

Criminal Court
Book County

In re
Pendergast

Address to the Jury.

Mr Harlan	920
Mr Todd	963
Mr Morrison	997
Mr. Darrow	1049
Instructions to Jury	1106

July 2, 1894, 9 o'clock A. M.

Court met pursuant to adjournment;

Whereupon Mr. Harlan addressed the jury as follows:

May it please the Court and gentlemen of the Jury:

To me has been assigned the duty of opening the case on behalf of the petitioner. It will be closed by my colleague, Mr. Darrow. The Court has allowed each side three hours and a half, and it is the intention of both sides to close the argument today. Now of that time I shall take not to exceed an hour and a half, and I shall ask the Court to indicate when my time is up.

Before beginning the argument of this case I cannot refrain from ^{conveying} expressing to you on behalf of my three senior colleagues and myself some expression of the appreciation with which we have observed the careful, honest and patient attention that you have given in this case. It is not always a pleasant thing to serve upon a jury. It is not a pleasant thing to be dragged from one's business, from one's home, to surrender one's self to an officer of the law, to be cut off from conference with one's friends, but in my

judgment it is at the same time, however disagreeable, one of the highest functions that a citizen can perform, and I know of no case where that is so true as the case where the life of a man is concerned.

I need not speak to you, gentlemen, of the solemnity and gravity of this occasion, of the importance of the issues involved in this proceeding, not only to this man, not only to his brother, not only to his mother, but to this community as well. In my judgment no proceeding for years has come before a jury in this county that touched so nearly the honor of this community and touched so nearly the civilization of this people. You must therefore take this case into earnest consideration. You have already done so. You have listened to the testimony with earnest attention, and you must retire and take the facts in this case into the most earnest consideration, not only, as I have said, for the benefit of this man and his family, but the benefit of ourselves. You must be fearless and you must be conscientious in the discussion and consideration of the conclusions to be reached on this question. When this jury was accepted by the petitioner or by his counsel there were five challenges still remaining to us, something that is rather unusual in a case of this importance, and I know of no better way that we

could have expressed to you the confidence that we have not only in your integrity, but also in your fitness to sit on the trial of this important issue.

Now the issue in this case is not the guilt or the innocence of this man. As you already understand and fully understand, that issue has been tried and determined against him. I will not say how that result was accomplished.

I will not go into any details as to the lawyers who represented this defendant in that case. One of them is a man whom I deem it an honor to know, and I deem it a pleasure to be associated with him in this case. I refer to Mr. Herron. Mr. Herron is the friend of John Prendergast, the brother of this prisoner. Those two men at the conclusion of the trial every day in this court, both of them go to the Federal post-office and put on the uniform of a government postman, and John Herron works far into the night and practices law in the day-time, in order that he might help his friend, John Prendergast, and the defendant, his brother. He has given to this case devotion such as few men have had. Night and day he has given his time and his attention and his labor to the progress of this case, to the securing of evidence, and in the morning, although he has worked far into the night, as I have said, he appears here to do what he can in aid of the case.

We are bound by that judgment as has well been said. We come before you, admitting that this man was legally responsible for the act that he committed, and the question that is now before you is not his responsibility or his guilt or his innocence, but whether the man is now insane.

Gentlemen, the life of this man is the story of poverty. I do not make that suggestion for the purpose of appealing to you as between poverty and wealth. This is no such case. There is no opportunity for such an appeal, even if I were inclined to make it. For my own part I believe that some men of wealth are the best and noblest and most useful citizens that we have, and when I refer to that man's poverty it is not in that sense, but touching the result of poverty upon the individual. The longer I live and the more I see of life, the more I see how poverty not only affects a man's life but often binds it as if it had been through a mould of steel. It shapes his character, it shapes his success, and very often a man's whole destiny is controlled by poverty, and such, it seems to me, was this case. Some men are able to rise above the hardships that poverty brings upon them. You all remember the story of several of our great men. Garfield was a man whose poverty was intense. He came from the tow-path. Lincoln was a man

whose poverty was so overwhelming as to make his early life pitiful, and this city is filled with men who started as low as could be in the scale of life and who have progressed until they have obtained for themselves positions of importance, commercial importance, and positions of honor in this community. But those men all had what this man had not, a strong body and a strong mind. Those elements were denied to this man. The proof shows, and even Mr. Trude admitted in his opening argument that this man was a man of frail mind. He did not have a strong mentality. We all know from the testimony of the physicians that he has had a weak physique, and he was not able to overcome the hardships that poverty imposed upon him. And in that sense, and in that sense alone, I have referred to this question of poverty. Now, gentlemen, how did this affect the life of this man? You have heard his story upon the stand, how at an early age he commenced to take up these questions, these questions of public importance; how he had a common school education, reached the Fifth Reader, and there his education stopped except as he was able to pursue it himself by reading such books as chance threw in his way. At an early age he commenced to take up the discussion of public questions. He read "Progress and Poverty". He read other books. He commenced to think about these questions that had been considered

921

and are considered important.

Now that book "Progress and Poverty" was one of the great books of this century. I do not know that I remember enough of it to say whether I agree with it, but I do know that the book touched great human questions. It led men to discuss and to think of great human questions. It brought men into closer sympathy with one another. It resulted in the formation of societies in which were discussed not only the question of single tax, but questions that concerned the welfare of humanity, and this man read that book, and it sank into his mind and sank into his heart, and became a part of his mental system, and subsequently the thoughts that were there suggested dominated his whole mind and took control of it.

Now is it surprising that a man of weak physique and weak intelligence, who had perhaps ambition for public life, thought he had the capacity to take up these questions and discuss them and bring about results. Is it surprising that such a man was impressed by such a book. Is it surprising that he made up his mind early in life at the time when you and I were dreaming of the future, ^{for} ~~for~~ ambition ^{of} and success---that he made up his mind that he would devote himself to the public questions that touched the welfare of this community, and is it surprising

925

that upon this weak mind this question of grade crossings should take root ?

I have seen it stated, and I am not sure whether it is so or not, that in all the Kingdom of Great Britain there is not a single grade crossing. The statement is perhaps an exaggeration, but the fact that the statement has been made in that way shows how keenly the people of that country appreciate the importance of this question.

Now, gentlemen, the question of grade crossings is nothing to you, is nothing to me, because no friends perhaps, no relatives, no child of yours, has lost his life or has been mangled on the grade crossings in this busy community, where all of us have our common occupations, this question has never been brought home to us as it ought to be.

