grey meant when he talked about the simple mantles of the poor. Clarence Darrow once said that a poor man on trial here was disposed of in fifteen minutes, but if he was rich and committed the same crime and he got a good lawyer his trial would last twenty-one days. Well, they got three lawyers and it has lasted just a little bit longer, in addition to the three wise men from the east.

What are we trying here, if your honor please, a murder case? And what is the evidence presented by the state upon

which they seek a verdict? A murder as the result of a drunken brawl; a murder committed in hot blood to avenge some injury either real or fancied? A man shooting down another because he debauched his wife and destroyed his home? A murder, the result of impulse or passion?

No. One of the most carefully planned murder cases that your honor or I in all our long experience have ever heard about. A murder committed by some young gamin of the streets whose father was a drunkard and his mother loose; who was denied every opportunity; brought up in the slums; never had a decent example set before him? No. But a murder committed by two super-intellects coming from the homes of the most respected families in Chicago. Every advantage that love, money and wealth and position could give them was theirs.

A man's conduct, I believe, your honor, depends upon his philosophy of life. Those who want to grow up to be respectable citizens in the community, to be useful citizens, they have got a correct philosophy of life. Those who want to excel in crime, those who want to tear down instead of build up, they select the wrong philosophy in life. That is all there is to this.

They had the power of choice and they deliberately choose to adopt the wrong philosophy and to make their conduct correspond with it.

Way last November, after these two defendants had had a quarrel and made it up—and I will not go into the nature of that quarrel; there is a lot of evidence in this case that has not come out and I do not intend to repeat it, to shock any person who may be listening.

These two defendants were perverts. Loeb the victim and Leopold the aggressor, and they quarreled. Then they entered into a childish compact—a childish compact, Dr. Healy says; a compact between these two so that these unnatural crimes might continue. Dr. Healy says that that is a childish compact. I say if Dr. Healy is not ashamed of himself he ought to be. My God, I was a grown man before I knew of such depravity. They talk about what lawyers will do for money, but my God, I am glad that I do not know of any lawyer who would get on the witness stand and under oath characterize an unnatural agreement between these two as a childish compact. Darrow and Bachrach say that is an evidence of insanity. The statutes of Illinois say that crimes against nature are punishable by imprisonment in the penitentiary. It is not a defense to a murder charge.

Mitigation! Mitigation! I have heard so many big words and foreign words in this case that I sometimes thought that perhaps we were letting error creep into the record, so many strange, foreign words were being used here, and the constitution provides that these trials must be conducted in the English language; I do not know; maybe I have got aggravation and mitigation mixed up.

It is a mitigating circumstance, if your honor please, that Leopold when they were outlining the plan of this conspiracy and murder wanted to take a little girl, a daughter of the rich, and first attack her and then murder her and then collect the ransom.

If that evidence had been put in by the state I would have thought it was an aggravation. These three wise men, with their distorted theories, hired by the defense, they put that evidence in, and Clarence Darrow calls it a mitigating circumstance.

Why, when they murder a boy they ought to be treated with kindness and consideration. If they had taken a little tot, a little girl, debauched and attacked her, I suppose we ought to have given each a medal and told them to go their way. My God, what are we coming to in this community?

I want to tell your honor, bearing in mind the testimony that was whispered into your ear, one of the motives in this case was a desire to satisfy unnatural lust. They first wanted a little girl so that Leopold could rape her and then they decided on a little boy. What happened? Immediately upon killing him they took his trousers off. How do you undress a child? First the little coat, the collar, the tie, the shirt, and the last thing is his trousers.

Yet, immediately after killing this poor little boy, his trousers alone came off, and for three hours that little dead boy, without his trousers but with all his other clothes on him, remained in that car, and they did not take the balance of the clothes off until they pushed the body into the culvert.

You have before you the coroner's report.

MR. DARROW—Well, now—

MR. B. BACHRACH—if the court please, I take exception to that statement. The coroner's report said there was no sign of recent dilation.

MR. CROWE—Your honor has the report.

MR. B. BACHRACH—Your honor will look at the report.

MR. CROWE—And I want to call your honor's attention to the fact that this little naked body lay in the water all night long with running water going over it, and that is why there wasn't any other evidence.

Away back in November, if your honor please, when this crime first began to take form, a kidnaping for ransom, it was necessary to write some letters. These two little boys wandering around in dreamland knew what very few men know except those engaged in work such as we are engaged in, that it is possible to take a typewritten document and tell what kind of a machine it was written on.

So they go to Ann Arbor and they steal a typewriter, a portable typewriter, for the purpose of writing these letters on it, and in order to divert suspicion from themselves or any other student, because if nothing but a typewriter was stolen the belief would be prevalent that it was the work of some student, some member of the fraternity, they stole watches and jewelry and other things to divert suspicion.

They go along working out the details of this crime. Mr. Darrow says that there is no motive; that it is a senseless crime; that the \$10,000 had absolutely nothing to do with it.

I will undertake to prove, not by argument, but by sworn testimony, that the \$10,000 had everything to do with it. I will show that this was not the crime of diseased minds, but this was the crime planned in all its minuteness by more than ordinary intellects.

Dr. Healy on his cross examination testified as follows:

Q.—Do you regard this as a crime of passion? A.—No, sir.

Q.—It is a cold-blooded proposition, premeditated and planned? A.—Yes, sir.

Q.—In other words, every detail of this crime is a crime of intellect and not a fantasy? A.—I think so.

Q.—And they are above the average in intellect? A.—One of them is. The other is not.

Q.—The other is about even? A.—I think he is just about average.

Q.—So super-intellect in one case and normal intellect in the other case planned and carried out every detail of this murder? A.—I think so.

Q.—Now, was there any other emotion acting in conjunction with the intellect when they attempted to cover up this crime by the various things they did, and by the various lies they told? A.—It would be rather hard for me to say whether there was or not, or whether it was all very largely an intellectual process.

Q.—Now, doctor, if in the inception of this crime it has appeared in evidence that the first thing the defendants did was to sell a typewriter so that it would be difficult for the authorities to trace the letters written, would you consider that a part of childish fantasy or would you consider that a result of their intellectual attainments? A.—It is a result of their intellectual attainments in my opinion.

Q.—If after having procured the typewriter they bought a block of paper, plain paper, that it would be difficult or impossible to trace, and wrote the letters on that, would that be the fantasy working, or was it their normal intellect working? A.—I think it was their good intellects working.

Q.—And if after having written the letter the defendants destroyed the remaining sheets of paper by burning them and attempted to destroy or lose the typewriter, by throwing it into the lake, after removing the keys and throwing them in a different part of the lake, was that boyish fantasy in operation, or was it their intellect working. I don't know about the horse sense, but their desire and plans to commit a perfect crime.

Q.—Is it fantasy or intellect that is operating? A.—It is intellect.

Q.—And after having learned from the Rent-a-Car people that in order to rent a car they would have to give references, one a Chicago reference, have to give an address whereto an identification card could be mailed, to have a bank reference, was it fantasy or intellect? Now, intellect is sometimes commonly referred to as good horse sense, is it not? A.—I think it was their intellect working. I don't know about the horse sense, but it is their intellect.

Q.—Well, good, common sense? A.—I don't think they were showing much good common sense at all in committing the crime at all you see. But having started on it they used their intellects.

Q.—Having found that they had to answer those requirements from the Rent-a-Car people was it intellect or fantasy that caused . . . A.—Intellect.

MR. CROWE—There is \$250 worth of testimony. That is testimony that was bought and paid for at the rate of \$250 per day. I have wondered, when I heard these doctors say that you could not make a complete and adequate examination in less than twenty or thirty days, whether the fact that they were working on a per diem of \$250 a day did not enter into the matter. If they were paid by the job instead of by the day I think they could have answered all the questions here in the three or four hours that our alienists employed from 2:00 in the afternoon until 6:30 in the evening. What opportunity, if your honor please, have the state alienists in the ordinary murder case to make an examination at all?

The state's attorney generally don't know what the defense is going to be until the case is four or five months old and is brought to trial. By that time the defendant has had a lawyer and he has been advised that the only way to save his neck is to appear insane, and if the state's attorney sends a doctor over to believe that after I had gotten their confessions, and corroborate while he is there.

The state was peculiarly fortunate in this case that we took time by the forelock. Mr. Bachrach, Jr., was guileless enough to believe that after I had gotten their confessions, and corroborate

rated them in every detail, that I had a suspicion in my mind that these two young perverts and murderers were insane. Mr. Darrow knows me a little longer and he is not quite as guileless as the younger Bachrach, and he guessed that maybe after I knew they had no defense on the facts; I knew how much money they had; that I might have thought that they were going to put in some kind of a fancy insanity defense.

And that is the reason why I sent for the four best alienists in the city of Chicago while I still had these young egotistical smart alecks—that is all they are. They are not supermen; they are not men of superior intelligence; they are just a couple of spoiled smart alecks, spoiled by the pampering and the petting of their folks and by the people who fawn upon them on account of their wealth. They repeat parrot-like things that they have remembered and assume the solemn expression of an owl and pass for supermen.

In one breath one of these wise men from the east will tell you that they still believe in Santa Claus and then in the next breath Mr. Darrow will tell you that they do not even believe in God.

What better opportunity, in God's world, has the state ever had in an examination than they had in this? From 2:30 until 6:30, when these two young smart alecks were telling their story and boasting of their depravity; before they had been advised to invent fantasies; before they had been advised to answer certain questions in certain ways and before they had been advised to withhold even from the wise men from the east certain information that might be detrimental to the defense in this case.

Yes, as Dr. Krohn said, their souls were bared; they were telling everything they knew, with no effort made to hide, no effort made to lie; and every incident that they told me about, I put a witness on the stand to prove.

Every detail of their confession has been corroborated by sworn testimony and by exhibits offered in evidence. And our alienists examined them.

Now, if your honor please, I do not think that there are a lot of things that we have to have alienists for. I do not think it is necessary in a majority of cases for you or for me or for men experienced in the practice of criminal law, to call in an alienist to find out whether John Jones, the author of this handwriting, also wrote that. In a great many cases we can tell by looking at it whether it was written by the same person or not.

I am not the physician that the younger Bachrach is, nor the philosopher that the senior counsel is, but I think that if I talk to a man for four hours consecutively, and he is insane, I am going to have a pretty good suspicion of it.

And I think if your honor watches a man for thirty days, day in and day out, and he is a lunatic, you are going to have a well-defined suspicion of it.

If he is insane, we may not know the cause of that insanity, we may not know the extent of it, or we may not know the name of it, and we will have to call in a doctor to advise us on those matters. But if he is insane, we know it, and if he is sane, we know it.

And after these learned doctors had talked to these men from half past two in the afternoon until 6:30 that night, I find that they made an examination.

I have sometimes thought that we were dreaming here, when the learned doctors got on the stand who had been employed to find out just how crazy these two fellows were.

Just make them crazy enough so that they won't hang, and don't make them crazy enough to make it necessary to put this up to twelve men, because twelve men are not going to be fooled by your twaddle.

Just make them insane enough so that it will make a mitigating circumstance that we can submit to the court.

One of these wise men got up on the stand, and he had been employed to examine into the mental condition of Leopold. He is asked:

Q.—Doctor, do you know that Leopold has written a great deal upon the subject of ornithology, that he is one of the authorities upon that subject in the United States, that he has lectured before the students of Harvard University upon that subject?
A.—Yes.

Q.—Did you see his works? A.—Yes.

Q.—Did you read them? A.—No.

Q.—You were employed to examine his mind, were you not?
A.—Yes.

Q.—What did you do? A—I examined a bodily secretion.

Q.—Don't you think you could get a better idea of his mental condition by reading the things he wrote, the product of his brain, than you could by examining that?

MR. DARROW—Your honor, I would like to have that coroner's report and the physician's report, because we claim there is absolutely a direct finding on this matter and absolutely contradictory of the argument.

MR. CROWE—You don't want a recess. I will talk on that tomorrow.

MR. DARROW—Well, if you are going to talk about it now I would like to have it.

MR. CROWE—I won't talk about that this afternoon.

BENJ. BACHRACH—The suggestion that I have to make to Mr. Crowe about this matter is that this is the first time it has been charged in this case that the committing of an immoral act was the purpose of this crime on the part of this boy. Now, if that is not cleared up at this time, if it goes out to the newspaper, it will do us no good unless it is cleared up at this time, and it is not a fair inference from that report.

MR. CROWE—I think I know what the evidence was in this case and I think all my arguments are based on facts and not on dreams or fantasies.

MR. DARROW—We know exactly what the coroner's report shows.

THE COURT—Look it over and I will stop the argument when you get it.

MR. CROWE—if the court please, I was discussing the testimony of the four state alienists, concededly the four best alienists in Chicago, and the reason why the state's attorney in his effort to enforce the law intelligently and effectively called them in on Sunday, before the defendants were taken out of his custody and turned over to their lawyers and the sheriff.

For the same reason, and to prevent a perjured defense by their friends and associates and servants I called in every person that I understood knew either one of these boys at once and placed them under oath and asked them what they knew about the mental condition of the two defendants.

If I had not, the defense in this case would have been insanity and not a mental disease that goes all around insanity in order to avoid a jury trial.

Instead of having one witness perjure himself, as Miss Nathan did, we would have had a flock of them called in to perjure themselves.

Supposing the state's attorney had not talked to Miss Nathan and did not have her statements that Loeb was a perfectly normal, rational boy, one of the manliest boys she had ever met, a perfect gentleman at all times? How could I have destroyed her on the stand if I did not have that statement?

I do not wonder that the senior counsel, with all his wisdom, gained through many years of practice, made the proposition to the state when he found out what the state had done in the way of preparation, "Don't you call any of your lay witnesses, and I won't call any of mine."

And I told him, "Bring on your lay witnesses; the law is fortified." And after he got through with Miss Nathan, he was through with all the rest that he had subpoenaed.

Do not lose sight of the fact, if your honor please, that all of the findings in that famous Bowman-Hulbert report were not testified to before your honor by Dr. Hulbert. I suppose he thought that the state's attorney would not read it.

Well, in the discharge of my duty, and in an effort to protect the people of Cook county, I have to do a lot of disagreeable things, so I decided I would read his report.

It has gotten to be quite a famous report; I do not know but what it rivals in fame the jokebook of Joe Miller, that we heard about when I was a boy.

Why did not the state call more lay witnesses? Why did I not call the brothers of the defendants? Why did I not call Loeb's valet, whose statement I got down in the state's attorney's office?

Why did I not call the employes of both families, and all their fraternity brothers, in addition to those that I did call?

Well, I would expect Walter Bachrach, who is not as experienced in the trial of criminal cases as Clarence Darrow is, to ask that question. Clarence Darrow knows why I didn't call them, because if I put them on the stand, if I would put Miss Nathan on the stand I was bound by her perjury. They are my witnesses. I vouch for their truthfulness when I put them on, and I knew they had all been up in Clarence Darrow's office, as Miss Nathan had. I knew that he would not call them, because I could destroy them. Your honor could not call them, because under the law, the only witness you can call as a court's witness is a person who has seen the crime committed, an eyewitness.

That is why I didn't ask your honor to call them, because under the law you could not.

But why, if these men have disordered and diseased minds, if they have indulged in fantasies, why wasn't the old nurse put on the stand to tell about it? She came all the way from Boston to help Dick, because she loved him. I will read you some of the things she told Dr. Hulbert that he didn't tell you, and after she got through talking to them and they knew that she would not stand for an insanity defense—she is a pensioner of the Loeb family, and she is over in Europe right now . . .

BENJ. BACHRACH—I take exception to that, if the court please; there is no such evidence in this case, and that is not so.

MR. CROWE—That she is a pensioner?

MR. BACHRACH—That she is a pensioner, absolutely not.

MR. CROWE—All right, then there is another inaccuracy, to say the least, in the report of Dr. Hulbert, and I will read it to you.

MR. BACHRACH—That may be, but it is not a fact.

MR. CROWE—Well, I will agree with you that this report is filled with lies.

MR. BACHRACH—You don't have to agree with me.

MR. CROWE—Lies bought and paid for for the purpose of defeating justice and saving these two mad dogs from the fate they so richly deserve.

Don't overlook the fact that every one of the state's alienists says in addition to all the matters and things that they learned, they took into consideration every bit of Dr. Hulbert's report, just the same as the three wise men from the east did. Not only that, they took into consideration all the testimony of these three wise men. They did not overlook a word. They did not overlook the fact that one shaved every day and the other only shaved twice a week. They even considered little Teddy and the cowboy suit.

The only explanation I can give of the testimony of Dr. White is that he is in his second childhood. I would hate to think that a man of his attainments would prostitute his profession and prostitute his learning to tell the story that he told your honor.

One of the very significant and distinguishing things, the eminent doctor says, was the fact that little Dickie had his picture taken in a cowboy's uniform when he was four years of age, and that is a distinguishing thing and stamps him as a man of diseased mind and with homicidal tendency.

I saw a shudder go through every woman in the courtroom that has a kid four or five years of age and I began to think of my poor kids. The other doctors—to relieve the tension and worry—I suppose Marshall Field's sale in cowboy suits must have fallen off at least a hundred thousand since that doctor testified. The other doctors saw how ridiculous and silly it all was, and they said they paid no attention to it, and one by one each doctor discarded all this silly bosh.

MR. DARROW—Well, I object to that. There is no evidence of that.

MR. CROWE—How many did you have?

MR. DARROW—We had seven or eight examine them.

MR. CROWE—Well, seven or eight then.

MR. DARROW—The court has a list of them.

MR. CROWE—Dr. Hall, he examined them. He sat in the courtroom every day. Dr. Hickson examined them and he was in the courtroom frequently. Dr. Neymann examined them,

and he was in the courtroom. I don't know whether Sanger-Brown examined them or not. But every alienist in Chicago, except our four, was called in, and not a one of them would take the stand, and, for money, perjure his soul and swear to a lot of silly rot.

MR. DARROW—Your honor, I object to that.

MR. CROWE (continuing)—About their mental condition.

MR. DARROW—There is not a particle of evidence of that sort and it is not . . .

MR. CROWE—Did any of them take the stand?

MR. DARROW—That isn't what you said. You said not one of them would do it for money.

MR. CROWE—It is a fair inference, when they hired them, they had them here, if they could have used them they would.

MR. DARROW—Now, just a minute. Let me make my objection clear.

MR. CROWE—I didn't object to your argument.

MR. DARROW—I know, but you have right to, if I travel out of the record.

MR. CROWE—Did you ever get inside the record?

MR. DARROW—It was agreed that if they called four alienists we would call four.

MR. CROWE.—No.

MR. DARROW—The fact that they did not testify, he may comment on that. I don't object to that, if he thinks it belongs there.

MR. CROWE—Finding nothing in their mental condition that would justify a suspicion of insanity or a suspicion of disease, they put on Dr. Hulbert, to testify about certain glands, ductless and otherwise. Finally, the grand old man of the defense, Clarence Darrow, seeing how absolutely absurd it all was, discarded all their testimony and substituted as a defense in this case his peculiar philosophy of life, of which we will talk more at length later on.

Having taken into consideration everything that the doctors for the defense had testified to, having taken into consideration everything contained in the Hulbert report, Dr. Church, Dr. Patrick, Dr. Singer and Dr. Krohn said that there was absolutely nothing to indicate mental disease in either one of these defendants.

Your honor heard an eminent authority upon that subject, Dr. Woodyatt, and he says there is so little known about the pineal gland and about these other matters and things that this doctor

testified to so glibly—there is so little known about it that nobody knows what effect they would have upon the mind of a person; that a calcified gland existed in a sane, sound mind the same as it did in a diseased mind. And all of the testimony of Hulbert upon that proposition was as illuminating, and should be given the same serious consideration as Old Doc Yak's teddy bears and Buffalo Bill suits.

If these men are insane, I ask your honor why they were instructed not to let our alienists examine further.

MR. DARROW—I object to that statement. There is not any such evidence, or any evidence that you ever asked for it. You had a chance to ask for it.

MR. CROWE—It is in evidence, if your honor please, but when they were in my office Monday, and Dr. Singer was there, they replied to all questions: "On advice of counsel we decline to answer." My God, if the defense was a heavy cancer, why should they not bare their breasts and let every doctor and layman look on and see? If there is a diseased mind, why tell Dr. Singer "Upon advice of counsel we respectfully decline to answer."?

MR. DARROW—Objection..

MR. CROWE—Are they honest in this defense . . .

MR. DARROW—I just want to have that record straight, that is all.

MR. CROWE—Or are they trying to put something over on the court?

MR. DARROW—if you will pardon me, Judge Crowe. There is not a word of evidence that Dr. Singer ever asked any questions, or that they ever asked for an examination by Dr. Singer, or by any other alienists, which they did not.

THE COURT—if this was a jury, and the statement was made that the defendants refused to testify . . .

MR. CROWE—Wait a moment, your honor. Let the record be very explicit on this point. I have made no allusion . . .

THE COURT—Well, I would not refer to anything that is not in the record. But I do not want to interrupt you. Go ahead. Did Mr. Savage get back with Dr. Springer's report? You might make that statement now about the condition of the body of the boy. Counsel for the defense says there is nothing to the statement, and Mr. Crowe says there is. In order that it may be cleared up fully we will have the entire statement read into the record, so that the newspapers will get it.

MR. CROWE—It has been read, your honor.

THE COURT (continuing)—And know exactly what it is. I would ask the ladies, if there are any here who do not want to

hear testimony that might be embarrassing to them, to kindly step out.

We will adjourn promptly after reading this part of the testimony, that you may prefer not to hear. We will suspend now for five minutes, in order that the ladies may retire for the afternoon. You may come back tomorrow as usual.

(A recess was then taken to allow the women present to retire. During the recess discussion occurred which is unprintable.)

THE COURT—I have asked the ladies to leave the room. Now, I want you to leave. If you do not, I will have the bailiffs escort you into the hallway. There is nothing left here now but a lot of rot that is not fit for you to hear. There will be nothing else to read. Why do you persist in listening. Step out into the hallway.

Now then, you might read it, Mr. Crowe or Mr. Savage. I don't care which.

MR. CROWE—I would rather have young Mr. Bachrach read this because it contains a number of these strange, foreign words.

THE COURT—Go ahead. Will you read it into the record so we will have the record straight. I don't know myself what it contains because I haven't read it yet. It will be part of my duty after this case is over, to read all this, some twelve hundred pages of stuff. I don't know who is right in the matter. We will have it read into the record, and be sure about it.

MR. DARROW—You read it, Walter.

(The report of Coroner's Physician A. F. Benson made on the body of Robert Franks on May 22 was then read by Mr. Bachrach.)

WALTER BACHRACH—Now, I think that is all that is necessary.

MR. CROWE—It is a matter of argument.

MR. DARROW—I don't think that is a matter of argument.

MR. CROWE—I don't think you and I are going to agree. You have your theory and I have mine.

MR. DARROW—The coroner's physician says there is no evidence.

MR. CROWE—You have your contention and I have mine.

BENJAMIN BACHRACH—The unfairness of it, if your honor please, is that the charge comes in the closing argument. There was no hint at all that such a claim would be made, and now all our opportunity to reply is gone.

MR. CROWE—Oh, no. You have made three speeches. Mr. Darrow has just finished his talk, Mr. Walter Bachrach made his argument and you have made your statement. You have had three opportunities to answer it.

MR. DARROW—You had two speeches in opening.

After further discussion by the attorneys the court ruled:

This is the evidence of the coroner and certainly conclusive and we will let it rest with what the coroner says.

THE COURT—Is there anything further in the report other than that?

MR. SAVAGE—The testimony of Dr. Springer here is substantially to the same effect.

THE COURT—The evidence of the coroner and certain conclusions, we read it, what the coroner says. There is nothing further here.

MR. CROWE—Then I am through with that argument.

THE COURT—All right; we will suspend now until tomorrow morning at 10:30 o'clock.

State's Attorney Crowe's argument in closing the prosecution of Nathan Leopold, Jr., and Richard Loeb, from the point of resumption on the morning of August 27, follows in part:

May it please your honor, when I left off last night I was talking about the state alienists and the three wise men from the east who came on here to testify that the little "Babe" or the little babes, rather, were suffering from a diseased mind.

Now, when the body is sick, the ordinary practitioner can generally tell you what kind of a disease you have, and I do not think there is any man who pretends to be a specialist who will admit that he cannot tell you what is the matter with you after he examines you. He may guess wrong, but he is going to make some kind of a guess. He may tell you you have one kind of a fever when in reality you have another, but he is going to give it some kind of a name. You know, the doctors have it on us lawyers. When we make mistakes they are discovered. When a doctor makes a mistake he is safe, because dead men tell no tales. If these two defendants are suffering from a mental disease what is the name of it? No one has gone on the stand that has been able to give this mental disease a name. And yet every one who got on for the defense pretended to know all that there was in the books and a great deal that never got into the books.

I was surprised that old Doc White wasn't able to name the peculiar mental disease he says exists here, because he in the past has been able to invent names for diseases which didn't exist.

If your honor will recollect, I questioned him as to whether or not he was the same William A. White who testified in the case of Gonzales vs. the United States, and he said he was. There he was trying to save a man from death . . .

BENJAMIN BACHRACH—I object, if your honor please, to any argument based upon the Gonzales case upon the ground that your honor specifically refused to let us go in and show our side of

the Gonzales case, and your honor stated at the time that you did not care what occurred in the Gonzales case, you were not interested in the Gonzales case at that time and it did not come out on the examination of Dr. White that the man Gonzales was in his care. We wanted to show you about it, we could have shown you very interesting things about it, but your honor declined to hear them and it would be unfair to go into that case now.

MR. CROWE—If we can quote poetry and if we can quote philosophy, I do not know why I cannot quote law.

MR. DARROW—That is not quoting law.

MR. CROWE—I called their attention to the case and identified the doctor as having testified in it, and in their argument they could have argued anything they wanted about it. They have argued about every other case that was tried in the Criminal court of Cook county. They have told your honor the facts where men were sentenced upon plea, they have told your honor the facts where men were sentenced upon verdicts. Why can't I tell your honor something about the Gonzales case if we can discuss all these other cases?

MR. BACHRACH—if you ask me I can answer that very quickly.

MR. CROWE—I am addressing my remarks to his honor.

MR. BACHRACH—I insist upon my objection, if the court please.

MR. CROWE—There was a man in prison, if your honor please, and Dr. White was trying to save him from the gallows, and he said he had a prison psychosis. That is, he was afraid, he was scared stiff that he was going to hang. And the United States court says that the opinion is expressed that the prisoner is suffering from prison psychosis, a newly discovered type of mental disease or insanity.

Newly discovered by Dr. White, just as the mental disease here is another newly discovered mental disease discovered by Dr. White, which is described as essentially a reaction to the situation in which he finds himself from its realization.

Just imagine! This eminent alienist says it is a newly discovered disease, prison psychosis, which is essentially a reaction to the situation in which he finds himself, from its realization. The diagnosis, it is admitted, is not consistent with defendant's efforts at malingering, with which those who have previously examined him were impressed. In the second or more elaborate comment on the case it is said, "The whole reaction is an extremely shallow one; that the defendant's knowledge of the crime of which he is convicted and his realization of the situation in which he is, lie only a little bit beneath the surface, and at times it forces itself upon his attention in spite of his

defensive efforts. And so we see in some of the later notes of his case his plots to escape, and expressions which show a very complete realization of the trouble he is in.

This merely means that his defenses are weak and that from time to time they break down. That is the diagnosis. The court says the majority of the hospital staff with whom the superintendent conferred expressed the opinion that the case was one of malingering, but the superintendent—Dr. White, who can look into a man's brain and tell whether he is lying with the same certainty as a physician can look into a man's body—the majority of the hospital staff with whom he conferred expressed the opinion that the case is one of malingering, but the superintendent, who said he had no doubt that he malingered to a certain extent, notwithstanding he thinks the theory of malingering does not explain the situation.

He also says that a previous attack of mental disturbance let up very shortly after he had been sent to Dannemora. This evidently refers to a former conviction in some other jurisdiction, after which he had been committed to an insane asylum. In his first case, the court was imposed upon and instead of sending him to the penitentiary he was sent to an insane asylum, and after he got there this mental disease disappeared just as suddenly and as mysteriously as it came on. And he adds (quoting Dr. White) : "In all probability this present disturbance would all disappear very rapidly if the causes for its existence were removed."

In all probability the present mental disease of these two defendants would disappear very rapidly if the causes for its existence were removed. If the glasses had never been found, if the state's attorney had not fastened the crime upon these two defendants, Nathan Leopold would be over in Paris, or some other of the gay capitals of Europe, indulging his unnatural lust with the \$5,000 he had wrung from Jacob Franks.

If they were to be discharged today, through some technicality in the law, this present disturbance would all disappear very rapidly if the causes for its existence were removed. I used to wonder why they got Doc White . . .

MR. BACHRACH—I want to take an exception . . .

MR. CROWE (continuing)—And this explains it.

MR. BACHRACH—if your honor please, I want to take an exception to that and ask the court to rule that it is improper to make this argument on Dr. White, because of what I have stated. The doctor testified on the witness stand that the man was in his custody at the time of the testifying twelve years later. We expected to show and can show that the sentence was commuted at the request of the president.

THE COURT—Oh, yes. The Gonzales case was stricken out. The defense did not have an opportunity to comment on it, and

the state should not. But this court is not going to pay any attention to argument that is outside of the record.

MR. CROWE—If your honor please, Mr. Darrow argued here, without a thread of evidence of any sort, that Dr. Krohn was a peddler of perjury. Haven't I got a right to comment on Dr. White?

THE COURT—Oh, yes, but not upon that case.

MR. CROWE—Haven't I got a right to quote what other people have said about him?

THE COURT—Please don't waste time going into those matters.

MR. CROWE—Now, if your honor please, we will go back of this defense and see whether it is an honest defense or not, to see whether these mental disturbances came on as suddenly as they would disappear if the causes of them were removed.

Your honor will recollect that while doctors employed by the defense were sitting in the courtroom witnesses were put on to testify to fainting spells. Now what was the purpose of that? The purpose of that was to lay a foundation, in my judgment, for some doctor to later take the stand and testify that Loeb was suffering from epilepsy and it would be argued that, having epilepsy, his mind was diseased. Dr. Hulbert in his report, as I will show you later, says that there were not any evidences of fainting in Loeb, except one fainting spell that he had during initiation, and yet witness after witness was put on and they testified that he fainted, that he was rigid, that his eyes were glassy and that he frothed at the mouth.

But cross-examination showed that he was merely drunk, he was not rigid, but he was stiff, his frothing at the mouth was a drunken symptom, and after he got through he wanted to lick a couple of waiters.

The evidence further showed that these other fainting spells were due to the fact that, in one case, seven or eight large boys jumped on him, and he fainted as a result of injuries inflicted upon him. He fainted again in the hospital after he had been in an automobile accident, and the doctor who waited upon him said that the fainting spells were due entirely, in his judgment, to the accident. Then the doctor who had been employed to take the stand and testify to epilepsy was dismissed. If these lay witnesses had stood up, and had not broken down under cross-examination, that doctor would have testified to epilepsy.

I submit that this defense is not an honest defense. This is a defense built up to suit the needs of the case. If the state only had half of the evidence that it did have, or a quarter of the evidence that it had, we would have had a jury in the box, and a plea of not guilty. But trapped like a couple of rats, with no place to

escape except through an insanity defense, they proceed to build it up. A weird, uncanny crime? The crime is not half as weird or uncanny as the defense that is put in here.

Let us see what Dr. Hulbert said in his report. That is in evidence, introduced by the defense; so I do not suppose there will be any objection to my reading from that. I am glad that the defendants' lawyers conceded me some few rights in this courtroom, although they argue that I ought to be down in the office after a plea of guilty, and that I have no business up here at all.

"Personal history, Richard Loeb. Mother's health—before his birth she was not very ill. Her fever was not remarkable, although there was some sickness."

The doctor did not testify to that on direct examination, your honor. He did not think this report would ever get into the hands of the state's attorney, and he said he did not.

He created the impression by his direct examination that there was something wrong at the time of this boy's birth.

What does he say in his report? He was a perfect baby. Oh! He developed a little late sexually and at the age of 15 Dr. Hulbert in his report said he had a social disease. On page 9, "There is no history of fainting attacks, except that once during an initiation ceremony at school he fainted."

In other words, after considering the teddy bears and the Buffalo Bill suits, and all this other trash that was testified to by these wise men from the east, counsel or somebody decided that they had to add something more to it to make it stand even as a mitigating circumstance, and while their report said that there was no history of fainting attacks, except once, they tried to prove a dozen in order to build a foundation for epilepsy.

And your honor recollects that on cross-examination every one of them either developed into being knocked unconscious by accident or else it was a drunken stupor brought on by debauchery.