It seems to me that this weak intelligence, this man whose mind was faulty and fragile and weak, and always has been, appreciated the importance of that question, crazy as he was, perhaps more keenly than any man in this community. Now, let us think of what this question is. The evidence shows that four hundred people last year lost their lives on the streets of Chicago on grade crossings, and I recall a case that went through our courts, a most distressing case of a young wife, a young widow, who stopped on one of the grade crossings, to allow a train to pass. She had in

her arms a child ~~about~~ a year old, and following her at the side was another little boy only three years old. That little fellow was a namesake of the judge whom we lawyers delight to call the Chancellor of Cook County---I refer to Judge Tuley. She waited until this train had passed, and the moment it had passed started across and there she was struck by another train, and these two children were literally torn to pieces. The woman was knocked insensible. Now ask her what she thinks of grade crossings, and I doubt not you will get the most bitter answer. Ask Judge Tuley what he thinks of grade crossings, and he will tell you very frankly, and the reason why it has not heretofore been a question of importance with us is because this matter has not been brought home to us. In this community we are rather selfish. We think of ourselves first and the public last, But four hundred people, as ~~this~~ record shows, or that is the indication, last year lost their lives, as I have said, on the streets of Chicago.

Now, gentlemen, think of that. Think of the widows that mourn and the children that weep. Think of the hearts that bled and the eyes that wept in that one year. Four hundred people, if put side by side, would make almost half a mile of human flesh and blood, that was crushed out and mangled beyond recognition, and brought into the presence

of their Maker, unexpectedly and without notice, leaving grief and anguish unutterable and inexpressible behind.

Now that is the kind of question that sank upon the mind of this man, entered into his mental system, dominated his heart, took possession of his mind, controlled his life, and I do not wonder at it. The surprise is that this man, of weak intelligence, appreciates more keenly than any of us the great horror of this question. One man a day, more than one, that loses his life upon the streets of Chicago, and that does not include the men who are mangled and torn and go through life with limbs broken, destroyed, amputated. It takes not into account the anguish, the pain, the suffering that comes from that source.

Now, gentlemen, is it any wonder that this man was dominated by this terrible question? A man whose mind was weak, whose soul wished to surrender itself to the good of this community, who was willing to sacrifice, in his crazy way, his whole life for the good of this community--Is it any wonder that this solemn question, this terrible question took possession of the man and dominated his whole career and produced these terrible results?

Of course the case I have mentioned is simply one. It is not a special case, the case of this woman with the

two children. It is a case that occurs every day. I happened to know that case, I have read the case, and not long since a clerk of one of our courts, riding in the street car, lost his life, with others, at a grade crossing, leaving anguish behind him; and I tried a case not long ago with my senior colleague where a man was driving two women across a grade crossing at night, and they were smashed to pieces, simply because the railroad thought it not worth while to keep a watchman and a gateman there at night.

That is the kind of a question that has been before this community for years, a blot upon the civilization of this community, a blot upon our good sense, and yet nobody has solved that question. Is it any wonder, I repeat again, that this weak mind should take up this question--anxious to serve this community, should take it up and brood over it and ponder over it and pray over it until it became a part of his mental system and dominated his whole career?

As I have said, the issue in this case is not one of guilt or innocence, but is simply a question as to whether this man is now insane. Upon that question I shall direct your attention briefly to the evidence in the case. To my mind, as a lawyer, it seems scarcely necessary. The evidence in this case is so overwhelming that it seems almost unnecessary to direct your attention to it in detail.

970

These gentlemen for the state have been accustomed to trying cases and they know what evidence means. They know what it is to make out a case, but I cannot think for a moment that they are content or can be content with the nature of the evidence introduced by the State, and I shall call your attention briefly to that evidence.

The first witness for the State was Dr. Davis.

He saw this prisoner three times, ⁶one before the trial, once on the 22nd of March just before the date set for the execution, and once last week. The Doctor says that he saw no evidence whatever of shaming on the part of this man; that at the first interview he was unable to get him to talk, at the second interview he was unable to get him to talk, and so at the third interview. Now, gentlemen, Dr. Davis is an old man, and it would not become me to criticise him as a man or as a physician. He is known in this community, and has the respect of many people in this community, but you saw his appearance on this stand. He wore a dress suit, always wears it. He looks like a picture cut from the canvas of a frame of three generations ago. He has a grim aspect, old age ~~has~~ crowns his head, and I doubt whether this petitioner ever saw such a man in his life. I doubt whether he ever saw a man with a dress suit on. I doubt whether he was ever brought in personal contact with a man of just such

930

appearance as that venerable gentleman presents, and for my own part I do not wonder that this man was overcome by the presence of that venerable man, and did not feel inclined, did not wish to talk with him. For myself I am not sure that I would care to engage in conversation with Dr. Davis, simply because he belongs to a different generation. It is likely the subjects ~~xxxxxxx~~ that he thinks of are not subjects that I think of; the subjects that he would talk of are not subjects that would interest me, and I am not surprised that this man, walking into the jail where such a man perhaps had not been seen, certainly not by Prendergast---I am not surprised that Prendergast found some difficulty in talking with him.

But this Doctor says that he saw no shamming whatever. He had no talk with him about track elevation, about killing the Mayor, about his single tax, or about any of these hobbies at all. He had no opportunity to talk with him. Conversation was refused, and he says he is sure the man was not shamming.

Now you will remember the opening speech made for the State, in which ^{much} the point was laid on that fact. The case of the State was to show that this man was shamming. That was the whole theory of the case. The acts themselves are certainly not the acts of a sound mind, but they are the acts of a cunning man, and the State undertook to show

931

that this man was shamming.

Now if he were it is natural to suppose that he would to this doctor show some evidence of insanity, but Dr. Davis is very frank, and he tells you that he saw no insanity either real or sham, and you must bear that in mind. Outside of that his testimony had no importance. He admits, as you will well remember, that if Prendergast believed that he was to be Corporation Counsel, that he believed all these things, then he admits the man was undoubtedly insane.

The next witness was Dr. Bluthardt.

Dr. Bluthardt said that he honestly believes---He had talked with this man, I think, as many as twenty times, had seen Prendergast, and he told you that he honestly believed that Prendergast honestly believed that he was to have the position of Corporation Counsel. Now, gentlemen, remember that fact, that this doctor for the State told you that in his judgment this man honestly believed that he was to be Corporation Counsel of the city of Chicago; and yet, when asked whether he considered this man insane, said he did not, that he thought that was absurd, and that it was absurd for Prendergast to believe any such thing. He did not take it as an evidence of insanity, but simply that the Doctor himself thought it was absurd.

Now, gentlemen, let that sink into your minds.

that a physician called by the State of Illinois to prove that this man was sane deliberately tells this jury that he honestly believes that this man believed, honestly and sincerely, that he was to be the Corporation Counsel, and yet that doctor tells you that he thought that was absurd, but he did not think it insane. And also you must remember that this Doctor, just as our own Doctors told you, said that he had some difficulty first in getting Prendergast to talk, but afterwards he talked frequently; and I will refer to that question again later.

The next witness was Dr. Benson. He has had no talk with Prendergast since the sentence. He went to see him, but he refused to talk. He hadn't a word with him, except to have the prisoner tell him that he did not want to talk to him, he did not want to be annoyed, and did not want to be interrupted. This doctor told you that the delusions of the insane are frequently not apparent upon a casual conversation, that you must search for them. He also told you that Prendergast did not have a strong mental development, he did not have a strong physical development, he did not look well, and yet on the strength of a simple physical investigation of that man, Dr. Benson gave you his opinion that this man was now sane. He also admitted---the same

9.33

doctor admitted that in a recent murder trial which took the attention of the community for some weeks, where a man entered a cottage at night with all the appearance of health and strength, and was subsequently found in a catch basin with wounds on his head, horribly wounded--- this same doctor also admitted on the witness stand that that man might have died of disease of the kidneys.

Now, gentlemen, I do not want to indulge in any criticism of these doctors, but it does seem to me remarkable that a man with such an examination as Dr. Benson had made should dare, with his own conscience, to come upon the witness stand and express an opinion in this most important case, involving the life of a fellow being, that he was sane. He would not be satisfied to diagnose a case upon any such examination, you would not be satisfied if he diagnosed the case of a relative or a child of yours upon any such examination. Even that doctor admitted, as they all admitted, that if this man had those delusions then he was insane.

Now, the next witness was Dr. Martin, who had two visits with Prendergast, and they were both short. He told him that he was not a physician. Well, perhaps that was right. I don't think that a man ought to be deceived under any circumstances, but of course we do not complain about that. Dr. Martin admits, as they all did admit, that if this man was

9311

sincere in the express^{low} of the various opinions that he did express here on the stand--if he believed those things then he should deem it as evidence and proof of insanity; and this same doctor said and insisted upon it that he was ~~xxxx~~ not shamming. He did not discover the slightest evidence of shamming; that Prendergast spoke to him truly in everything he said. But he did not talk with him about these questions, these delusions that were on his mind at all. And yet, knowing ~~of~~ ^{that} these delusions were the questions involved in this case, this doctor was content to come on the stand and tell you that he thought the ~~same~~ man was sane; and the same doctor, when asked to give to the jury the name of some of the various phases of insanity, some of the medical terms that were employed, made a guess at it and said that paranoia was paronia-- he called it paronia, and it does not seem that the testimony of such a witness ought to have the slightest weight with this jury.

Now I come to the question of Dr. Corbus. He told Mr. Prendergast that he was a business man, and he saw him twice, once in the morning and once in the afternoon of last week, and afterwards told him he would bring him a basket of fruit. Dr. Corbus says that although he deceived Prendergast, Prendergast did not endeavor to deceive him. He said that he was perfectly fair, that his conversation was candid, that

935

his conversation was true; that what he said was sincere; that he meant what he said. He also said that he knew that this man's delusions, if he had any delusions, were the questions of single tax and the questions of his relations with the church, of his being appointed Corporation Counsel, and yet this doctor did not ask him a single question on any of those points, not a single question.

Now, gentlemen, suppose you should send for a physician. Suppose your son should break his leg and you should send for a physician, and he should come and feel his pulse and say the leg was not broken. Would it be any more absurd than this man who, knowing the questions that were claimed to be involved in this man's brain, goes to him and asks him about everything else, and never once asks him about those important questions? I do not see how that man dared to come upon this stand and give his opinion that this man was sane, when he had never once asked him about these serious questions.

Now, then, another remarkable thing about Dr. Corbus was this. He thoroughly understood, he said, the nature of this proceeding-- I refer now to Dr. Corbus-- he said he knew that the man's guilt or innocence had been established by the previous trial, and that the only question involved in this proceeding was the sanity or insanity of this man; that if he were sane he would go to the gallows; if he were insane he

He asked Prendergast what he wanted him to testify to, whether he wanted the doctor to say that he was sane or insane, and Prendergast told him he wanted him to say that he was sane, and with that as the only question involved in this suit, the only question that can affect and save this man's life, this man tells you that he thought that was a ~~sane~~ answer for this man to make.

Now, gentlemen, what value can you, as intelligent men, attach to the witness of such a man, who deliberately goes there to ascertain the mental condition of this man and never puts him a question about these delusions, and that is practically the nature of all the testimony in this case.

I do not know-- some of you may know Dr. Corbus. He may be a man of good standing, but I am sure, whether you know him or not, or esteem him or not, you cannot but agree with me that this doctor had ^{no} any right upon such an examination as he made to venture an opinion upon the sanity or insanity of this man, when he must have known, if he knows anything about insane matters, that it is often difficult, as the doctor whom I have just quoted has said-- it is often most difficult to get at the delusions of an insane man.

Dr. Spray, you will remember, told you that seven out of ^{insane} ten men reason correctly, and it was very often difficult to find out what the trouble was with them. Dr. Davis refer-

red to a delusion where a man thought he was made of glass. I happen to know that in the asylum of this State at Elgin there is such a man who thinks that he is made of glass, and upon all other questions the man will talk to you rationally and sanely. He is said to be perhaps the best insane patient in the world, because he won't let anybody approach him. He is afraid if somebody gets near him he will be broken. Yet upon all other questions that man talks rationally and sanely.

Now, then, a physician who knows anything about these matters would know, if told that that man was insane, or if he were asked to examine into the mental condition of that man-- would know that he would have to ~~approach~~^{broach} that question or he would never discover it. There is another man in that asylum who suffers under the delusion that he is a telephone, and he won't let any man approach him, because he says he is tired of being rung up by people. And yet on all other questions the man will talk to you as rationally and as sanely as any other man. Only on questions that touch his personal delusions and questions that concern that will that man talk ^{ir}rationally.

And yet here is a doctor that did not endeavor to discuss any of these questions, these most important questions, with this man, and yet he tells you also that he knew that those

were the delusions in questions.

Dr. Price was honest with this man. He told the jailer he did not want to deceive him, he wanted to be introduced as a doctor, and he was introduced as a doctor. He said the interview was not satisfactory; they were interrupted because the prisoner was brought into court, and the only thing that he said that impressed him particularly was the testimony here of this prisoner, where he refused to answer the question as to where he got that pistol. He was much impressed by that and thought the refusal was cunning.