Then this nurse; the nurse, who, according to the testimony of the defense, knew more about Richard Loeb up until the time he was fourteen years of age than any living person. They tried to create the impression that she was insane and that Dick caught his insanity from her, the same as one boy catches measles from another. They had her here in Chicago and she is not produced as a witness. A letter was read to indicate that she was insane, and if I ever read a letter that more clearly demonstrated sanity than the letter written by that nurse I don't remember it. It was a kindly, loving letter, sent by a woman to a boy she loved, filled with motherly advice, advice that it develops is so sadly needed in this case by these two young perverts.

A picture of her was introduced to show that she was some terribly hideous creature.

Let us see what Dr. Hulbert says about her. She is supposed to have given information in reference to Dick because these people would think he had a diseased mind when he was a child.

She returned to Chicago after the arrest of young Richard, to help him in any way she could, and through the attorneys, arrangements were made for an interview. She is very reserved, quiet and strict; her memory is good. She is a woman of attractive appearance, modestly and carefully dressed. She denied any imperfections in herself while she was a nurse, and she denied any imperfections with the boy during her stay with the family. She said that he was quite all right at fifteen years of age, at the time she left the house.

She said he was a lazy boy, but a bright student. He was lazy until he got along in several grades of school where he found that he could graduate in one year's less time than he expected, if he would study, and so he began to study hard.

She would not say—she denied that he ever had any fears or any disorders in his sleep, and if anybody would know about the day dreams or the night dreams of Richard Loeb, I submit that this woman would know about it; and we are told about the weird, uncanny dreams he had, both waking and asleep.

She denied that he ever had fears or any disorder in his sleep. She would not say anything which might reflect on the boy, even though she was plainly told that a complete understanding of this boy was essential for an accurate diagnosis.

She came on here, as Dr. Hulbert says, to do anything within her power to help the boy, short of perjury, and, although she was told that a complete understanding of the boy was essential for a correct diagnosis, which means, for a defense in this case, she would not say anything that might reflect upon him, because she intended to tell the truth, and that is why she was sworn as a witness before these alienists, but was not brought into court and sworn before your honor.

Her general viewpoint is a conventional one. She was quite unaware of the fact that he had become a petty thief and played detective. A woman that they claim, until he was fifteen years of age, never let him out of her sight by day or by night.

A woman that they claim, until he was fifteen years of age, never let him out of her sight day or night, was quite unaware that he was a petty thief or played detective. If she did not know it, who in God's name would know it? If she says he wasn't a petty thief and he didn't play detective, will you take her word for it, or will you take Dr. Hulbert's word?

What information has he got? He talked to Richard Loeb and he talked to the nurse, the one they claim was with him every hour of the day, and because he was constantly tied to her apronstrings he is now here charged with murder, and she gives the lie to this.

It has been argued here that because Richard Loeb told the doctors that he had no ambition in life, that he hadn't selected or thought of any profession, that is an indication he is mentally unbalanced, and because the other defendant had a definite ambition in life, he is also mentally unbalanced.

A happy philosophy of medicine, especially when you are testifying in a guilty case, and trying to cheat the gallows. It is too bad that they have two defendants here. It would be so much easier to prove one insane, because anything you found in him could be a bad sign. But when you have two, and they are not exactly alike, when one has broken arches and the other has a high arch, why, then it has got to be a bad sign in one and a bad sign in the other. And if one has to shave every day, that is a bad sign, and if the other has to shave but twice a week, that is a bad sign.

It was a bad sign that Richard Loeb did not have any definite aim or purpose in life, and it was also a bad sign because Leopold wanted to study law and ornithology. Well, let us see what Dr. Hulbert says about this.

"When the patient"—that is, Loeb—"was asked what he expected to make of his education, and what were his ambitions, he stated he expected to study law the next year. He said he had always intended to study law." And yet when they were putting on their defense, everybody was testifying that he had no ambition in life. He was just wandering around like a ship without a rudder, and did not know what port he was going to put into.

"When the patient was asked what use he expected to make of his education, and what were his ambitions, he stated he expected to study law the next year. He said he had always intended to study law. At one time he had thought of teaching history, but he felt that he was not of the scholarly type. Asked why, he replied that he was always lazy, and that he could never sit down and apply himself. As a boy he poisoned his mind by reading detective stories." Well, there are a whole lot of us in the same fix. I remember crawling under the bed to read Nick Carter. After I got through reading Nick Carter I began to read Gaboriau's French detective stories, and when I was a student at Yale I paid more attention to Raffles than I did to real property."

I think that is the experience of most normal, healthy-minded people. Let us see what the doctor says about it:

"It was observed that he read good books—Dickens and Thackeray—but not the Alger books, though he did read 'Little Lord Fauntleroy.' He spent all his time in day dreams." Now, that is what your honor has been told—day dreams and the reading of detective stories. What does the doctor say about it? "He was rarely observed day dreaming." That is the information he got from the nurse, because I read what the nurse said. "He was never haunted by fears or dreams," is what she said. And Doctors

Hulbert and Bowman, under another heading, in another chapter, giving information that they got from other people, say he was rarely observed day dreaming.

And here Hulbert and Bowman, under another heading, in another chapter, giving information that they got from other people, say he was rarely observed day dreaming, night dreams were very rare. Sometimes he would talk or laugh in his sleep, but not often; he slept soundly and was hard to waken.

Oh, the only reason that Dickie committed this slight delinquency of murdering little Bobby Franks was that he desired the thrill, all his life he craved for thrills.

What do Bowman and Hulbert say about it? "He never appeared to crave a thrill or excitement; but was rather quiet in his conduct. After Miss Struthers left that home he seemed to be much the same as before, quiet, rather affectionate, extremely polite and respectful."

That is what the friends and members of the family must have told the doctor. Here is what the patient told the doctor himself:

"The patient's estimate of himself. While also at times he had a tremendous output of energy and physical ability, he tired easily. He is rather inclined to be a leader in athletics and games which he enjoys."

Why, the whole trouble with him is that he never led the natural life boys lead. He was always kept in the house with his nose buried in some serious, solemn volume.

That is what we were told. And the only time he had any boys was when Doc White could put some interpretation upon those boys which would lead to the conclusion of a diseased mind. That is why we heard about the teddy bears and these various suits of his.

He never went out and played as boys play baseball, marbles and other things, and yet when he is talking to the doctor and the doctor reports to "the three wise men from the east," he says he is inclined to be a leader in athletics and games, which he enjoys. He makes friends very easily and feels quite at ease with strangers. He is inclined to be a leader and likes to dominate his environment.

Well, isn't that natural in a healthy-minded person? Everybody desires to strive, to succeed and to lead. But the doctor adds: "But can fit himself easily into any sort of situation, so that he does not become bothered or upset if someone else happens to be dominating the particular situation and he is compelled to assume a minor role." And as a boy who did not have judgment enough to plan, a boy who had no—well, to do or not to do, and yet he tells the doctor, "While the patient often acts without reflection and is quite impulsive, he nevertheless plans a great deal and works out consistent schemes for the future."

"He plans a great deal and works out consistent schemes for the future," in this mad brain of this mad boy.

"He is open and frank with others as long as he feels there is nothing he wants to conceal."

Dr. White said he couldn't lie to him. "Nobody can lie to me. I can read their minds just the same as, or look into them just the same as a doctor can look into the human body with an X-Ray." Well, I don't suppose he thinks he knows more than the Lord does, but I don't believe that he will concede that the Lord knew any more than he did when the Lord was his age.

"But if he feels that it is to his interest to hold anything back he does so. He therefore gives an appearance of great frankness, which is not true. The patient says that he will tell a lie with no compunction whatever and that he is completely dishonest."

Let us see whether he lied to these doctors and withheld information, the same as they lied to your honor and withheld information. Here again the doctor says, talking about his being tied to the apronstrings of an old nurse and never being allowed to play as other boys played, page 41: "He has always been fond of athletics and outdoor sports, such as tennis, swimming, hockey, skating, and so forth, always being fond of bridge. While he plays some other card games, he has not been particularly interested in them. He is considered an extremely good bridge player and has passed a great deal of time playing it. He is fond of dancing and mixed society. He has used alcohol considerably since he was fifteen and gotten drunk a number of times."

(There was a brief recess.)

MR. CROWE—If your honor please, when I left off we were talking about the poor little rich boy, who had been brought up in a golden cage, who never had a chance to use his wings as other boys did. Never permitted to play with other boys, never allowed the recreations that other boys had, and yet Dr. Hulbert says on page 42: "In 1912, at the age of seven, he and Jack Mengel built a five-foot square room with a pointed roof. This was used for a playhouse. A year or so later the boys formed a guinea pig company and used the playhouse for the office of the company. In 1916, Richard Loeb, with five or six other boys, published two issues of a small 3 x 5-inch, twenty-four page journal, called Richard's Magazine. His contribution was that of being editor, manager and author. His writings showed quite advanced thinking for a boy of his own age, and reflected well the humanitarian environment of his home."

Reflected the humanitarian environment of his home, and yet Mr. Darrow, in a vain effort to save their worthless lives, has said that they committed this murder on account of their families.

Oh, another interesting thing that leads these wise men to think that they are demented and stark mad is that over in jail,

while he is preparing his defense, he wants to wear an old ragged coat. He has always been careful of his personal appearance and neat and clean about his person and has liked to appear well dressed." I have never seen him any other way. "He has always had a pleasant consciousness of his own body." And again I find in Dr. Hulbert's report: "He has always been interested in camping, motor-boating and outdoor life in general. This has never been linked with any intellectual pursuit, such as botany, zoology or the like." Tennis, swimming, hockey, skating, bridge, dancing,—all the sports every healthy, natural young boy would like to indulge in, but a great many of which we were not able to indulge in, because we happened to be the rich boys of poor parents and not the poor boys of multimillionaires.

They didn't lie when questioned by their alienists. It would not have done them any good to lie to Doc White anyhow, but they did not lie to any of them; and they all testified that if they had lied, an impossible thing, and the things that they had told them were false and they had held back certain things that were material and did not tell them, that would have changed their opinion. Oh undoubtedly, if the facts were not as they were, we would come to a different conclusion. But these boys were collaborating with us while we were planning this weird and uncanny defense for them. They didn't lie and they didn't withhold anything.

Well, let's see what Dr. Hulbert says and Dr. Bowman said. In this report Dr. Hulbert says, "I never expected that to fall into your hands, Mr. Crowe." During the examination on page 66: "During the examination and his recitation of his criminal career, he was not quite frank. Without any indication facially or otherwise he would lie or repress certain instances, unless he imagined that the doctor was previously aware of those instances."

When questioned about this later he said he had failed to mention certain things because he thought it advisable not to mention them or because he had been advised not to mention them.

After some guileless attorney, studied in the medicine and grounded in it, probably more than he is in the practice of the criminal law, some doctor or some member of the family had gotten these two smart Alecks and had trained and prepared them and told them what to tell the doctors and what not to tell them, then they brought on these doctors and said:

"Now, go in and listen to that story, and if after you listen to the story they tell you you don't think they are crazy, then you must be crazy."

He failed to mention certain things because he either thought it advisable not to mention them, he himself, or because he had been advised not to mention them. So, obviously, there are gaps in his history of the development of crime. "His oldest brother, Allan, does not know of these untold stories, but the patient says he will not tell them unless Allan advises him to do so." What are these untold stories?

The case is closed and we have not heard a word of it. They were not going to lie in order to fool the doctors, so that the doctors could fool your honor. No. They were perfectly frank. As Dr. White said, "They didn't lie to me, and they wouldn't lie to a man as smart as I am." They had not thought when they were talking to the doctors as to their defense in this case, none whatever. They might as a result of a childish fantasy murder little Bobby Franks as they wandered along in the dark, but, God forbid, that they should attempt to fool your honor in an effort to save their worthless lives.

But let us continue from the Hulbert-Bowman report: "On the other hand, there is a certain legal advantage." This is not a carefully prepared examination for the purpose of putting in a crooked and silly defense, in an effort to fool your honor, according to the witnesses when they are under oath on the stand. But when they are making a report for the lawyers and a report for "the wise men from the east" to base an opinion on, Drs. Hulbert and Bowman say, "On the other hand, there is a certain legal advantage in minimizing the broadcasting of his episodes, even keeping them secret from the attorneys, examiners or relatives."

Here are doctors who want to make your honor believe that their only interest is in finding out what the truth is, and telling it to you regardless, and they give their reason for not insisting on all of the facts in the following language: "On the other hand, there is a certain legal advantage in minimizing the broadcasting of the episodes, even keeping them secret from his attorneys, examiners or relatives. Consequently no great effort should be made to bring forth details which he willfully suppresses. This is Dr. Bowman and Dr. Hulbert advising Dr. White, Dr. Glueck and Dr. Healy that there is a certain legal advantage not to bring these matters out, and no effort should be made by them to bring forth details which he willfully suppresses.

I quite agree with Dr. Hulbert, that when he wrote this report he never thought it was going to be read by the state's attorney, or the contents of it would ever be told to your honor.

His fantasies usually occur between the time of retiring and the time sleep comes over him. He estimates that this period was on an average of half an hour's duration.

Not wandering around all day, Mr. Darrow, in a day dream and indulging in fantasies, walking up and down the street, snapping fingers, pointing out buildings, waving the gang here and there; not a fantasy that became a part of his life. Dr. Hulbert and Dr. Bowman said that the fantasies usually occur a half-hour before he goes to sleep. That is the time, your honor, when I and everybody else fantasy. When we get into bed we dream dreams of what we are going to accomplish and we scheme and plan and that is exactly what Dickie Loeb did.

And all this other stuff that we have been regaled with is perjury, pure and simple; perjury for a purpose—from Philip Drunk to Philip Sober, from the lying alienists on the stand to a report made by the alienists that they did not think would come to light.

Continuing on page 93: "He denied being implicated in the so-called gland robbery of Mr. Ream."

Well, it would be unfortunate with all these old gland doctors and all this piffle about glands that Dickie beat the doctors to it and experimented on glands prior to this time.

"He denied being in Geneva in the case of the ragged stranger who was found dead with his hands cut off and his face mutilated. He denied having participated in any other delinquencies."

And mark you this, your honor: "But later referred to four episodes, for which the letters A, B, C and D were suggested."

He referred to four episodes. Four crimes, if your honor please, that they merely designated as A, B, C, and D. And then the two doctors, whose only interest is to tell the truth as they find it, add in their own language: "It was found forensically—now what does "forensically" mean? That it was found from a legal standpoint, so the doctor says, "forensically inadvisable to question him about these." And the case closes and we are just as much in the dark as ever as to what these four crimes were, because the doctors concluded that legally, forensically, it was inadvisable to question him about it. And then I ask you, when Darrow talks about tricks, who are the tricksters in this case?

What strange hold did this man Leopold have upon Loeb? Why did he submit himself to the unnatural practices of Leopold? I will tell you, your honor, and I think I will demonstrate it beyond the peradventure of a doubt that these four episodes, that these four crimes, were known to Leopold, and he blackmailed Loeb, he threatened Loeb with exposure, and Loeb had to go along with Leopold. And Leopold was willing to go along with Loeb for vile reasons. And I will prove that, and I will prove it by the testimony of the defense, beyond a reasonable doubt.

"On their way back from Ann Arbor," on page 98, "the plan of kidnaping a boy coupled with the idea of ransom was first broached by the patient."

That is, that is the first time that Loeb talked to Leopold about kidnaping for a ransom. Not a thrill, but ransom. And I will demonstrate that money was the motive here. I will demonstrate that they gambled and they played for such high stakes that even their millionaire companions could not play with them. I will demonstrate that they had money that they cannot account for, unless it is the proceeds of either A, B, C, or D.

"The patient had a definite boy in mind at that time; the patient did not like this boy or his family."

A crime by mad boys, without a purpose, without any thought of revenge, without any thought of money? Let's see. The first boy they contemplated killing was a boy he did not like. Hatred, revenge, was the motive in his mind at that time; but their desire for money overcame that.

"The patient did not like this boy nor his family"—the details of which were not brought out. Why not? Because the details might show that the hate and the anger were strong enough to impel him to kill him; but he does tell you that the first boy was one he did not like, and he did not like his family.

"He was the patient's own age, rather large for his age. Patient's idea was to get hold of this boy when he was coming back from a party and lure him into an automobile. He could not figure any safe way of getting the money, and because he could not figure any safe way of getting the money, he brushed aside his hate and his desire for revenge upon his enemy."

Money is the motive in this case, and I will prove it repeatedly by their own evidence. He could not figure any safe way of getting the money. "The patient and his companion discussed this idea quite frequently. Neither of them, however, could think of any simple and certain method of securing the money." All through this case it is money, money, money—blood! "Neither of them, however, could think of any simple and certain method of securing the money. They continued to discuss the matter, weighing the pros and cons, suggesting methods only to pick flaws in them. In March, 1924, the patient conceived the idea of securing"—what? The thrill? The excitement? No. "Conceived the idea of securing the money by having it thrown off of a moving train. This idea was discussed in great detail, and gradually developed into a carefully systematized plan."

But Mr. Darrow disagrees with the doctor. This was not carefully discussed and gone into in great detail, and gradually developed into a carefully systematized plan. This was just the mad act of mad boys, wandering around in the dark, looking for a teddy bear.

It was figured out first that the money should be thrown off of a moving train when it was dark, somewhere in the country. He and his companion spent many uncomfortable afternoons—I really sympathize with you, dear little boys, for all of the discomfort you suffered on those afternoons. I really sympathize with you, dear little boys. It is too bad that in this weird, uncanny scheme of yours, of murder, you had to spend many uncomfortable afternoons—going over the Illinois Central tracks looking for suitable locations. Finally his companion—that is, Leopold, your honor—suggested the idea of setting upon a certain brick factory on the left side of the track as a landmark. There was

considerable discussion as to what car to use. Both the patient and his companion felt that it was not safe to use either of their own cars.

Mad boys in the dark and dreamland, doing a mad act without any thought of the consequences of it, and least of all not considering their personal safety at all? Too crazy to know that it was all wrong, and too crazy to care whether they were caught?

"They both felt that it was not safe to use either of their own cars. The patient developed an intense interest in the plan, and found also that it gave him a very pleasant topic of conversation when he and his companion were together, drinking or driving about."

When he and his companion were drinking they would gloat over the perfection of their plan to murder, and murder for money. I used to think that the most impelling motive in life was passion. But in this case passion and a desire for revenge are swept aside for money. Money is the controlling motive in this case. If they merely wanted to kill for a thrill, if they merely wanted to kill to satisfy his anger and hate toward this companion of his, he would have been the victim; but they could not figure out how they could safely get the money.

"Patient's companion suggested that they rent a car, so they went to the Morrison hotel and registered under the name of Ballard. An elaborate"—a crime without purpose? A mad act of mad boys without any purpose, without any thought either in its planning or its execution, according to Mr. Darrow, but the doctor says, "an elaborate plan for building up an identification was worked out. Letters were sent to Mr. Ballard at the hotel, and a bank account was opened in his name."

Here is a man who has no emotion; all intellect and no emotion. His nurse says he was kind and affectionate, obedient and respectful. Isn't that emotion? Isn't love one of the greatest emotions that surges through your heart? Kind and affectionate, loving.

What does the doctor say? "The bank account was opened in his name," and then the doctor adds in parenthesis, "When the patient came to this point in the narrative he looked decidedly interested, drew up his chair, talked almost in a dramatic whisper with considerable tension, his eyes constantly roaming the room."

In fact, he showed what? Lack of emotion? Showed that he was devoid of emotion? No, in fact, he showed intense emotional reaction. "Herein the repetition of that which he said had been very thrilling to him."

Who are you going to believe? The doctor, after he has been coached, taking the stand and saying he has not any emotion, or the doctor in the first instance when he is making a report, that he does

not expect you or me to see, and he stated on the stand that he did not, and he says, in fact, he showed intense emotional reactions.

"On May 9 patient's companion went to the Rent-a-Car company and said he wished to rent a car." Well, I will pass that. Your honor knows it.

"Mitigation," and this document is offered in mitigation of this crime. As I said yesterday, probably I have been confused by the use of all these learned terms in a strange, foreign language that I did not understand or learn. But if this is mitigation, my God, I would like to know what is aggravation.

"The patient's companion"—that is Leopold—"first suggested that they get a girl."

THE COURT—Now, you went over that once yesterday. It can serve no good purpose to repeat that.

MR. CROWE—I know, but I am merely repeating it, your honor, for the reason . . .

THE COURT—You mustn't repeat. I don't want to be arbitrary, but don't repeat.

MR. CROWE—All right, your honor.

THE COURT—You can have as much time as you like. There is no necessity of repeating that phrase with these ladies present. You have already gone over it once, and the court is fully aware of it.

MR. CROWE—I know that, but I want to call your honor's attention to it. Yesterday it was an argument, and today I am reading from the report of the doctor.

THE COURT—Well, there is no use reading it again or repeating it again.

MR. CROWE—Your honor understands it is in the report?

THE COURT—Yes.

MR. CROWE—Then they considered half a dozen boys, any one of them would do: "That they were physically small enough to be easily handled." That is the first reason. "They didn't want to take a boy that might put up a fight and get the best of it." That was one reason why they discarded the first boy, who was bigger than they were, and the second reason was the difficulty of getting the money. "One who was physically small enough to be easily handled, and their parents were extremely wealthy and who would have no difficulty or disinclination to pay ransom money."

What is the motive? All the way through the report, all the way through the confession—money, ransom, wealth. These

boys' identities were not sought other times, when the doctors are not anxious to get all of the facts.

Now, continuing on page 102: "Since they planned to kidnap a boy who was known to them, because it would be easy to lure him into their automobile, they felt that it was necessary to kill him at once."

Why? For the thrill? For the excitement? The only reason that Mr. Darrow can assign for this mad act of mad boys, that they did it for thrill or excitement? Oh, no. This is what they told the doctor.

"A boy who was known to them," etc., "they felt it was necessary to kill him at once, to avoid any possible identification of themselves by the victim, should he escape, or their plans go awry." That is the motive here. The kidnaping was planned for ransom. They wanted the money first, and they were going to kidnap a boy to get the money. Then to make sure they were picking the right fellow, whose folks were wealthy, and who could pay the ransom, they had to pick a boy they knew and who knew them.

Then the motive for the murder was their own self-preservation. You do not have to take my word for it. Take the word of the doctors hired by the alienists, who say the boys told them that themselves.

It was necessary to kill him at once, to avoid any possible identification by the victim should he escape, or their plans go awry. Was this killing done as we have been led to believe by the defense, merely for the thrill, your honor, or the excitement? What does the doctor further say on that?

"The patient"—Loeb—"did not anticipate the actual killing with any pleasure."

It was not for the thrill or the excitement. The original crime was the kidnaping for money. The killing was an afterthought, to prevent their identification, and their subsequent apprehension and punishment. He said he did not anticipate the killing with any pleasure. It was merely necessary in order to get the money. Motive? "The killing apparently has no other significance"—now, this is not my argument, your honor, but in their own report, their own evidence . . .

"The killing apparently has no other significance than being an inevitable part of a perfect crime in covering one possible trace of identification."

Drs. Hulbert and Bowman were told by these defendants, as I told your honor, that the killing had no significance here except to prevent their being apprehended and convicted if the victim escaped. That is the motive for the murder, self-preservation, the same as a thief in the night in your house, when suddenly

surprised, shoots to kill. Why? He did not go into your house to kill; he went in to rob. The killing had no significance, except he did not want to be apprehended; the desire, the urge of self-preservation. And that is the only significance that the murder in this case has.

Not the thrill, as we have been told, not a desire for excitement, but they killed for exactly the same reason that the burglar caught at night kills for, exactly the same reason that Krauser killed when he was robbing the Atlantic & Pacific Tea Store.

He did not go into the A. & P. store with murder in his heart. He went in with greed, just as they went into this kidnaping. He killed because he did not want to be apprehended.

See whether they took delight and pleasure in this killing for the mere wantonness of killing. See whether the mere wantonness of killing gave them the thrill that they tried to make you believe. "They anticipated a few unpleasant minutes." Not pleasant minutes; not the thrill and the delight and the fast beating heart that they tell you Dickie Loeb has, if he has got a heart at all. "They anticipated a few unpleasant minutes in strangling him." And I might tell you at this point, your honor, and will develop later, that the original plan of Loeb was not to kill him with the chisel, but they were to strangle him to death with the ropes that they procured. He was to pull one end and Leopold the other; and the reason he wanted that done was, as I will demonstrate as we go on, Leopold had something on him.

Leopold knew about the crimes A, B, C and D, and in this murder he was going to make Leopold pull the rope so he would have something equal on Leopold.

"They anticipated a few unpleasant minutes in strangling him." And then the doctor says in parenthesis: "The patient's face registered the expression of disgust." No emotions. No, his emotions were split off from his intellect. And again the doctor says he showed emotion; he showed disgust at the plot to strangle that boy.

And they planned for each of them, namely, the patient and his associate, to have hold of one end of the strangling rope and they would pull at the same time so that both would be equally guilty of murder. They did not seem to think that this would give them a closer tie in their friendship."

No thrill. No delight. It was the sharing of culpability.

"It was not anticipated that the blow on the back of the head with the taped chisel would be fatal. "The patient stated that he thinks that during the last week preceding the crime he had less pleasure in his anticipation."

He didn't take the same pleasure in thinking of getting \$10,000 by kidnaping the last week, because the murder end began to worry him, and he was going to make Leopold share the guilt

equally of the murder. This man, who does not believe in God, and certainly does not believe in the laws of the state of Illinois, who has no emotions or no heart, might be surprised to know that it was his own conscience bothering him the last week.

"He did not want to back out because of their extensive plans, because of the time spent, because of the trouble they had gone to and because of his associate being in it with him, and he was afraid of what the associate would think should he not go ahead. They decided to get any young boy they knew."

Any young boy they knew! Is that all? "They decided to get any young boy they knew to be of wealthy family." Money don't enter into it.

"They had also perfected the plan for securing"—what? The thrill. The excitement? No. "They had also perfected the plan for securing the money. The victim's father was to be told to put the money in a cigar box, etc." I won't go on with that because your honor is familiar with the details.

Again, and this is three times in the report as to this boy who had no emotions and on account of lack of emotions in a mad frenzy and in a dream committed this unthinkable crime, on page 107 the doctors say, continuing with Loeb:

"We got the boy and disposed of him as planned on Wednesday," then I will skip some. "So we made our escape without waiting for the train." What I skipped is merely the details about sending the cab, and so on.

"We returned the car to the agency at 4:30," and the doctor's remark in parenthesis, "At this point he choked up." His emotions overcame him. "He choked up and he wiped his nose with his fingers." He wiped away the tears.

The other fellow hasn't any emotions either, your honor, none at all. He drove them all out when he was seven or eight or nine or ten years of age, at the same time he passed God out of his heart. Well, let's see what Dickie says about it.

"I had quite a time quieting down my associate." This is during the murder, if your honor please.

"I had quite a time quieting down my associate. I cooled him down in five minutes, after we got him into the back seat, thinking he was alive. I got calmer, while quieting my associate. He was hit on the head several times (referring to Franks). My associate says, 'This is terrible, this is terrible.'"

Emotion or totally devoid of emotion? When he saw Loeb knocking out the life of this boy it took Loeb five minutes to quiet him down. He said, "This is terrible, this is terrible."

I will tell your honor, if you don't think they have got emotions, of another instance. Some of us didn't think that Harvey Church

had. He told his story with the air of a braggadocio, and he gloated apparently while he was telling the authorities how tough a fellow he was. But when he was told to begin his march to the gallows they carried him there in a stupor.

And if it is the fate of these two perverts that they must pay the penalty of this crime upon the gallows, when they realize it, you will find that they have got emotion and you will find they have got fear, and you will find these cowardly perverts will have to be carried to the gallows.

"This is terrible, this is terrible.' I told him it was all right, and talked and laughed to calm him."

To calm him? No. "I told him it was all right, and joked and laughed, possibly to calm myself, too." Cold-blooded? How did they put this poor little Franks boy's body into the culvert?

Unfortunately, the body was not kicked far enough into this hole. There is that little dead body, naked, and after they shoved it in, they kicked it in; and the unfortunate part of it was, according to Loeb, unfortunately the body was not kicked far enough into this hole because a foot remained protruding, visible to a passerby. That was the only unfortunate thing about this, that a foot stuck out, and the body was found the next day; and they are sitting before your honor on a plea of guilty to this murder.

He did not have any emotions. He first told the doctor, in accordance with his own ideas or his training, that he got a kick out of the whole thing; and then he began to get a little more truthful to the doctor.

"He first stated that he got more of a kick in discussing it with his own family, but later changed his statement, and said that he felt he got a little less kick because he had some slight remorse. His mother said that whoever did it should be tarred and feathered."

What does that mean? A mob ought to take him. We have heard Mr. Darrow talk repeatedly of the hoarse cry of the angry mob. There is no danger or no fear of us hearing the hoarse cry of the angry mob if the extreme penalty is visited here. I am not so sure otherwise.

"On the other hand the patient was a little worried." Well, what is worry? Worry is an emotion the same as fear, the same as love. "Worried by the attitude of his father." I would like to direct your honor's attention to what I have got marked there (handing the Bowman-Hulbert report to Judge Caverly), and particularly the word "decent," showing the attitude of mind of some of these defense alienists when they refer to childish pacts, and so on. I will skip that. Do you want to look at it?

Now let us find out how he has acted in jail, your honor: "He has shown nothing unusual in his behavior in jail" Acts just like a

normal, sane person. "He has shown nothing unusual in his behavior in jail."

Of course after this report had been given to the lawyers and the doctors from the East they had to add to it a little bit, just as they did about the epilepsy, and Doc White brought in a lot of things that are not in this report, and someone else brought the unusual conduct of the defendant while he was in jail, wearing an old coat and so on.

But these two doctors, when the defense was young and had not matured, say he showed nothing unusual in his behavior in jail; his life was quiet and well ordered.

He eats and sleeps well; even going to sleep while his associate was being examined in the same room.

Dr. Krohn has been criticized for saying that these defendants were correctly oriented in all three manners. Let us see what these three doctors say. "He is correctly oriented in the three spheres." He knows his name, he knows where he is, he knows what is going on.

"He takes a lively interest in the jail routine, and in the affairs of other prisoners, speaking of their crimes and their prospects in the usual jail phraseology, such as 'I think so-and-so will get the 'rope' or I think so-and-so will get the 'street.'"

Is there anything in his conduct in the jail that these doctors discovered, to indicate a mad boy who wants to do a mad act?

Or is it just the conduct of normal people, people who are responsible to the law for their violations of it?

I do not intend to take up any more time than I deem necessary. Your honor has been extremely patient with the state and with the defense in this case, but I think that your honor realizes, as most everybody realizes, the tremendous importance of this case, and the fact that it should be tried in an orderly manner, according to the laws of the state; and where human lives or the enforcement of the law is concerned, time is of little moment.

I just want to call your attention to one or two little things which show that this was not a purposeless crime of mad boys traveling around in a dream. In the Hulbert-Bowman report, the doctors say:

"The boys arranged to have their rented car, with a back cloth over the license plate, backed up to the tracks at the place where the box would be thrown. They had timed the train, they had arranged that if the train was late, it probably meant that there had been some flaw in their plans, and that the father had sought aid, whereupon they would drive away in the car and not wait for the train."

Planning, deliberating, working out the most minute details, they were perfectly assured that their plans were so perfect that they themselves would never be suspected, and of course would never be apprehended.

And nothing in my judgment but an act of God, an act of Providence, was responsible for the unraveling of this terrible crime. I think that when the glasses that Leopold had not worn for three months, glasses that he no longer needed, dropped from his pocket at night, the hand of God was at work in this case.

He may not believe in God, but if he has listened and paid attention and thought as the evidence was unfolded, he must begin to believe there is a God now.

No thought of money, a mad act committed by mad boys in a dream; money did not enter into it, and yet they tell the doctor and he tells us: "They planned to divide the \$10,000 equally"; and I believe one of our alienists expressed it—they planned to cut it fifty-fifty.

I have repeatedly referred to the fact that they tried to create an impression when the doctors were examining them that they were perfectly frank; they co-operated; they did not lie; they did not distort; they did not hold back any evidence; and that is the sworn testimony of the three doctors from the East.

Let us find out whether that is true or not. I suspected and I tried to get them to admit on cross-examination that boys of superior education and intellect, boys who could plan a crime of this sort stretching over a period of six months and attend to every minute detail, boys who showed such an abandoned and malignant heart, as the facts in this case show that they possessed, might possibly, when caught like rats, lie just a little bit to friendly doctors who were trying to build up a defense for them to save their worthless lives.

Oh, no, that is impossible. Everything they told us was true. They withheld nothing. They distorted nothing. They suppressed nothing.

Well let's see what they say about it in the report that was intended to be a secret report and was not to fall into your hands or into mine:

"The boy is apparently frank, but is not absolutely so, sometimes distorting his statements, but without anything to indicate it, and sometimes suppresses much data."

I wonder, is it possible they did fool Old Doc Yak from Washington, and I wonder whether it was necessary to fool him. I wonder whether he was not willing to try to fool the court? Back to motive again, on page 116: "He had no hatred toward the boy. As the hate of his first planned victim disappeared, the excitement of planning grew, and money developed as an afterthought.