Now, gentlemen, that was a curious attitude of mind for this man, that he was unwilling to say where he got that pistol, but it is the simplest question in the world. He said that he did not want that inquiry pushed further. When I asked him whether it was not true that he got that pistol of a shoemaker, he drew himself up with some dignity and said, "I do not desire to lay any special emphasis upon that fact." This deluded man was confused and ashamed of the fact that he had bought the pistol of a shoemaker instead of going to the hardware store. That is all there is about that question. If he were cunning and shrewd do you suppose that he would have refused to answer that question? Wouldn't he have made up some sort of answer other than a refusal? If this man
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is a cunning man, the shrewd man, the sane man that the State

claims, if it possible, before a jury of twelve men, where his life was involved, that he would have declined to answer that question, when it was the easiest thing in the world to make up some sort of story about it, the falsity of which could never have been tested. And yet that fact was the only fact that seemed to impress Dr. Price with the cunningness of this man. The fact that he was confused and ashamed of having bought a pistol of a shoemaker was a rather unusual proceeding, and it seemed to him that he would prefer not to have it known. He said, "I do not desire"-- he said it with some dignity-- "I do not desire to lay any special emphasis upon that fact", and that is the whole story about the pistol.

The next witness was Dr. Spray, who told you that this man, and insisted upon it time and again, that this man had a faulty mental makeup and ~~had~~ had never been right, and he told you that on the 22nd day of March, the day before the time set for the execution of this man, he was as cool and collected as he ever was.

Gentlemen, I shall have something further to say about that, and I call your attention to it now because it was this doctor that said it, and the same man told you, and all the witnesses told you, that seven out of ten ^{insane} men reason correctly; I mean seven out of ten lunatics reason correctly on all questions except the questions upon which they personally are

940

deluded, and he had talked with him only once since the trial, and Dr. Spray told you that he himself honestly believed that the late Mayor promised this man to make him Corporation Counsel. He believes that the Mayor honestly-- he honestly believes that the Mayor promised to make this deluded man Corporation Counsel. Where did he get that belief? He certainly did not get it from the Mayor. He got it from talking with this man. He was impressed, as the other doctors have been for the State, with the candidness and the truthfulness of this man; and here is a doctor of some large experience, at the head of an insane asylum, that does not say that he believes that Prendergast believed that he was going to get the position, but says that he honestly believed that Carter Harrison promised to make him Corporation Counsel.

Now, where did he get that belief? He got it from talking with this man. In other words, this doctor has been impressed, as I am sure you were impressed, with the truthfulness of this man's story. This deluded man impressed him with the belief that the late Mayor actually promised to give him that position. Gentlemen, that is a very odd fact, that a man of his age and of his experience, from conversations with this man, should come away impressed with the truthfulness, not of this man's belief, but with the truthfulness of the story that he told. In other words, he believed

941

that the Mayor had actually promised to make him Corporation Counsel of the city of Chicago. And yet the State would have you believe that this man is a cunning man, an untruthful man, a shrewd man; that he is simply shamming insanity.

The same doctor told you that he also believed that Mr. Kraus, the X Corporation Counsel at that time, did introduce Prendergast to his subordinates as his successor in that office, and that actually took place and will not be denied by the State, I believe, that Prendergast went into the office of the Corporation Counsel of the city of Chicago, asserted himself as the successor of Mr. Kraus, and Mr. Kraus was so impressed with the fact that he was a man of faulty mental makeup that he actually took him around his office and introduced him as his successor in that office, and Dr. Spray told you that the trouble with this man is that he started upon false premises; that he reasoned correctly from those false premises, but he started from false premises, and that he had always been faulty in his mind, he has always been faulty in his body.

Now, the next man was Dr. Baxter, who saw him last Monday, and he declined to talk. He had three visits with Prendergast before the trial, and all that he ever got out of that man was Prendergast said he was sane, and the doctor took his word for it. That is all that this doctor ever

945-

got Prendergast to say, that he was a sane man, and apparently the doctor thought that that settled the whole question. But he did not talk with him about his religious belief,. He tells you on the stand he made no inquiry of this man about the question of single tax or any of these questions that dominated this man's mind, that had unbalanced his mind. About none of these questions did Dr. Baxter once allude to this man, and he told you that ~~he~~ he knew that these were his hobbies; he knew that those were the thoughts and those were the questions that were on this man's mind, and yet, like the other doctor, he never once in all his inquiries made a single endeavor to get Prendergast to talk of those questions.

Now, gentlemen, you may know Dr. Baxter. I do not. Some of you may know him, but as I say again, I do not conceive, I cannot conceive, how Dr. Baxter, consistently with his conscience-- I do not mean to say that he was dishonest at all. I mean to say that he was thoughtless, that he did not appreciate the gravity of what he was doing when he told you this man was sane-- How he could do that, never once having made inquiry into the man's mind. It is something that I do not understand, it is something that certainly adds no weight to the case made by the State.

Dr. Caldwell started out by telling you that he did not claim to have any expert knowledge on the question of sanity

9113

or insanity, he simply claimed to have good common sense, and that was all. He told you his story glibly, he told you his story as if he, out of all these doctors, was the only man that had gotten at the true state of this man's mind. He told you that Prendergast was fair with him, that he really thinks he was sincere. He said also that he honestly believed that Prendergast thought he did right in killing Mr. Harrison, but he said, I asked him whether it was true that he was the successor of the Savior, and he laughed at ~~it~~^{it}. The prisoner laughed at him when he asked that question, and the doctor from that one fact comes upon the stand and says that that is a cunning man, a shrewd man, and he is not insane.

Now, gentlemen, think of it. Here stands the State of Illinois telling you that this man is a sane man, that he is shamming insanity, and in the middle of the trial Dr. Caldwell, an utter stranger, goes there to him and in ten minutes, as he thinks, he gets the full confidence of this man whose life is concerned in this trial;— an utter stranger goes into the jail, gets his full confidence, discovers that the man is sane and is shamming about those matters, and yet the State says that he is a shrewd, cunning shammer. That right in the middle of this trial, to an utter stranger, he would tell the doctor, when for five and six and seven months he has deceived everybody else. Gentlemen, it is most absurd.

The trouble with Dr. Caldwell was that he did not know how to diagnose a case of this kind, did not know how to act with such a case. He did not know the importance of the testimony he was giving. He said he had good common sense, and yet, although he says that, the man was sincere in his talk with him, that he believed that he ought to have killed Mr. Harrison, yet simply because he laughed at the idea that he was the successor of Jesus, the Doctor says he was insane.

Now, the truth is the man has never made any such claim. What he has stated was that to him was given especial knowledge of the Savior, not that he was the successor of the Savior, but that he was the legitimate successor of St. Peter. The doctor complained of his poor memory. He told you that he took a note book in there and he put down the things that he considered important, and on cross examination he was asked whether he had talked to Prendergast about his being Corporation Counsel, and he said yes, I remember that he did say something about that, but I did not deem it important and I made no note of it.

Gentlemen, is that man competent to pass upon this great question, who did not deem it important that Prendergast made some allusion to his being appointed Corporation Counsel, who made no note of it and could not remember and tell you what it was that he said about it? And then on his second

interview-- he had a second interview-- he said that Prendergast was incoherent, did not talk consecutively, and did at that time say something about his being the special instrument of God, but what it was he could not remember. He said his memory was poor and he made no note of it because he did not deem it important, and then the next man was Dr. Stowell.

Dr. Stowell had two interviews last week. At the first interview Prendergast declined to say anything to him ~~about~~ and the doctor stood outside of his cell and watched him through the cell door and made up his mind that he was sane. On the second interview he went with Dr. Flood and Dr. Clark Gopen, the three of them went together, and they were interrupted by his being called into court, and he says that he does not remember anything that this man said at that interview. Dr. Stowell told you on the stand that he could not remember what was said, Although the interview had taken place only two days before he could not remember a single word, he could not tell this jury a single thing that this man said, and yet he said that he was sane.

And Dr. Flood who was with him at that time-- all he said was that the interview was very unsatisfactory. He believed the man was sane, but the interview was very unsatisfactory, and he did believe that if this man thought all these things, if he thought he ought to have been Corporation

Counsel, if he thought he had a special relation with the Deity, that then he was insane.

Now, gentlemen, there were three people at that interview. One, as I have said, was Dr. Stowell, one was Dr. Flood, and the other was Dr. Clark Gapen. Dr. Gapen-- They were all witnesses asked to go there by the State of Illinois-- Dr. Gapen is the superintendent of the largest insane asylum--

MR. TODD: We object to that statement because it is not in the evidence, that ^{Dr} Judge Gapen was asked to go there by the people of the State of Illinois.

MR. HARLAN: I am not surprised that counsel objects.

THE COURT: Mr. Harlan, it ought not to be necessary for the court to ask counsel on both sides to make no reference to matters that are plainly not in evidence.

MR. HARLAN: I referred to it, your honor, not with any idea of impropriety, but because the doctor was here in court.

THE COURT: We won't talk of that. Many persons have been here in court, and they are not a part of this case.

MR. HARLAN: It seems to me, your honor, that if the State-- I do not care to discuss it against the court's wish, but it does seem to me that if the State calls three witnesses---

MR. MORRISON: I object to the mention of any person's name who has not been a witness here, or anything that they

may know utterly outside of the record.

THE COURT: I trust you will not discuss it, Mr. Harlan.

MR. HARLAN: It is for the court to say and for me to be guided by the rulings of the court. I wish to note an exception to your honor's ruling. I am not surprised that the State should make the objection---

THE COURT: Mr. Harlan, do not pursue a matter that has been passed upon by the court.

MR. HARLAN: I shall not refer further to Dr. Flood, because I have already gone through the list of the doctors presented by the State. Dr. Flood also told you that the man was not shamming. Now, gentlemen, think of it. There is not a single doctor presented by the State, I think, but with one exception, who told you that this man was shamming. On the contrary they told you, most of them, that the man was candid, was sincere, that he honestly believed certain things that he said. There was only one man, I think, that told you that the man was playing with the law, was playing with this jury, was playing with his conscience. I think there was but one man who was presented by the State that thought he discovered evidence of shamming on the part of this man. There was not a single man that got at the bottom of this man's delusions. There was not a single man that made a fair endeavor to do so. I mean by that-- I do not wish to

948

accuse any of these doctors of dishonesty, simply of incompetency and nothing more; that they did not know how to go at this thing, or that they did not have the opportunity to go at this thing to discover what was the trouble with this man.

Now, contrast the endeavors made by the witnesses for the State with the endeavors made by the witnesses for this petitioner to find out the state of his mind. Dr. Head was with him five hours. Old Dr. Andrews, than whom no man is better known in his profession in this city, and favorably, gentlemen, saw him three times, and old as he was, outside of those jail visits he ~~made~~ made endeavors to make independent investigation for himself of the career and the antecedents and the life of this man. Three times he saw him. Dhe he hesitate to question him about these delusions? Not at all. That was his business. That was the particular thing for him to examine. That was the trouble, that was the disease, and he went at the disease. He does not come into court and say, the man is insane, but I did not ask him about these questions. He comes into court, says he is insane, and he tells you why he was insane; that he searched his mind as best he could, and he told you that the man was not shamming, that he could not be shamming, that he could not be deceived. He knew how to go at these things and he did go at them.

Then take old Dr. Ingalls, and I liked his testimony, for the special reason because it appeared so clearly that he had no interest whatever in this case. He told you he did not know which was Mr. Gregory and which was Mr. Darrow. He told you of the careful endeavor that he had made to get at the bottom of this case, and when asked by Mr. Trude if the man was not shamming he said, "I cannot think it, I cannot think that the man ^{did} would deceive me or could deceive me, I do not believe he was shamming". And he told you he ~~believed~~ believed the man was unbalanced.

And then take the rest of them. Dr. Sanger Brown is an expert in insanity, mental and nervous troubles. There is not a man in this community or in this State that stands higher in his profession than Dr. Sanger Brown. I know that he knew what he was talking about. I know that he was not a man to be deceived by a man of this kind.

Dr. Church also, a specialist in this matter, has a standing of which he may be proud, not only in this community, but in his profession.

So with Dr. Bannister. So with all the physicians called by the petitioner. There is not a single man that appeared on our side in this case whose judgment you would not be glad to have in case a relative or a son or a daughter were troubled in any of these matters. There was not a

single man whose position in this community was not well understood and thoroughly established. If you had a son that showed indications of mental trouble you would have gone to one of these men and ^{to} no other. They represent the flower of the profession in this city and have come here without pay, have made this investigation without pay, with no interest whatever in this case, and have told you that it is impossible for this man to be shamming; that his trouble is not an unknown one, not an uncommon one, not one that is difficult to understand, and not one that is very difficult to get at, and they have all told you how difficult it would be to be deceived.