Neither he nor his associate would have done it without the money. That extra \$5,000 would have been his security."

Have they any interest in the money? "We anticipated especially the money," in the language of Loeb, and then the doctor adds in parenthesis, "Facial expression of interest." "We thought we had it all so cleverly worked out, and we felt certain at not being caught. We felt certain of not being caught or we would not have gone into it."

Is that the mad talk of a mad boy; or is that the cold-blooded reasoning of a man who is a criminal, with a criminal heart and a superior intelligence and education?

And again, if your honor please, the doctor says: "I asked him if he would go through this plan again if he felt certain that he would not be discovered. He replied, 'I believe I would.'"

Why? Darrow says \$10,000 is not the motive, but take it from his own lips, "I believe I would if I could get the money."

The patient's attention was called to a newspaper account of an interview with Mrs. Franks, the mother of the victim, in which she stated she had no desire to see the boys hanged, but would like to talk to them to know whether the boy suffered in his last moments. The patient was asked whether it would upset him at all to talk with Mrs. Franks. He replied he thought it would upset him a little and make him feel sad. He said when he read this interview in the paper, "My first feeling was joy."

There has been some talk here, in order to make him appear to be mad, that he even contemplated killing his little brother, Tommy, or killing his father. The evidence in this case shows that that is just thrown in for good measure, that it has no foundation in fact at all. It is another piece of perjury, manufactured in order to build a foundation for a perjured insanity defense.

Now, I told your honor about A, B, C, and D, that these doctors decided that it was forensically inadvisable to go into, that it might hurt the defense if it was gone into, and for that reason they did not go into it.

I told you at that time I would prove by this report that Loeb had committed major crimes, four of them, that he would not even tell his lawyers about, that he would not tell the doctors about, and they concluded it was a bad thing to make inquiry about; that Leopold knew about these and that Loeb was afraid of Leopold; that he contemplated killing him so that he would not be in his power.

I told your honor, and I have no desire to repeat it, the use that Leopold made of that information and the method in which he blackmailed Loeb. Now, let us see what the evidence is on that:

"The patient and his associate were on very intimate terms, but the patient stated that his associate often stated that he would

never entirely trust the patient, since the time the associate had found that the patient was taking unfair financial advantage of him." Or in other words that he did not have the honor that is supposed to exist among thieves. Loeb was robbing Leopold.

"In a way, I have always been sort of afraid of him. He intimidated me by threatening to expose me and I could not stand it."

And on page 123: "Of late the patient, Loeb, had often thought of the possibility of shooting his associate." He was afraid of Leopold; he was afraid that Leopold might tell of A, B, C and D. "I could not stand it. I had often thought of the possibility of shooting him."

And again, your honor: "He often contemplated shooting his associate when they were out together and had the associate's revolvers along. He thought of pointing the revolver at his associate and shooting him. He denied ever having thought of hitting him over the head with a chisel.

"The idea of murdering a fellow, especially alone—I don't think I could have done it. If I could have snapped my fingers, and make him pass away in a heart attack, I would have done it."

Now, we can understand why the doctors in their testimony suppressed this part of the testimony. Now we can understand what A, B, C and D are.

"One reason why he never murdered Leopold"—the report says "associate"—"was that he felt that he would be suspected and there was no very safe way of doing it."

And one reason why he did not kill Leopold was that he knew of no safe way of doing it and he might have been suspected.

Well, it might have been a good thing if he could have planned as safe a way to kill Leopold as he did to kill Bobby Franks and then have stopped there.

He might have carried it a little further and committed suicide, and I think the community—a pall might have settled over them, but I do not think their grief would have lasted long.

"In connection with this he had often contemplated murdering his associate and securing a new pal." Somebody who would have nothing on him.

"He states that he had often contemplated hitting his associate over the head with a pistol, later shooting him, breaking the crystal of his watch, robbing him, leaving things in a way to create the impression that his associate had been robbed, that there had been a struggle, and he had been killed during the struggle."

I direct your honor's attention to this:

"He contemplated escape from jail, but he does not want to do this, for it would distress his family to have him disappear and be

known either as a criminal or an insane person. Before he decides to escape he wanted to discuss this with his older brother, Allan. He thinks an escape could be managed by spending a few thousand dollars, by bribing the guards at the jail and by someone giving him a gun.

"He says this without any swagger, as though it was only a matter of careful detailed planning, which his mind can do. He has made no plans as to where he would go should he escape."

Then the doctors add: "It must be borne in mind that Tommy O'Connor, one of the most desperate and one of the most intelligent criminals Chicago has ever known, did make a successful jail delivery from this jail within the last few years."

What a feeling of comfort and security the mothers and fathers of this town would have, with their children going back and forth upon the streets of Chicago to school, and these two mad dogs at large.

Let us find out about this superman stuff: "He often discussed morals with his associates, who insisted to him that the only wrong he, the patient, can do is to make a mistake, that anything that gives him pleasure is right for him to do."

Let's find out what judgment and credence Loeb paid to that statement. Quoting him literally, he says: "I took this statement with a great big dose of salt. Smile."

Well, he knew Leopold, and he knew when Leopold was joking, and he knew when he was in earnest, and when he talked about the superman theory he says, "I took it with a great big dose of salt. Smiles." But the doctors swallowed it as if it was sugar.

"He says he is not sorry for his present predicament." There isn't anybody in town that feels as bad as Loeb does about his present predicament. "He says that he is sorry for his present predicament for his family's sake. He doesn't know what should be done to him. He felt that the law should take its course, unless he could avoid it in some other way."

Now that is probably by escape, by bribing guards, and as he says, that is not out of the question Tommy O'Connor got out and he is out yet.

Talk about life imprisonment in the penitentiary.

He would repeat maybe if he knew he would not be discovered. Is that mitigation, your honor? All the way through this report runs the statement, "I would kill again if I thought I could get away with it," and they offer that in mitigation for the murder.

"When he and his associate quarreled in March the patient considered securing another friend for his criminal operations.

He stated that he had considered crimes similar to that of Koretz, who had put through a gigantic stock swindle. If Mr. Darrow had read this I think he would have blamed Koretz for this murder.

On page 131: "The patient's high intellectual functions are intact; he is obviously of high intelligence. The examination was extensive, but did not show any pathology except the low basal metabolism."

That was the only thing that this extensive examination showed, and not a sign of pathology at all. "He is correctly oriented, and in excellent contact with his surroundings. He denies any hallucinatory experiences, and there is no evidence of their presence. He has no feeling that people are against him or that he is being treated unfairly at the present time. Patient is intensely selfish and wrapped up in his own thoughts and feelings."

Heredity, finally Mr. Darrow says: the family, or some ancestor away back, planted the seed here. Hereditary influence. Well, let us see what the doctors say: "There is nothing about the patient's condition to show any evidence of a hereditary nature, and there is not the slightest reason to suppose that a condition of this kind will be transmitted to future generations by any of his relatives.

"This condition is acquired within the life history of the individual, and dies out when he dies.

"There is nothing elicited from a most careful and painstaking history from all possible sources to suggest that the family, either by omission or commission, contributed toward his delinquencies in the way they trained this boy."

Is your honor going to be more influenced by an argument of Mr. Darrow that Dickie is not responsible for this, that his family is; that it is due to heredity and training, or are you going to be more influenced by the statement of their doctors?

Continuing with the Bowman-Hulbert report, and here the person talking is Leopold and not Loeb.

"The reason why they agreed to strangle the victim with a rope, to their mind, was that that would make them equally guilty of the crime."

In other words, all this king and slave fantasy is a mere figment of the imagination. The real tie that binds in this case is that one was a criminal; the other had something on him.

He was afraid of exposure; he contemplated murdering him, and the other one blackmailed him in the manner that I have already indicated. Loeb wanted to shut the mouth of Leopold and then break with him. Leopold had enough on him, on A, B, C, and D, and that is why he wanted Leopold to help him choke the life out of little Bobby Franks.

No emotion in the superman Leopold? No, he killed all his emotions before he came into court, on the advice of counsel and the advice of doctors.

But when he is talking he says: "It was necessary to hit the victim several times over the head and he bled some. This upset the patient a great deal. He said to his companion, 'My God, this is awful.'

"He experienced a sinking feeling in the pit of his stomach; his hands trembled, he lost some of his self control. His companion, however, laughed and joked and helped the patient to get back his self control."

When they got to the culvert they found the boy had already died and they could not carry out their original scheme of strangling him with the ropes.

Again: "Asked whether he would commit another such crime if he were certain that he could escape detection, he replied, 'I would not commit another such crime because I realize that no one can ever be sure of escaping detection.'"

He feels that this would be the only reason that would keep him from another such attempt. That there would be no question of remorse or guilt entering into it.

The desire to save their own worthless hides is the only thing that enters into their thoughts.

When he is not posing to prepare a defense based on the fact that he has no emotion, when he is not posing, these doctors say he shows a great deal of emotion. Why, your honor, it really would be too bad if these two young fellows imposed on Old Doc Yak, lied to him. I showed to you what Loeb said he would do. I showed to you in this report what he has done. He has lied repeatedly to the doctors. He has lied under advice of counsel and family. He has suppressed and distorted.

Money was always uppermost in their minds when they talk about this kidnaping, and the murder, as I have explained, is an afterthought, in order to protect themselves. Psychiatric observations. We live and learn. "Patient's intellectual functions are intact"—Leopold—"and he is quite obviously an individual of high intelligence. He is correctly oriented, and in excellent contact with his surroundings."

Let's see what Leopold said he would do:

He seems to be reasonably frank during the examinations, particularly with regard to his own feelings and emotions and his estimate of himself. On the other hand, he undoubtedly omits certain data regarding some of his past experiences. He lied rather plausibly at times.

"Later, when he realized that it was known he was lying, he appeared perfectly unconcerned. A number of times he inquired whether his story agreed with his companion's and seemed to show a great deal of concern about this matter.

"In fact, he did this so crudely it was apparent that he was concerned lest there be some failure of their stories to coincide."

In other words, both of them are lying, both of them have lied, both have suppressed things and hid them from their doctors, and they had to do it in order to give a basis of that insanity defense here.

Both of them had been schooled and trained and instructed as to what to tell these doctors and what not to tell them, and when he is telling his story he is concerned lest there be some failure of their stories to coincide, lest one of them might forget or the other might forget.

The same argument was made by Mr. Darrow with reference to Leopold as was made to Loeb. First he began to blame the old German philosopher Nietzsche, although every student in every university for the last twenty-five years has read his philosophy.

And then I guess he thought that would not do because if reading his philosophy would be an excuse for this crime, how about the countless thousands who have gone before and who are still reading this philosophy who lead decent, honorable lives?

He did not have a poor old nurse in this case to blame, and he was not quite satisfied in blaming some remote ancestor, so he blames their parents, respectable, decent, law abiding citizens.

The only unfortunate thing that ever came into their life was to have a snake like Leopold in that decent family. Casting blame where blame was not due, but where sympathy should go out, as it does from the heart of every person in this community, to the respected families of these men.

But Mr. Darrow says, "No. Save your sympathy for the boys. Do not place the blame on the boys. Place it on their families. This is the result of heredity."

May I be permitted, if your honor please, for a few moments to read you some prose?

"The White House, Washington, D. C., Aug. 8, 1904.—The application for commutation of sentence of John W. Burley is denied. This man committed the most heinous crime known to our laws. Twice before he has committed crimes of a similar but less terrible character. In my judgment there is no judgment whatever for paying heed to the allegation that he is not of sound mind—allegations made after the trial and the conviction," as in this case.

No person in all this broad land who knew these two defendants ever suspected that they were mentally diseased until after Bachrach and Darrow were retained to defend them in

a case where they had no escape on the facts. If I had taken them into custody on the 20th day of May and attempted to have them committed to an insane asylum Mr. Darrow would have been here, their families would have been here, and all the doctors they could hire; and there would be only one crazy man in the courtroom, and that would be the state's attorney.

"Nobody would pretend that there has ever been any such degree of mental unsoundness shown as would make people even consider sending him to an asylum if he had not committed this crime. Under such circumstances, he should certainly be esteemed sane enough to suffer the penalty for his monstrous deed." And the penalty in this case was hanging.

I have scant sympathy with the plea of insanity advanced to save a man from the consequences of crime when, unless that crime had been committed, it would have been impossible to persuade any reasonable authority to commit him to an asylum as insane.

Would it be possible in this case, if this crime had not been committed, to persuade any reasonable authority to commit either to an asylum as insane?

Among the most dangerous criminals, and especially among those prone to commit this particular kind of offense, there are plenty of a temper so fiendish or brutal as to be incompatible with any other than a brutish order of intelligence; but these men are nevertheless responsible for their acts; and nothing more tends to encourage crime among such men than the belief that through the plea of insanity or any other method it is possible for them to escape paying the just penalty of their crimes. The crime in question is one to the existence of which we largely owe the existence of that spirit of lawlessness which takes form in lynching. It is a crime so revolting that the criminal is not entitled to one particle of sympathy from any human being.

And I submit, if your honor please, the crime at bar is so revolting that the criminals are not entitled to one particle of sympathy from any human being. I continue the reading:

"It is essential that punishment for it should be not only as certain but as swift as possible. The jury in this case did their duty by recommending the infliction of the death penalty. It is to be regretted that we do not have special provision for more summary dealing with this type of cases."

What is to be regretted in this case, if your honor please, that under the laws as you have found them we have no more summary manner of dealing with the case at bar. But this is a community of law, and this community will survive or fall as we enforce our laws and respect them. I continue the reading:

"The more we do what in us lies to secure a certain and swift justice in dealing with these cases, the more effectively

do we work against the growth of that lynching spirit which is so full of evil omen for this people, because it seeks to avenge one infamous crime by the commission of another of equal infamy.

"The application is denied, and the sentence will be carried into effect."

I submit, if your honor please, that it is safer to follow the reasoning of this state document than it is to follow the sophistries of Clarence Darrow. I submit that it is safer to follow the philosophy of Theodore Roosevelt as he laid it down in this great state paper when he was President of the United States, and was only concerned with the enforcement of the law, than it is to follow the weird and uncanny philosophy of the paid advocate of the defense, whose business it is to make murder safe in Cook county.

Now, if your honor please, the other day Mr. Darrow argued that the state advanced the silly argument that these boys were gamblers, and they gambled for high stakes.

He said the only evidence we had to predicate such a charge on was the testimony of Leon Mandel, who had played one game of bridge with them, and who said that in that game they played for 5 cents or 10 cents a point.

The trouble with Mr. Darrow is that he does not know all the facts in this case. He does not know all the evidence.

I thank God that I am not a great pleader, because I think that sometimes when men are obsessed with the idea that when they open their mouth words of wisdom rush out, that all that is necessary in the trial of a case is to make a wonderful argument, that that is why a great many of them fail, in my judgment, because they rely too much upon their oratory.

They pay no attention whatever to the facts in the case, and, after all, I believe that courts and juries are influenced not by oratory, but by hard facts sworn to by witnesses.

Now let us see whether there is any other evidence in this case. Among the letters introduced in evidence we find the following, Allan M. Loeb, 2465 Utah av., Seattle, Wash. Allan Loeb is the generalissimo of the defense.

He is the one who is advising young Loeb whether or not he ought to tell the doctors this or whether he ought to tell the lawyers that.

This letter was mailed May 19, 1924, and probably was received by Richard Loeb the day of the murder. Marked "Personal."

"Dear Dick—I wanted to send this letter to you so there would be no possible chance of dad seeing it. Glad to hear about Sammy Schmaltz, but could that amount have been possibly reversed. . . "

In other words, as I read this letter, and as your honor will read it after I get all through, he was glad to hear he had won some money, but could that amount have been possibly reversed, could he have lost it instead of winning it?

"If so, you are all wrong, in your gambling, and even so"—even if you did win instead of lose—"and even so you must be shooting a little too high. Did you get cash?" Or did he pay on an I. O. U., I suppose. "Best love, Allen."

Another letter from one of his companions:

"Robert L. Leopold, 530 Thompson st., Ann Arbor, Mich. Dear Dick—Just a line, as I am awfully busy, and am coming to you for help. I have an exam in history, 17, and know nothing about it.

"Furthermore, my notes are no good. You said last semester that you would let me take your notes in the course. Please send them to me right away if you can. My exam is next Friday and I must study. Please drop me a line and let me know, so I know whether to plan on them or not.

"I am damn sorry that we couldn't see each other while I was home, but you are always so — busy. I guess I am too, while home.