Another man was Dr. Walls, who saw this man every day for five months. Gentlemen, is there anybody so competent in this case to testify as that man, ~~as~~ the physician who saw this man every day for five months, and he told you the man was insane. He told you there was no doubt about that. He told you that his disease was progressive^{WARR}; that although he was better physically that he was weaker mentally, and he said that meant that the disease had a firm hold upon him and would never let go. Do you know anybody that is more competent to testify than Dr. Walls, a man who was interested in the case because it was an important one, and who saw this man every day for five months?

Now, gentlemen, there was no such physician presented by the State. For myself, I do not know a single physician who did appear for the State whose service you or I would seek in a case of this kind, a relative or a son, but I know seven or eight physicians who appeared for the petitioner, any one of whom we would go to, would be likely to go to, and that is the way you must estimate the testimony of these men, by their standing in the community, by their opportunities for judging, by their opportunities for knowing about these matters.

Our witnesses were experts in these matters. There was not a single witness for the State that claimed to be an expert in these matters, not a single one.

Much has been said about the difficulty of getting this man to talk. The inference has been made by the questions asked that this man would only talk to the physicians who came from Mr. Gregory. Now, gentlemen, every physician who has testified in this case has told you of the difficulty of getting this man to talk. Dr. Favill had an hour's interview with him, told ~~you~~ him that he came from Mr. Gregory and twice was refused an interview by the prisoner. Twice after that, after the prisoner knew that he came from Mr. Gregory, he declined to talk or have anything to do with him, declined to talk with him, and so of other physicians in

952

this case. Every one has told you of the difficulty of getting this man to talk, and you saw that yourself on the stand. He got on the stand and said that he did not want to be examined. The record shows four or five of those questions that were put to him by the court before he finally said, "I am willing to be examined." Now, that was the same kind of objection that he made to these doctors. The court insisted on what he asked him and exercised a little authority, and finally we got out the story of his life. He did that right in your presence, and that is the way he has refused to talk to these physicians, just in that way.

Now, if they had known how to get at this man, how to examine him, there would have been no difficulty at all. Every single witness who testified told you of the difficulty they had. Dr. Brandt was three hours with ~~him~~ the man, and Dr. Ingalls went to see him three times, and Dr. Bannister four or five times, and Dr. Kuh three times, and Dr. Church six or seven times, and finally they were able to get at the whole condition of this man's mind.

Now, as to this man's condition on the 22nd day of March, the day before he was to be hanged by the order of the court. Mr. Morris has stated that the position of the State in reference to this matter is whether this man -- and it does not seem to be denied by the State -- is now of a

faulty, weak, fragile mentality, but the position of the State seems to be whether he is able now to appreciate the condition in which he is. As Mr. Morrison stated it, whether he is now in a frame of mind such as to enable him to prepare to meet his Maker.

Now, gentlemen, on the 22nd of March Dr. Spray saw this man at night. He was a witness for the State. He told you that Prendergast at that time was perfectly cool and collected, always had been. In the presence of death, with but a few hours, ~~as~~ as he thought, to live, he was perfectly cool and collected, and Father Muldoon told you that at that time, as was his duty, he came to this jail to offer to this man the consolations of a priest, and that he declined to talk with the priest, declined to accept his consolation, declined to have his official ministrations; said that his conscience was clear and he did not need those ceremonies which ever Catholic deems it necessary to have performed before death. I do not know myself what those ceremonies are or the meaning of them, but you do know the testimony shows that every good Catholic deems it desirable, deems it necessary before he dies that certain ceremonies should be performed, and that night, in the presence of death, before he knew any stay-- The stay was not granted until late at night, and that afternoon Father Muldoon went there to offer him these priestly

ministrations, and the man declined them. Never before had he refused to talk with his priest, except a few days before he had refused Father Dore, told him he did not want any priests.

Now, gentlemen, was he afraid at that time to meet his maker? Is he now able to understand the meaning of this proceeding? I do not doubt for a moment that this man knows what it is to be hanged. I do not doubt for a moment that he knows what it is to be imprisoned, but I do doubt and evidence for the petitioner shows it that he would think if he were executed to-morrow that he was going to the death of a martyr; that this community was losing its most valuable man, losing the one man that understood this question of grade crossings and the one man that could work it out and solve it.

The testimony of all those men who got at the state of this man's mind shows that he is utterly incompetent to understand why his life should be taken, utterly incompetent to make up his mind to meet death, and that he does not believe that he will meet death under any circumstances, but that he will be saved by the power of the prayer.

There has been a change in this man, it is proved by the testimony. That is uncontradicted. I have already referred to the question of the priest. That was a change in his character that came right in the presence of death, when there

was no occasion for shamming. He did not know there was to be any stay. But there is a further change. He declined about that time to have further interviews with his brother. He declined to have any further interviews with his mother, and wrote her a letter, the most pitiful letter, in my judgment, that I have ever read, showing insanity in every word and every line, in which he told her she must not come to him unless she had something important to communicate to him. This man had acquired this delusion that he had some special relation with the deity, that he had some special religious position in the world, successor of St. Peter, and he remembered the injunction of the Savior, a man must put away his mother, his father, his brother--I do not recall the exact words; I ought to, but I don't-- and he told his mother in this letter that she must not come to him unless she had something of importance to communicate. Now, gentlemen, that is a phase of this man's character, right in the presence of death, when there was no occasion for shamming; when, if he were sane, he must have recognized the truth that death was imminent. But that is not all. Dr. Church has told you-- and he a man, as I have said, that has the highest position-- that this man's character has changed; that he has delusions that he had never seen before, and he had examined him repeatedly; the delusion that he was successor of St. Peter, that he was a special instrument of the church, a special instrument of God.

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There was a delusion that had never existed before which had never been observed before, and yet all the physicians tell you that additional delusions were present, and Dr. Walsh, who saw this man longer than anybody else, knew more about it, also told you that since the last trial there had been a decided change. He had observed these additional delusions, and he told you that the man's disease was progressive and progressing rapidly.