"But I always feel as though I am intruding when you guys are gambling, because I don't gamble that high. At any rate, better luck next time when home. Thanks in advance for your trouble.

"Sincerely, Bobby."

It is in evidence in this case, if your honor please, that both of these defendants had a bank account. We put a witness on the stand, an employe of Sears-Roebuck, who testified that from time to time she gave checks to the defendant Loeb here. She told about two checks for \$250.

His allowance was \$250 a month, so they say. The Charlevoix bank statement shows that on March 15, 1923, he deposited \$141.55; March 25, \$125; May 16, \$345; May 31, \$300—all this was in 1923—June 28, \$683; July, \$171.40; July 13, \$259; July 16, \$108; July 21, \$50; August 27, \$155; August 28, \$175; September 8, \$300; September 19, \$302.75. Where did he get it? These are not checks for \$250 from Sears-Roebuck. Then he had another account at the Hyde Park State Bank.

It shows as follows on deposits: October 1, 1923, \$485; October 16, \$50; November 1, \$444.50; November 5, \$100; November 16, \$100; November 19, \$730; November 28, \$175. Business was good that month. December 24, \$420; January 14, \$400; February 6 (that is, in this year), \$425; February 14, \$230; March 14, \$137; April 16, \$350; April 25, \$100; May 15 (the week before the murder) \$536.51. And where did he get it?

April 16, 1924, \$350; April 25, \$100. That is, 1924. Where did he get it?

MR. DARROW—Do you know whether any of those checks were from one bank to the other?

MR. CROWE—I don't know, Mr. Darrow.

MR. DARROW—It might be well to look into it.

THE COURT—We will suspend until tomorrow morning at 10:30 o'clock.

On the morning of August 28 Mr. Crowe spoke as follows:

May it please your honor, before resuming my argument in this case, and not that it has anything to do particularly with the case at bar, I might report as state's attorney of this county to the chief justice of the Criminal court that last night Antone Valania, age nineteen, and young Lydon, sixteen, confessed to the state's attorney of Cook county that they murdered a woman for \$60. One of them went to the seventh grade in the grammar school; a sister at the age of seventeen was a prostitute and shoplifter.

When I left off last night, your honor, I had called attention to the fact that the defendant Loeb had in the Hyde Park State Bank and the bank of Charlevoix a sum somewhat over \$3,000. I read off the deposits, showing that in some months he deposited as high as \$700, \$800 or \$900, and the testimony on behalf of the defense is here that he had an allowance of \$250 a month. That can be construed as evidence either in support of the contention of the state that these men gambled for high stakes, higher than their millionaire friends could afford to gamble for, or it may be considered in support of the contention of the state that A, B, C and D were crimes committed by the defendant Loeb.

There has been testimony here that he had bonds, Liberty bonds, and had not clipped the coupons from them for two or three years. Well, if they were the proceeds of a robbery, that was an act of wisdom and discretion.

Now, if your honor please, in support of our contention that the motive in this case was, first, money; that the original crime planned was the crime of kidnaping; that murder was later decided upon in order to protect them from arrest and punishment, I do not intend to take up your honor's time by reviewing all the evidence independent of the statements made by these defendants to their doctors that I read to you yesterday from the Bowman-Hulbert report; but I will direct your honor's attention to the uncomfortable afternoons that they spent along the Illinois Central tracks, the number of times they threw a pad of paper from the car to see where the money would light. I will direct your attention again to the ransom letter: "Secure before noon today \$10,000. This money must be composed entirely of old bills."

If they merely wanted to get the money and did not want to use it, what difference whether the bills were old; what difference whether they were marked or unmarked if they did not intend to spend them?

As a final word of warning, "this is a strictly commercial proposition." All the way through, if your honor please, all the way through this most unusual crime runs money, money, money.

And when it is not money it is blood. I think that we have clearly established the real motive in this case. Mr. Darrow relies upon the facts. First, he says there was no motive; second, upon the youth of the defendants and third upon their mental condition. I strongly suspect that the real defense in this case is not any of those at all. The real defense in this case is Clarence Darrow and his peculiar philosophy of life.

I quite agree with the senior Bachrach when he was closing, that they brought in a man who was an expert on punishment to instruct your honor just what punishment you should mete out in this case. In other words, the real defense in this case is Clarence Darrow, and those things which he has urged upon your honor as a defense I would like to take up in detail. As I say, I think I have covered completely and have demonstrated beyond the peradventure of a doubt that the only active, controlling motive in this case was money, \$10,000, and as much more as they could get afterward.

Now how about their health? The only thing pathologically about Leopold is that he has calcified pineal gland. Our doctors, Dr. Woodyat, said that did not mean anything, nobody knows, and nobody has testified on behalf of the defense that it did mean anything. Glands, they tell us, do not generally calcify until you are about thirty years of age. Now some people develop earlier in life than others. I believe in Africa women are matured at nine years of age and bear children at nine or ten years of age.

Leopold has developed a little earlier than the average man. He has developed physically and mentally and if it means anything at all it means that he has the intellect and brain and mind of a man thirty years of age and that is all. I read to you last night the report of Drs. Hulbert and Bowman that there was not anything pathological about Loeb except the minus seventeen of his basal metabolism.

And every doctor who took the stand said that that was within the range of normality, that is the only thing that is abnormal, that is the only thing that is diseased, according to their evidence. And every expert who took the stand testified that that is normal, assuming it is true.

Why, your honor can look at them. You have looked at them. You have observed them. There is nothing the matter with them physically. There is nothing the matter with them mentally. The only fault is the trouble with their moral sense, and that is not a defense in a criminal case.

There is Connors, twenty-two years of age, a Cairo Negro, who was sentenced July 31 for a crime of murder on a plea of guilty by Judge Hartwell, whom your honor undoubtedly knows, because he has sat in Cook county courts and was the former partner of Judge Duncan of the Supreme court.

MR. DARROW—Excuse me. Would you mind tell me who that is again?

MR. CROWE—Hess Connors, a colored boy, twenty-two years of age, sentenced on a plea of guilty in the state of Illinois, July 31 of this year.

MR. DARROW—Not in Chicago?

MR. CROWE—Not in Chicago, no.

I submit, if your honor please, if we can take the power of American manhood, take boys at eighteen years of age and send them to their death in the front-line trenches of France in defense of our laws, we have an equal right to take men nineteen years of age and take their lives for violating those laws that these boys gave up their lives to defend.

Ah many a boy eighteen years of age lies beneath the poppies in Flanders fields who died to defend the laws of this country. We had no compunction when he did that; why should he have any compunction when we take the lives of men nineteen years of age who want to tear down and destroy the laws that these brave boys died to preserve?

We might direct your honor's attention to what is going on over this land right at this time while this case is on trial. Alexander Bujec, nineteen, must die in the electric chair October 17 for the murder of his thirteen-year-old cousin in Akron, Ohio. He was sentenced Aug. 20.

Mr. Darrow has referred in the case to hanging. Mr. Darrow is a student of criminology; he has written a book on it and he says the criminal age, the time when crimes are committed, is between the age of seventeen and twenty-four. And your honor and I know that the average criminal age is twenty-two.

If we are going to punish crime and by the punishment stop it and the criminal age is between seventeen and twenty-four, how can we punish it if the age is a defense?

Mr. Darrow criticized Mr. Marshall for his quotations from Blackstone and seemed to be under the impression that we were trying to try this case under the ancient British law.

We are trying this case, if your honor please, under the statutes of the state of Illinois in the year 1924. They say that a boy between ten and fourteen may have sufficient capacity to commit a crime and be answerable for it, but it is the duty of the state to prove beyond a reasonable doubt that he has sufficient capacity.

The statute which your honor is bound to enforce in this case and the statute under which we are trying these defendants further provides that from fourteen years of age up the law presumes that he has the capacity to commit a crime and is entirely and thoroughly responsible for it.

Let us see at what age some of these men have been hanged. Buff Higgins was hanged at the age of twenty-three. Butch Lyons was twenty-five. Henry Foster, twenty-four. Albert C. Fields, twenty-four. Windreth, twenty-nine. Mannow, twenty-seven. Dan McCarthy, twenty-seven. William T. Powers, twenty-three. Chris Murray, twenty-eight. John Drugan, twenty-two. Robert Howard, thirty. Louis P. Pesant, sentenced on a plea of guilty, April 15, 1904, by Judge Kersten, was twenty-three. Peter Neidermeyer . . .

MR. DARROW—What happened to that case?

MR. CROWE—Twenty-three and hanged. He was hanged April 15, 1904. Peter Neidermeyer, twenty-three. Gustave Marks, twenty-one. Harvey VanDine, twenty-one. These were not the poor sons of multimillionaires; these were the sons of poor men—men who had no advantage in life, men who had no education, men who had been brought up in the gutter and the slums, men who did not develop intellectually at the early age that these men have developed at. Richard Ivens, twenty-four; Andrew Williams, twenty-two; Thomas Jennings, twenty-eight; Thomas Schultz, nineteen; Frank Shiblewski, twenty-two, and his brother hanged the same day; Ewald, twenty-three; Smith, twenty-seven; Lundgreen, twenty-five; Dennis Anderson, twenty-one; Lloyd Bopp, twenty-three; Albert Johnson, twenty-five; Earl Dear, twenty-six; Jack O'Brien, twenty-two; Mills, twenty-one; Champion, twenty-two; Zander, twenty-two; Haensel, a man who fought for his country, who was syphilitic, who was hit in the service of his country in the head by a chain weighing 1,000 pounds, and who was discharged from further service physically unfit, was hanged in Cook county at the age of twenty-seven; the little songbird from Italy, Viani, seventeen.

Brislane, twenty-seven; Sam Ferrarri, twenty-six; Oscar McDavit, a colored man, who thought that the Lord had appointed him to lead his race back to Africa, twenty-three; George Brown, twenty-nine; Antonio Lopez, twenty-six; Harry Ward, twenty-five; Carl Wanderer, twenty-five; Legrine, twenty-seven; Harvey Church, twenty-three; Pastoni, twenty-six; Dalton, sentenced by your honor, a colored boy, without any of the advantages that these men had, whose ancestors were slaves, only two or three generations removed from savagery in Africa, and yet he paid the penalty for the violation of the laws; Walter Krauser, sitting in the county jail, marking off the days between now and the day he hangs, twenty-one; Bernard Grant, sitting in the county jail, waiting for October 17, when he will pay the penalty upon the gallows.

Oh, but Mr. Darrow says, there are only six men who have been hanged on pleas in Cook county. Now, your honor and I are familiar enough with the practice over here not to be fooled by that. What happens when a man gets a guilty client, and there is no defense? He generally goes to the state's attorney, and he says, "If you will waive the death penalty I will plead guilty." If there is in the nature of the case any mitigating circumstances the state's attorney says, "Yes, we will waive the death penalty. Let's go upstairs and plead him guilty, and I will recommend life."

But if the case is of such a nature that the state's attorney cannot in conscience and in law waive the extreme penalty, he says, "No, that man has got to go to a jury." And then sometimes they do as Walter Stanton did this summer. He went before the state's attorney and asked him would he waive the death penalty? The state's attorney said, "No, this is a hanging case." Walter Stanton then went in and stated the facts to Judge Steffen, and Judge Steffen said, "If you plead him guilty I am going to hang him." Walter Stanton then went before another judge, and there apparently was some misunderstanding, because he pleaded the man guilty, and when he got through the judge indicated he was going to sentence him to hang, and then Walter Stanton nearly collapsed and begged the court for God's sake to let him go to a jury.

The reason that courts do not hang any oftener than they do, is because hanging cases always go to juries. Where the attorney cannot make an agreement in advance, he says, "Well, then, I am going to take a chance with twelve men. They can't do any worse than the court can do on a plea, and I am going to give my client a run for his money."

Now, your honor and I know that that is the case, and Mr. Darrow knows it is the case, and everybody who is familiar with procedure in the Criminal court knows it is the case. It is not because there is one law for the judge and another law for the jury. It is not because juries must execute the law to the uttermost, and the court has a right to sit as a friendly father. It is a matter of fact known to everybody, that when they cannot make an agreement with either the court or the state's attorney, they go to juries. That is why we only have six hanged on pleas and so many hanged on verdicts.

MR. DARROW—Judge, will it trouble you to give me that case that you said was before Judge Kersten?

MR. CROWE—Pesant.

MR. DARROW—I don't like to interrupt you. You need not look for it now, if it is too much trouble.

MR. CROWE—The first name is Louis.

MR. DARROW—When?

MR. CROWE—April 5, 1904.

MR. DARROW—Aren't you mistaken about that?

MR. CROWE—That being the situation, are we going to tell the criminal world, and Mr. Darrow says the criminal world is between seventeen and twenty-four, and that the average is twenty-two, the age at which murders are committed, crimes of violence are committed? Are we going to tell them that the new law introduced into the statutes of Illinois by Clarence Darrow and approved by the chief justice of the Criminal court makes it perfectly safe for them to murder, or are we going to tell them that the law will be vigorously enforced?

The law, if your honor please, is made to protect the innocent, and it is made to protect the innocent by punishing the guilty, and in no other way can we protect innocence or protect society.

I think, if your honor please, I have now covered the three defenses set forth by Mr. Darrow, their age, lack of motive, and physical and mental condition. When we get all through, Mr. Darrow says that your honor ought to be merciful; and finally, that is his concluding defense, he appeals to your heart and to your sympathy and not to your mind or your conscience.

When I was listening to Mr. Darrow plead for sympathy for these two men who showed no sympathy, it reminded me of the story of Abraham Lincoln, about a young boy about their age whose parents were wealthy and he murdered both of them. He was an only child and he did it so that he might inherit their money. His crime was discovered the same as this crime has been discovered, and the court asked him for any reason he might have why sentence of death should not be passed upon him and he promptly replied he hoped the court would be lenient to a poor orphan.

Robert Franks had a right to live. He had a right to the society of his family and his friends and they had a right to his society. These two young law students of superior intelligence, with more intelligence than they have heart, decided that he must die. He was only fourteen. These two law students knew under the law if you had a right to take a life you had a right to take it at fourteen, and they thought they had a right to take his life, and they proceeded to take it.

I don't know whether I gave the age of Bernard Grant, who is sentenced to die on Oct. 17 of this year by your confrere, Judge Hebel. Bernard Grant is nineteen years of age.

Mr. Darrow quoted considerable poetry to you and I would like again to be indulged while I read a little bit of prose.

"Crime and criminals. If I looked at jails and crime and prisoners in the way the ordinary person does, I should not speak on this subject to you."

This is an address delivered to the prisoners in the county jail, if your honor please:

"The reason I talk to you on the question of crime, its cause and cure, is because I really do not believe the least in crime. There is no such thing as a crime, as the word is generally understood. I do not believe that there is any sort of distinction between the real moral condition in and out of jail. One is just as good as the other. The people here can no more help being here than the people outside can avoid being outside. I do not believe that people are in jail because they deserve to be. They are in jail simply because they cannot avoid it, on account of circumstances which are entirely beyond their control and for which they are in no way responsible.

"I suppose a great many people on the outside would say I was doing you harm if they should hear what I have to say to you this afternoon, but you cannot be heard a great deal, anyway, so it will not matter. The good people outside would say that I was really teaching you things that were calculated to injure society, but it is worth while now and then to hear something different from what you ordinarily get from preachers and the like. They will tell you that you should be good and then you will be rich and be happy. Of course, we know that people don't get rich by being good, and that is the reason why so many of you people try to get rich some other way, only you don't understand how to do it quite as well as the fellow outside.

"There are some people who think that everything in this world is an accident, but really there is no such thing as an accident. A great many persons feel that many of the people in jail ought not to be there and many of those outside ought to be in. I think none of them ought to be here. There ought to be no jails, and if it were not for the fact that the people on the outside are so grasping and heartless in their dealing with the people on the inside, there would be no such institutions as jails.

"When I ride on the street cars I am held up. I pay five cents a ride for what is worth two and a half cents, simply because a body of men have been bribed—have bribed the city council and the legislature so that all the rest of us have to pay tribute to them. If I didn't want to fall into the clutches of the gas trust and chose to burn oil instead of gas, then good Mr. Rockefeller holds me up.

"Let me see whether there is any connection between this crime of the respectable classes in your presence and the jail. Many of you I believe are in jail because you have really committed burglary; many of you because you have stolen something within the meaning of the law; you have taken some other person's property. Some of you may have entered a store and carried off a pair of shoes because you did not have the price. Possibly some of you have committed murder. I cannot tell what all of you did. There are a great many people here who have done some of these things who really don't know themselves why they did them. I think I know why you did them, every one of you.

You did these things because you were bound to do them. It looked to you at the time as if you had a chance to do them or not, as you saw fit, but still after all you had no choice. There are many people who had some money in their pocket and still went out and got some more money in a way society forbids."

Just the same as these two defendants, while they had some money in the bank, they went out to get more money in a manner that society forbids.

"Now, you may not yourself see exactly why it was you did this, but if you look at the question deeply enough and carefully enough you will see that there were circumstances that drove you to do exactly the thing which you did.

"You could not help it any more than we outside can help take the position we will take. The reformers will tell you to be good and you will be happy and people who have property to protect think the only way to do is to build jails and lock you up on week days and pray for you on Sundays.

"I think all this has nothing whatever to do with right conduct. Some so-called criminals, and I will use this word because it is handy; it means nothing to me, I speak of the criminal who gets caught as distinguished from the criminal who catches them—some of these so-called criminals are in jail for the first offense, but nine-tenths of you are in jail because you did not have a good lawyer, and, of course, you did not have a good lawyer because you did not have enough money to pay a good lawyer. There is no very great danger of a rich man going to jail.

"There is a bill before the legislature of this state to punish kidnaping of children with death. We have wise members of the legislature. They know the gas trust when they see it, and they always see it. They can furnish light enough to be seen. And this legislature thinks it is going to stop kidnaping of children by making a law punishing kidnapers of children with death."

MR. DARROW—I want to take exception to the reading of this. It is not in evidence. It was an address delivered twenty-five years ago.

MR. CROWE—Is it any less evidence than Omar Khayyam is evidence?

MR. DARROW—That is another thing.

MR. CROWE—Oh, certainly.

MR. DARROW—It has not any relation to my views. I have expressed my views freely in a book which Judge Crowe is fairly familiar with and has quoted here. This is simply a talk twenty-five years ago. It hasn't anything to do with this case.

THE COURT—Oh, yes. What Mr. Darrow has said or does has no bearing on this case particularly, except what he has said

or done during this trial. The court will not give great consideration to any readings or lectures in any way in determining what should be done with these two young men, who have pleaded guilty of this murder.

MR. CROWE—Well, if Clarence Darrow is really ashamed of his philosophy of life, something has been accomplished in this trial.

"I believe that progress is purely a question of the pleasurable units that we get out of life. The pleasure-and-pain theory is the only correct theory of morality and the only way of judging life."

That is the doctrine of Leopold. That is the doctrine expounded last Sunday in the press of Chicago by Clarence Darrow.

I want to tell you the real defense in this case, your honor. It is Clarence Darrow's dangerous philosophy of life. He said to your honor that he was not pleading alone for these two young men. He said he was looking to the future, that he was thinking of the 10,000 young boys that in the future would fill the chairs his clients fill, and he wants to soften the law. He wants them treated not with the severity that the law of this state prescribes, but he wants them treated with kindness and consideration.

I want to tell your honor that it would be much better if God had not caused this crime to be disclosed. It would have been much better if it went unsolved and these men went unwhipped of justice. It would not have done near the harm to this community as will be done if your honor, as Chief Justice of this great court, puts your official seal upon the doctrines of anarchy preached by Clarence Darrow as a defense in this case.

Society can endure, the law can endure and criminals escape, but if a court such as this should say that he believes in the doctrine of Darrow, that you ought not to hang when the law says you should, a greater blow has been struck at our institutions than a hundred, yes, a thousand murders.

Mr. Darrow has preached in this case that one of the handicaps the defendants are under is that they are rich, the sons of multimillionaires. I have already stated to your honor that if it was not for their wealth Darrow would not be here and the Bachrachs would not be here. If it was not for their wealth we would not have been regaled by all this tommyrot by the three wise men from the east.

I don't want to refer to this any more than Mr. Darrow did, but he referred to it and it is in evidence, and he tried to make your honor believe that somebody lied, that Gortland lied when he talked about a friendly judge.

On June 10, 1924, in the Chicago Herald and Examiner—that was before this case had been assigned to anybody; that

was when Darrow was announcing and he did announce in this same article, that they were going to plead not guilty—there was an article written by Mr. Slattery, sitting back there, on June 10:

"The friendly judge resort suggested for the defense will be of no avail. It was mentioned as a possibility that a plea of guilty might be entered on the understanding it would result in life sentence. If this becomes an absolute probability, Crowe announced that he will nolle prosse the case and re-indict the slayers."

Did Gortland lie? He gave the name of witness after witness that he told the same story to, as he told it to Slattery, before the case was even assigned.

He says that was told to him by Leopold. I don't know whether your honor . . .

MR. DARROW—Are you quoting from his testimony?

MR. CROWE—I am talking about his testimony. He said it was told him by Leopold. I don't know whether your honor believes that officer or not, but I want to tell you, if you have observed the conduct of their attorneys and their families with one honorable exception, and that is the old man who sits in sackcloth and ashes and who is entitled to the sympathy of everybody, old Mr. Leopold, with that one honorable exception, everybody connected with the case has laughed and sneered and jeered, and if the defendant, Leopold, did not say that he would plead guilty before a friendly judge, his actions demonstrated that he thinks he has got one.

MR. DARROW—I want to take exception to this statement. It has not any place in a court of justice—

MR. CROWE—You brought it up and argued on it, and I am replying to it.

MR. DARROW—Oh, no.

MR. CROWE—But now if your honor please, you have listened—

THE COURT—Let the reporter write up that statement; have that statement written up.

MR. CROWE—You have listened with a great deal of patience and kindness and consideration to the state and the defense. I am going not going to unduly trespass upon your honor's time, and I am going to close for the state.

I believe that the facts and circumstances proven in this case demonstrate that a crime has been committed by these two defendants and that no other punishment except the extreme penalty of the law will fit, and I leave the case with you on behalf of the state of Illinois, and I ask your honor in the language of the Holy Writ to "execute justice and righteousness in the land."



**THE DECISION AND PRONOUNCEMENT OF SENTENCE
BY JUDGE CAVERLY IN THE FRANKS CASE
SEPTEMBER 10, 1924**

The State of Illinois vs. Leopold and Loeb.

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

It is no uncommon thing that pleas of guilty are entered in criminal cases, but almost without exception in the past, such pleas have been the result of virtual agreement between the defendant and the state's attorney whereby, in consideration of the plea, the state's attorney consents to recommend to the court a sentence deemed appropriate by him, and, in the absence of special reasons to the contrary, it is the practice of the court to follow such recommendations.

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

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

Since both of the cases: That, namely of murder and that of kidnaping for ransom were of a character which invested the court with discretion as to the extent of the punishment, it became his duty under the statute to examine witnesses as to the aggravation and mitigation of the offense. This duty has been fully met. By consent of counsel for the state and for the de-

fendants, the testimony in the murder case has been accepted as equally applicable to the case of kidnaping for ransom.

In addition, a prima facie case was made out for the kidnaping as well.

The testimony introduced, both by the prosecution and the defense, has been as detailed and elaborate as though the case had been tried before a jury. It has been given the widest publicity and the public is so fully familiar with all its phases that it would serve no useful purpose to restate or analyze the evidence.

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

The court, however, feels impelled to dwell briefly on the mass of data produced as to the physical, mental and moral condition of the two defendants.

They have been shown in essential respects to be abnormal; had they been normal they would not have committed the crime. It is beyond the province of this court, as it is beyond the province of human science in its present state of development, to predicate ultimate responsibility for human acts.

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

The value of such tests seems to lie in their applicability to crime and criminals in general. Since they concern the broad question of human responsibility and legal punishment, and are in no wise peculiar to these individual defendants, they may be deserving of legislative, but not of judicial, consideration. For this reason the court is satisfied that his judgment in the present case cannot be affected thereby.

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

And here, the court will say, not for the purpose of extenuating guilt, but merely with the object of dispelling misapprehension that appears to have found lodgment in the public mind,

that he is convinced by conclusive evidence that there was no abuse offered to the body of the victim. But it did not need that element to make the crime abhorrent to every instinct of humanity, and the court is satisfied that neither in the act itself, nor in its motive or lack of motive nor in the antecedents of the offenders, can he find any mitigating circumstances.

For both the crimes of murder and of kidnaping for ransom, the law prescribes different punishments in the alternative. For the crime of murder, the statute declares: "Whoever is guilty of murder, shall suffer the punishment of death, or imprisonment in the penitentiary for his natural life, or for a term of not less than fourteen years.

"If the accused is found guilty by a jury, they shall fix the punishment by their verdict; upon a plea of guilty, the punishment shall be fixed by the court."

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

Under the plea of guilty, the duty of determining the punishment devolves upon the court and the law indicates no rule or policy for the guidance of his discretion. In reaching his decision, the court would have welcomed the counsel and support of others.

In some states the legislature in its wisdom has provided for a bench of three judges to determine the penalty in cases such as this. Nevertheless, the court is willing to meet his responsibilities. It would have been the path of least resistance to impose the extreme penalty of the law.

In choosing imprisonment instead of death, the court is moved chiefly by the consideration of the age of the defendants, boys of eighteen and nineteen years. It is not for the court to say that he will not in any case enforce capital punishment as an alternative, but the court believes that it is within his province to decline to impose the sentence of death on persons who are not of full age.

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

Life imprisonment may not, at the moment, strike the public imagination as forcibly as would death by hanging; but to the offenders, particularly of the type they are, the prolonged suf-

ferring of years of confinement may well be the severer form of retribution and expiation.

The court feels it proper to add a final word concerning the effect of the parole law upon the punishment upon these defendants. In the case of such atrocious crimes, it is entirely within the discretion of the department of public welfare never to admit these defendants to parole. To such a policy the court urges them strictly to adhere. If this course is persevered in, the punishment of these defendants will both satisfy the ends of justice and safeguard the interests of society.

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

In No. 33623, indictment for murder, the sentence of the court is that you, Richard Loeb, be confined in the penitentiary at Joliet for the term of your natural life. The court finds that your age is eighteen.

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

In 33624, kidnaping for ransom, the sentence of the court is that you, Richard Loeb, be confined in the penitentiary at Joliet for the term of ninety-nine years. The court finds your age is eighteen.

The Sheriff may retire with the prisoners.





THE FACTS OF THE CASE

NOT in many years have the people of the United States been stirred by the commission of a crime as they were by the murder for which Richard Loeb and Nathan Leopold, Jr., sons of wealthy Chicago families, have been sent to prison for life. They killed Robert Franks, fourteen-year-old son of another rich family, not because of any enmity against him, but for money and the thrill which the deed provided.

Disposition of their case was effected within a remarkably short time. Young Franks was slain on May 21, 1924. There were many clues, and many suspects were unrelentingly third-degreed by the police and prosecuting authorities. But for an accident the perpetrators of the murder might never have been apprehended. It was through the finding of a pair of tortoise-shell-rimmed eye-glasses near the culvert where the dead boy's body was thrown that the mystery was solved. A firm of opticians was able to show by its records that those glasses had been made for Leopold.

For two days Leopold and Loeb, in the hands of the police, had affected a nonchalant attitude, apparently having been utterly frank about their movements on the day of the murder. But when the two youths learned that Leopold's eye-glasses had been found and were confronted with the news that the Leopold family's chauffeur had stated that an automobile in which the pair had asserted they had been riding on the evening of May 21 was at that time laid up for repairs their self-confidence broke down. And in a little while confessions came from both.

Late in July the two were put on trial before Judge John R. Caverly, with Clarence Darrow, veteran of many great legal battles, as their chief counsel. State's Attorney Robert E. Crowe directed the prosecution. The defendants pleaded guilty, and threw themselves upon the mercy of the court. Both sides employed several high-priced alienists. The defense did not seek to show that Leopold and Loeb were insane, but that there were "mitigating circumstances" of a mental nature which influenced the actions of each.

Some lay witnesses were summoned by both sides, but most of the time allotted to testimony was occupied by the alienists. Charges of perjury were bandied back and forth by Crowe and Darrow. The trial stretched across thirty calendar days. Then, on August 28, Judge Caverly went into retirement to study the voluminous transcript. On September 10 he summoned to court all persons immediately concerned, and sentenced the accused to serve life-and-99-years behind the walls of the state penitentiary at Joliet. The life sentence was the penalty ascribed for the crime of murder, and the 99 years was the penalty for the offense of kidnaping, to which Leopold and Loeb also had pleaded guilty.

Within a few hours after sentence had been passed, the convicted youths were transported in a heavily guarded high-powered automobile to Joliet, forty miles from Chicago. There they were interviewed for the last time by a dozen newspapermen, exchanged their names for numbers, had their heads shorn, and were put into solitary confinement for twenty-four hours, a procedure calculated to give newly arrived prisoners "time to think it over." After the interview with the reporters, Warden John L. Whitman ordered the pair separated, and announced that they would not be permitted to meet each other again until July 4, 1925. Leopold, now Convict No. 9305, was put to work in the rattan section of the prison chair factory, and Loeb, No. 9306, was assigned to the cabinet-making section of the same factory.

On May 22 the nude body of a boy about thirteen years old was found in a culvert alongside the Pennsylvania railroad tracks at 118th street, at the extreme southern edge of Chicago. Tony Minke, employe of the American Maize Company, made the discovery on his way to work. The boy was submerged in two feet of water, but with a foot sticking above the surface. Minke notified the police. Two deep gashes were in the dead boy's head, indicating hatchet-blows to the early observers. Tortoise-rimmed eye-glasses were found on the ground near the culvert, and the undertaker who cared for the body placed them on the victim's face, assuming that they were his. So the newspapers announced that a boy wearing glasses had been murdered.

Meanwhile search was being made for Robert Franks, son of Jacob Franks, millionaire watch manufacturer, whose home at 5052 Ellis avenue was described by the press as one of the show places of the South Side. Robert had disappeared on the previous day. He had been a student at the Harvard school, a private institution not far from his home. The police were slow to connect the disappearance of the Franks boy with the finding of the body at 118th street, because of the eye-glasses. Robert had never worn eye-glasses.

When he had not returned home at nine o'clock on the night of the twenty-first, his father called in an old friend, Samuel Etelson, former corporation counsel, for advice. The two men then

hastened to the Harvard school, searched the buildings there and had to climb through the windows to do it, but found no traces of the boy. Finally Ettelson located the school athletic instructor, R. P. Williams, who said he had seen Robert umpiring a baseball game at five o'clock and a few minutes later had walked to the corner of Forty-seventh street and Ellis avenue. Robert started toward home, walking south on Ellis avenue, about 5:15, Williams stated. This was the last time any of his friends saw him alive.

While this search was being conducted, a mysterious telephone call was received at the Franks home. Mrs. Franks took the receiver from the maid. A man's voice announced that he was "Mr. Johnson." He said it was probably known by this time that Robert had been kidnaped, that no harm would be done to him, that he had been stolen for a ransom, and that full instructions as to further actions by the family would be communicated next day. Then "Mr. Johnson" hung up the receiver and Mrs. Franks fainted.

Shortly afterward Jacob Franks and Ettelson came in. Mrs. Franks had been revived. The police department was notified of all the circumstances, and the telephone company was asked to supervise all calls to the Franks home. Throughout the night some one waited beside the phone. But no second call came.

Next morning at 9 o'clock the door-bell rang. There was a special delivery letter addressed to Jacob Franks. It was typewritten, phrased in good English, and demanded a ransom of \$10,000, promising that within six hours after receipt of the money Robert would be safely returned to his family. The name of "George Johnson" was signed to the letter in typewriting. The text of the communication follows:

Dear Sir:

You no doubt know by this time your son has been kidnapped. Allow us to assure you that he is at present well and safe. You need fear no physical harm for him provided you live up carefully to the following instructions, and such others as you will receive by future communications. Should you, however, disobey any of our instructions even slightly, his death will be the penalty.

1. For obvious reasons make absolutely no attempt to communicate with either the police authorities, or any private agency. Should you already have communicated with the police, allow them to continue their investigations, but do not mention this letter.

2. Secure before noon today ten thousand dollars, (\$10,000.00). This money must be composed entirely of OLD BILLS of the following denominations:

\$2,000.00 in twenty dollar bills.

\$8,000.00 in fifty dollar bills. The money must be old. Any attempt to include new or marked bills will render the entire venture futile.

3. The money should be placed in a large cigar box, or if this

is impossible in a heavy cardboard box, SECURELY closed and wrapped in white paper. The wrapping paper should be sealed at all openings with sealing wax.

4. Have the money with you prepared as directed above, and remain at home after one o'clock P. M. See that the telephone is not in use.

You will receive a future communication instructing you as to your future course.