Gentlemen, I have already taken up more time than I should, and I fear, rather tediously, but I wish to direct your attention just briefly to the evidence on one side and on the other. As I have said, you must take the evidence of these men, not your own opinions about the man, but the evidence of the men that are competent and qualified to judge and you must give to them the credit that is due to them by their experience and by reason of their position in this community. If you test the evidence offered by the State and the evidence offered by the petitioner in that way, I can't see how it is possible that there should be any doubt as to the result of this case. There is not a single witness offered by the petitioner whose position in the community was not understood and established, and whose judgment you would not value yourself in similar cases. Not a single one. Not a single man who is without reputation. Not a single man whose name you are not familiar with. Perhaps

that is broad, but the majority of them are men skilled in these matters and have reputation in these matters. Contrast their evidence with the evidence offered by the State, and the manner in which the gentlemen who were called by the State, made this investigation, and it seems to me there cannot be any doubt as to the result of this case. It does not seem to me possible that any man could hesitate on the case made out here, or could hesitate to say that this man is insane; that ~~ix~~ he is not ready to meet his Maker; that he does not understand the position in which he is, and that he is materially changed since the last trial. I don't see how there can be any doubt in your own minds about that. The evidence seems to me almost conclusive, and as to the question of shamming, it is a mere pretense. It is not supported by a scintilla of evidence that has any weight. On the contrary, the witnesses for the State all deny that he was shamming. I believe there was one exception, and that he was candid, and that he was sincere in his statement. Is it possible to conceive that if this were a shrewd man, the cunning man, the sharp man, the intelligent man, that he would not have seized the opportunity to make some demonstration before the witnesses for the State, and have given to them some ground, some action, some sentence, some conversation, upon which they might predicate the opinion that he was insane. If this man is an actor, if he is cunning,

the world has never before produced such an actor. If he is playing a part here, there never was before such a part played by any human being, and he has deceived the men who knew about such matters, men of vast experience. He has deceived them utterly, old men and young, men who are accustomed to dig into the minds of insane people to find out these things. He has deceived them all. Has the world ever produced such a man before?? Gentlemen, I can't believe it; and I was much impressed with Dr. Ingalls. He said, "I can't believe it; I can't think it possible that he deceived me." Do you think it possible? It seems to me there can be no doubt upon that question. Perhaps it is not worth while to dwell upon it longer.

Gentlemen, this is a christian community; it is a civilized community, and I don't believe that this community wants a man that is insane to be hanged. It is not the theory which christian people and civilized people entertain of such matters. It is not consistent with civilization, it is not consistent with humanity, that a man who is not ready to meet his Maker, should be hanged upon the gallows; that a man who does not understand and cannot understand the position in which he is in here, should be hanged, or even that he should suffer death. It is not proper that he should be hanged. It is not a spectacle that can do honor to a civilized community. It is not a spectacle that ought

ever to take place under any circumstances. It is not a
 spectacle in which a man ought to have any doubt if his con-
 science tells him that a man is insane. Now, the law as
 this man has said, is human sympathy. I don't believe that.
 If ever it were, there never would be any punishment at all.
 But I rather ^{accuse} doubt the definition of my ^{senior} skilled colleague,
 Mr. Darrow, when he said that law is something that grows
 out of the consciences of men. One of the noblest qualities
 is that of mercy. If this man is sane, he is not entitled
 to any mercy, but if he is insane, he is entitled to mercy.
 The law is merciful. Be merciful to him if upon your con-
 science you think this man's mind is unbalanced. Be not
 mer ciful to him if upon your conscience you think his mind
 is sane . If he is insane, be merciful to him, be merciful
 to his brother, who stood by him through all this trial with
 devotion such only as a brother can give. Be merciful to
 his mother. Her life has been a hard one already. She ^{has} had
 the full measure of hardship. Be merciful to her if upon
 your conscience you think this man is insane. But above all
 be merciful to yourselves, and be merciful to this community.
 Don't bring upon this community the disgrace of such a scene
 if upon your conscience you think this man is insane. It
 is not a spectacle which will do any honor to this community
 to hang this man. We are making history here. Not history
 that will affect the result of the trial but history that

will go down in the books of law. Gentlemen, as sure^{ly} as we stand here, the history of this case, the opinion that the public shall hereafter entertain of this case, will be in line with the testimony given by the fourteen doctors that testified for the petitioner. As sure^{ly} as you sit in this box, that hereafter will be the judgment of this case, that this man was in sane, that the fourteen doctors who testified for this man, were right. That will be the conclusion that history will place upon this case. There can be no doubt about that. The very weakness of the case made by the State, will hasten that conclusion, and, gentlemen, don't ben deceived by your opinion as to what the public may think of this case. No man in this community, no thoughtful man, wants this man to be hanged if he is insane. The public in my judgment will be gratified, as some one has said in this court room, if it should turn out that the man was insane. There was a man, perhaps you heard of him, who fired at the Queen of England, which under the laws of that country was a capital offense, and the Queen's ministers insisted that an inquiry should first be made into the man's sanity because they did not want to think that a subject of Her Majesty had fired at her with intent to kill her. For myself and for this community, I think there would be a feeling of gratitude if it should turn out that this man who did this act, for which he has been held respoinsible, although it was not claimed that he was of thoroughly sound

mind at the time he committed this act, subsequently became
 insane. It should be deemed an affair between man and man.
 The Mayor lost his life because of a grudge entertained by
 this miserable man against him. I say, I think this com-
 munity will be grateful for such a result, and it rests
 upon your conscience. There is in the breast of every man,
 a natural ^{standing court of} desire for equity, acquitting and condemning in
 the court of one's own conscience. Gentlemen, take this
 case into that court. Take it into your conscience. Weigh
 the testimony carefully. Be moved by nothing outside of
 four walls that surround you. Do not make any mistake about
 public opinion. Take it into your conscience. Deal with
 it fearlessly. Deal with it conscientiously, and no criti-
 cism shall ever come from any one representing the petitioner
 whatever result you may reach. Deal with it tenderly. If
 the man is sane, let him go to his punishment. If he is
 insane, be merciful to him and to his, and be merciful to
 yourselves. It is a terrible thing, in conclusion, for a
 man to have a member of his family hanged. It is a thing
 that does not stop with one generation, it goes on for gen-
 erations to come. If this man is ^vsane, spare his brother;
 spare his brother's children from this ignominy. I make no
 appeal to mercy, if he is sane. I can honestly make an
 appeal for your mercy if he is insane. Mercy for this
 brother and mercy for this mother. Her life, as I have al-

ready said, has been a hard one . Let her go to her long rest with the ^{late} lark still singing in her heart. Don't crush out the last remnant of her life with this disgrace and humiliation if upon your conscience you think this man is bereft of reason. I thank you for your attention.

ARGUMENT FOR THE PEOPLE BY MR. TODD.