As a final word of warning—this is a strictly commercial proposition and we are prepared to put our threat into execution should we have reasonable grounds to believe that you have committed an infraction of the above instructions. However, should you carefully follow out our instructions to the letter, we can assure you that your son will be safely returned to you within six hours of our receipt of the money.

Yours truly
GEORGE JOHNSON.

The deliberate tone of the letter brought terror to the Franks family and Ettelson's first action was to call the officials of the telephone company and ask that no attention be paid to the Franks telephone. He was afraid to do one little thing that would incur the wrath of the kidnapers and thereby endanger the life of the boy.

Jacob Franks obtained the old bills as directed—\$8,000 in \$50 notes and \$2,000 in \$20 notes. He wrapped these in a package as directed and waited beside the telephone. At one p. m. it rang. The mysterious "Mr. Johnson" said that a Yellow Cab would come to the house and asked that Mr. Franks get into the cab. He also ordered that Mr. Franks have the money.

Meanwhile a newspaper reporter had called to announce that a boy had been found dead. Robert's uncle went to the boy and about three p. m. called the house, informing Ettelson that the body was that of his friend's son.

At 3:30 a Yellow Cab arrived at the house. Ettelson went out and talked to the driver. The number of the cab was 1492 or 1942. He asked the driver who had sent him, whom he had come for, and where he expected to go with his load. He said that the call had come from the Forty-seventh street station, that he was to call for Mr. Franks, but could not tell me where he was expected to go. Ettelson instructed the driver to wait a moment outside the door and went in to talk the matter over with Franks.

He told Franks that he believed he would only be endangering his own life by going in that taxicab. He agreed. Then Ettelson went outside to look for the chauffeur, but he had disappeared.

Shortly after the murder-victim's body had been identified as that of Robert Franks, the police began to arrest suspects. That night they took into custody Mott Kirk Mitchell, a teacher at the

Harvard school, and R. P. Williams, the physical instructor there. These two men were subjected to a grilling at the Wabash avenue police station which extended from 1 a. m. to 6 a. m. on the twenty-third. The authorities also questioned Walter Williams, mathematics instructor at the school.

At the beginning the police were impelled to consider two outstanding theories:

1. That the kidnaping might have been an actual kidnaping for purposes of extortion.
2. That the letter demanding ransom might have been written simply to cover up an attack by a moron upon the boy which had ended, perhaps unintentionally, in Robert's death.

But it was on the eye-glasses that the investigators pinned their principal hopes. They instituted a canvass of opticians throughout the city to learn if possible for whom the spectacles had been made. Meanwhile rewards totaling \$10,000 had been offered by the Franks family and by enterprising newspapers, for information which would lead to the apprehension and conviction of the person or persons guilty of the crime.

And the police set out to trace the typewriter on which the ransom-letter was written. Various experts attributed it to various makes of machines—Corona, Underwood, Hammond. Search was being made, too, for the dead boy's clothing. One of his stockings was found near the culvert, but that was all.

By the night of the twenty-third the coroner's staff found reason to express belief that the boy came to his death while struggling with his captors, perhaps while in a speeding automobile. Perhaps, the police calculated, he was being taken to some point outside the city, and died struggling with the kidnapers enroute. Then, presumably, they would try to get rid of the body immediately.

Anna Licht, secretary of the Harvard school, offered a clue to the investigators. On the afternoon of the twenty-first, she said, a man who looked as if he were drunk or abnormal mentally, was sitting on the curb near the school a few minutes before Robert Franks left. As Robert passed out of the door, the man raised his arm as if signalling to somebody. And Irving Hartman, a student, reported that he saw a large gray Winton touring car lingering near the institution that afternoon. At the same time he saw Robert Franks walking in the street and a moment later Robert was nowhere in sight and the gray car was gone. Accordingly the police figured that the man on the curb signalled to an accomplice or accomplices in the Winton car, and that they then followed Robert, enticed him into the automobile or forced him to enter it, and then drove him away to his death. So a search was begun for big gray Winton automobiles, and the owners of many such machines were surprised by being stopped by policemen and compelled to give an accounting of their whereabouts on the twenty-first.

All sorts of clues were now being given to the police. Various men and women had seen automobiles of varying makes which contained mysterious looking bundles in the rear seat, or excited or "suspicious looking" persons on the front seat, or both. Strange appearing automobiles had been seen on lonely roads in the night, acting "suspiciously."

When the funeral services for Robert Franks were held on Sunday, the twenty-fifth, a floral wreath accompanied by a card bearing the words "Sympathy of Mr. Johnson" was received by the family. At the same time it was reported that a letter had come to Jacob Franks threatening harm to his young daughter Josephine, and a guard of detectives was assigned to protect her.

It became known on Monday, the twenty-sixth, that a blood-stained iron bar had been found on the night of Robert's disappearance, on Ellis avenue near Forty-ninth street, close to where the police believed the boy had been kidnaped. This bar was wrapped with zinc-oxide medical tape, presumably to prevent skin abrasions when it was used as a weapon. The find had been made by a night watchman, Bernard Hunt, whose round included the Franks home. He gave it to the Hyde Park police, who at that time supposed the bar to be a burglar's tool and placed it with other instruments of like kind.

And now it developed that the spot where the boy's body was found, characterized by the newspapers as "inaccessible" and "lonely," was a frequent haunt of fifteen or twenty boys, including several from the Harvard school, who were studying the bird life of the Chicago district for a periodical not connected with the school. None of the Harvard instructors had ever accompanied them on these trips, one of the boys stated.

Michael J. Grady, lieutenant of detectives, expressed this opinion on Monday, the twenty-sixth: "Two or more men killed Robert Franks accidentally by suffocation as he fought them, and then sought to blind the trail. They drove around until dusk. The boy was undressed in their auto and when they moved the body in the darkness that one stocking was lost. Their object was ransom. 'No one knows he is dead,' they reasoned. They wrote a demand on a portable typewriter such as is found in homes of students, writers and traveling men. Then came the upset in their plans. The body was found."

Suspicion now centered strongly upon members of the Harvard school teaching staff. On the morning of May twenty-seventh Instructors Mott Kirk Mitchell and Walter Wilson of that school, who were still in custody, were taken from the investigation headquarters at the Drake Hotel to the state's attorney's office for another grilling.

Samuel Ettelson was quoted by the Chicago American that day as advancing the opinion that: "One instructor at the Harvard school killed Robert Franks; another wrote the polished letter demanding \$10,000 from the family."

Then two salesmen informed the police that while coming from Hammond, Indiana, to Chicago on the night of the kidnaping they saw two women standing near a Dodge automobile at 105th street and the Pennsylvania tracks and cleaning a spade. Dark figures were moving in the swamp beyond, they declared. And another party of motorists turned over to the police a note and a piece of pillow slip which they asserted they had found near the culvert where the boy's body was found. The note read: "You dirty skunk.—G. J." Below were the words: "I'll get you yet."

And another find which looked promising was that of a charred package found in an old auto body in a vacant lot at Forty-fourth street and Cottage Grove avenue, only a few blocks from the Franks home. The package was wrapped in a newspaper dated May twenty-second, and contained: typewriter parts, twisted and damaged by fire; a metal box containing what appeared to be ashes of cloth; a wooden box containing a powder; and a charred diagram, with arrows drawn upon it. The Hyde Park police were told that a brown and white taxicab had driven into the vacant lot, and that the package had been thrown from the cab to the ground, after which the car had sped away.

Various persons, women and men, were arrested as suspects as the days passed. One of these held was a former policeman. In each the police had reasons for making arrests which sounded plausible. At times the highly colored stories in the newspapers made it appear to many that the crime would be fastened on one or more of the instructors at the Harvard school. There were hints of perversion among both teachers and students, and the school was put on the defensive.

But on the twenty-eighth Mitchell and Wilson were released on writs of habeas corpus and returned to their posts as instructors, and their connection with the case was ended.

Not until Friday, May 30, were the names of Richard Loeb and Nathan Leopold, Jr., mentioned in the newspaper accounts of the investigation. Then developments came swiftly. Leopold had been arrested on the previous day when Almer Coe and Company, opticians, reported that he had purchased a pair of glasses similar to those found on the crime scene. He was nineteen years old and formerly attended the Harvard school, but was now a student at the University of Chicago. His father was a millionaire box manufacturer. Loeb also was nineteen, the son of Albert H. Loeb, millionaire vice-president of Sears, Roebuck & Company, and nephew of Jacob M. Loeb, former president of the Chicago Board of Education. Both boys were reputed to be intellectual prodigies. Leopold was an accomplished linguist and was credited with being an authority on ornithology, while Loeb had taken honors at the University of Michigan law school. He also had formerly attended the Harvard school.

He explained that he must have lost the spectacles while on an ornithological expedition to the vicinity of the murder. They were

headache glasses, he asserted, and having had no headaches for three months he had carried them in his pocket.

On the thirtieth it developed that five days before Leopold had been questioned for an hour and a half, in a general questioning of various students and former students at the Harvard school. At that time a police captain asked him about the possibility of some of his bird-lover friends having lost the spectacles, and he gave the names of several youths who might have dropped them.

"He didn't ask me about my glasses," Leopold explained. "And I didn't think that mine might have been lost."

Questioned about his movements on the night of the crime, Leopold had declared that he and Richard Loeb, his chum, had picked up two girls in his automobile, dined with them at the Cocoanut Grove restaurant on East Sixty-third street, and then took them to Jackson Park. But the girls were of the kind that usually have to walk home when they go for automobile rides with strange young men, he explained, and so "we let them walk." Loeb had been expected home for dinner, but was slightly "under the weather" from drinking, Leopold asserted, and it was because of this that they had "cruised" along Sixty-third street and picked up the girls. After they made the girls get out of the automobile, Leopold drove to the Loeb home, he said.

But Loeb, interrogated separately by detectives, stated that left Leopold immediately after the dinner at the Cocoanut Grove and went to his own home.

Search of the homes of Leopold and Loeb was next made. In the former was found a letter addressed to "Dick," the text of which follows:

DEAR DICK:

October 9, 1923.

In view of our former relations, I take it for granted that it is unnecessary to make any excuse for writing you at this time, and still I am going to state my reasons for so doing, as this may turn out to be a long letter, and I don't want to cause you the inconvenience of reading it all to find out what it contains if you are not interested in the subjects dealt with.

First, I am enclosing the document which I mentioned to you today, and which I will explain later. Second, I am going to tell you of a new fact which has come up since our discussion. And third, I am going to put in writing what my attitude is toward our present relations, with a view of avoiding future possible misunderstandings, and in the hope (though I think it rather vain) that possibly we may have misunderstood each other, and can yet clear this matter up.

Now, as to the first, I wanted you this afternoon, and still want you, to feel that we are on an equal footing legally, and therefore, I purposely committed the same tort of which you were guilty, the only difference being that in your case the

facts would be harder to prove than in mine, should I deny them. The enclosed document should secure you against changing my mind in admitting the facts, if the matter should come up, as it would prove to any court that they were true.

As to the second. On your suggestion I immediately phoned Dick Rubel, and speaking from a paper prepared beforehand (to be sure of the exact wording) said:

"Dick, when we were together yesterday, did I tell you that Dick (Loeb) had told me the things which I then told you, or that it was merely my opinion that I believed them to be so?"

I asked this twice to be sure he understood, and on the same answer both times (which I took down as he spoke) felt that he did understand.

He replied:

"No, you did not tell me that Dick told you these things, but said that they were in your opinion true."

He further denied telling you subsequently that I had said that they were gleaned from conversation with you, and I then told him that he was quite right, that you never had told me. I further told him that this was merely your suggestion of how to settle a question of fact that he was in no way implicated, and that neither of us would be angry with him at his reply. (I imply your assent to this).

This of course proves that you were mistaken this afternoon in the question of my having actually and technically broken confidence, and voids my apology, which I made contingent on proof of this matter.

Now, as to the third, last, and most important question. When you came to my home this afternoon I expected either to break friendship with you or attempt to kill you unless you told me why you acted as you did yesterday.

You did, however, tell me, and hence the question shifted to the fact that I would act as before if you persisted in thinking me treacherous, either in act (which you waived if Dick's opinion went with mine) or in intention.

Now, I apprehend, though here I am not quite sure, that you said that you did not think me treacherous in intent, nor ever have, but that you considered me in the wrong and expected such a statement from me. This statement I unconditionally refused to make until such time as I may become convinced of its truth.

However, the question of our relation I think must be in your hands (unless the above conceptions are mistaken), inasmuch as you have satisfied first one and then the other requirement, upon which I agreed to refrain from attempting to kill you or refusing to continue our friendship. Hence I have no

reason not to continue to be on friendly terms with you, and would under ordinary conditions continue as before.

The only question, then, is with you. You demand me to perform an act, namely, state that I acted wrongly. This I refuse. Now it is up to you to inflict the penalty for this refusal—at your discretion, to break friendship, inflict physical punishment, or anything else you like, or on the other hand to continue as before.

The decision, therefore, must rest with you. This is all of my opinion on the right and wrong of the matter.

Now comes a practical question. I think that I would ordinarily be expected to, and in fact do expect to continue my attitude toward you, as before, until I learn either by direct words or by conduct on your part which way your decision has been formed. This I shall do.

Now a word of advice. I do not wish to influence your decision either way, but I do want to warn you that in case you deem it advisable to discontinue our friendship, that in both our interests extreme care must be had. The motif of "A falling out of _____" would be sure to be popular, which is patently undesirable and forms an irksome but unavoidable bond between us.

Therefore, it is, in my humble opinion, expedient, though our breach need be no less real in fact, yet to observe the conventionalities, such as salutation on the street and a general appearance of at least not unfriendly relations on all occasions when we may be thrown together in public.

Now, Dick, I am going to make a request to which I have perhaps no right, and yet which I dare to make also for "Auld Lang Syne." Will you, if not too inconvenient, let me know your answer (before I leave tomorrow) on the last count? This, to which I have no right, would greatly help my peace of mind in the next few days when it is most necessary to me. You can if you will merely call up my home before 12 noon and leave a message saying, "Dick says yes," if you wish our relations to continue as before, and "Dick says no," if not.

It is unnecessary to add that your decision will of course have no effect on my keeping to myself our confidences of the past, and that I regret the whole affair more than I can say.

Hoping not to have caused you too much trouble in reading this, I am (for the present), as ever

"BABE."

For long hours the two youths put up a bold front. Even the discrepancy between their explanations of their movements on the night of the crime apparently did not disturb their self-confidence. Leopold endeavored to account for that discrepancy by saying that "Dickie" Loeb had drunk too much gin that night, and to give the idea that Loeb wasn't wholly accountable.

When they confessed, however, each contended that it was he who drove the murder car, and that the other had sat in the rear seat behind curtains and killed Robert Franks.

Neither exhibited any qualms about the killing. "No, it didn't bother me—much," said Nathan. "An experimenter impales live beetle on a pin. The beetle struggles. That is all part of the experiment. . . . It was all Loeb's idea. I realize I am equally guilty under the law and we both face the same penalty. It gets me nothing to accuse him. But it was Loeb who enticed me into the car and it was Loeb who struck him on the head the instant."

"I didn't do it. Why, Loeb knows I couldn't do that. Weapons which injure a person are so repugnant to me that I loathe the sight of them. I could not—it would have been physically impossible for me to have struck the blow that killed Robert Franks."

"I was driving the car. I rented it. I own a Willys-Knight and have driven it for many months. It seems likely I'd be driving, doesn't it? Loeb was sitting on the back seat. He leaned out and called to Robert. 'We'll drive you home,' he said. The boy got in and the next moment Dick struck him and threw the bandage around his neck, choking him. It was all over in a minute. I got a bit sick when the boy struggled."

But Loeb told a different story. "I was driving that car, not Nathan," he averred. "Nathan was in the back seat. I did call out because I was the one who knew him. When Robert climbed in Babe (Leopold) reached over from the back seat and struck him. That's the truth—so help me God."

Throughout the whole day-to-day development of the narrative of the Franks murder, the Chicago newspapers played up the two defendants as "intellectual giants." They were interviewed twice a day in the county jail, and apparently gloried in the publicity they received. They had delved into Oscar Wilde's writings and into the literature of several European writers whose attitude toward life was abnormal, and they were able to spout a great deal of showy philosophy.

In a conversation about herrings Leopold said to a reporter: "I presume you've never eaten sea-weed? Nor dog-meat? I've tried both. About the only thing I haven't eaten, I guess, is human flesh. That suits some palates. It's only a 'taboo' of modern society which prevents the eating of such flesh."

"What we eat is only a matter of habit. Curious, isn't it, that most of the sweetest meats, squirrel and rabbit, are shunned by many people. It's just tradition. Many of our traditions are just irrational, don't you think?"

THE END.