May it please the Court and gentlemen of the jury :

We are not pursuing this man whether he be sane or insane, in order to see that he expiate the crime for which he was convicted upon the gallows. We are here as the representative of the law. We are here, not a suppliant for mercy, but demanding that justice shall be done. We are not here for the purpose of presenting before you, the sickening spectacle of the Chief Executive of this city shot down at the very threshold of his house, with a bride to be weeping over the prostrate body. We are not here to speak of the concourse of people following ~~in~~ silent step the departed mayor to his grave. Those questions, as well as those which were last appealed to you by the learned gentlemen, were adjudicated when the verdict of another jury at another time, where those matters were pertinent,

were submitted to that jury, were rendered, ~~and~~ they brushed aside the tears and rendered a verdict of Guilty and fixed the punishment at death.? In the name of the People and the Public at that time and on that occasion, it would have been as the gentleman said, a matter of rejoicing to our citizens had that jury brought in a verdict finding this man insane . Now! the gentlemen said that the people would rejoice to know that the man had struck down the chief executive of our city, was insane. Yes, the people would have rejoiced then. But what would the people say to-day, when, from the time that verdict was rendered up to within 11 hours of the scaffold, every effort had been made, the courts of all jurisdiction had been appealed to, and in vain. And at last by an affidavit, which is of record in this case, sworn to by the brother, who in the former case testified that his brother was sane, that the defendant had become insane since the rendition of that judgment ? What would the people say if justice should be cheated of her victim by such a technicality of the law, namely, that this defendant had become insane since the rendition of that judgment ? I ask you, gentlemen, as men, I ask you as citizens, to see the law upheld. If such trifling and trafficking with justice, should be the appeal in the name of the people, should find lodgment in your hearts. The question here is not one of mercy, it is one of law and of justice. The law demand

that it shall be in force in this case the same as it ought to be enforced in every other case, and if you in your wisdom as jurors, in scrutinizing the testimony that has been given here under the solemn sanction of the oath you have taken, and decide that since the rendition of that judgment this defendant has become insane, then and only then are you at liberty to find that this man is insane and that the sentence of this court should not be carried out. While it has been appealed to you that the people would like to see the man that shot down Carter Harrison insane, remember, gentlemen, that a jury of your peers and fellow citizens decided that when the fatal bullet went soeering from the revolver held in the hand of the assassin and struck down an heir of our city, they declared that he was sane and responsible, and now comes the question for you to decide, not what the people thought as to the condition of this man's mind at the time that he fired that fatal shot. No, that question has been settled for ever and for aye. The Supreme court of this imperial state has passed upon that question. Even our Federal Court refused to interfere with it, and after the date of the rendition of this verdict, wherein this defendant was found sane, that stands as a manumment to his sanity, we can only commence this investigation from that point up to the present, whether he has become insane since then. Starting from that point as the day that

he was sane. I am amused at the learned gentleman who last addressed you stating that there was not a man put upon the stand by the state, who rose to the dignity of a medical expert. Why, by the testimony of their own physicians, this man's condition has not changed within the last year.

Take the testimony of Dr. Davis who testified in the other case that this man, according to the hypothetical question put to him which incorporated all the facts pertaining to the homicide, and the career and history of the case, testified that this man was crazy, takes the stand again and says that he was crazy.

Take the testimony of Dr. Church. On the former trial he testified for the defense and said that this man was crazy, and upon this trial he has testified to the same facts.

The verdict of the other jury placed the shield of disapproval on the testimony that Dr. Church then gave. I ask you if the testimony of Dr. Church is stronger than the verdict of the Jury? If you are going to pass upon this case according to the law, or whether ~~xxxxxxxxxxxxxxxx~~ by your verdict you are to vindicate Dr. Church.

Take the testimony of Dr. Sanger Brown. Did he testify that this man had become insane since February? No. He said, "I don't wish to testify that he has become insane since February." Take the testimony of Dr. Brown.

It is the same with Dr. Head. Dr. Head said : "I would place the insanity at perhaps a year." And on page 305 of his testimony he stated : "I am not able to state there is any change in his condition."

Dr. Ingalls also stated that in his opinion, he would place the insanity at at least a year. And even Dr. Andrews did not testify that in his opinion this man became insane since the rendition of that judgment.

Now, the question as to whether this man is sane or insane, whether he knew the difference between right and wrong at the time of firing the fatal shot, or not, and had the power to do or not to do that act, is not the question we have here under consideration. The jury decided that point, and it stands as res adjudicata for this case.

Now, the insanity that we are trying here is not the insanity that was put up as a defense in the other case. The question here is, Has this man's condition changed ? Is he in a mental condition to-day different from that which he was in at the time of the rendition of that verdict ?

Even Dr. Favil testified that in his opinion he would place that man's insanity for at least a number of years. So did Dr. Kew. He also testified that he would place his insanity for years.

Now, I ask you, gentlemen, if the verdict of this

jury that found the defendant Guilty is to stand and whether by such a technicality of the law, that I cannot believe in, that even those that represent the petitioner have any faith in, namely that this petitioner has become insane since the rendition of that judgment, is going to pervert the destruction of the law in this case by bringing doctors here upon the stand by whose testimony they disagree with the verdict of the jury and the decision of our Supreme Court on the acts and conduct of that jury; or whether you as jurors are going to stand by the law and find ^{if} ~~that~~ this man has become insane since the rendition of that judgment, then and only under such circumstances, will you find that he is insane.

On the other hand, who are the best to testify as to whether this man's condition has changed or not? Those who have seen him since the rendition of that judgment or those who have been with him during the period of the other trial, who have been to see him since the time the verdict of this court was set aside by a reprieve given by another judge? Are they more capable of analyzing this man's conduct and this man's mental condition? Are they not more capable than those who have only seen him since the rendition of that judgment?

I ask you, gentlemen, to consider all the testimony that has been given in this case by both sides. I ask you to weigh the testimony not only as to what was said but

the manner in which it was said. I ask you to compare and contrast the fairness and the subtlety and the penetration of the intelligence of each one of these Doctors into this man's mental condition, and ask yourselves if old Dr. Ennis Davis did not give you the most clean-cut and decisive answers that all of you could understand, and whose language carried with it such weight and force that it commended itself to your intelligence and your judgment. There was no such display in the verbosity of old Dr. Davis, that would lead him to state that he did not believe that the jurors or the counsel could comprehend the emanation of his brain. And yet one of the Doctors for the defense--Dr. Alexander--clothed her ideas in such technical terms, that she herself was conscious of the fact that outside of Dr. Alexander, there was not sufficient mentality in this jury or in the counsel to comprehend her utterances. There is no man possessed of the most common kind of reasoning that could not understand the testimony of old Dr. Davis. What did he bring to the stand with him? Not only a gigantic intellectuality, but 57 years experience as a practitioner in medicine. A man whose experience and whose life and intelligence made him capable of analyzing this man's testimony, analyzing this man's talk, arriving at a conclusion that would commend itself to all who heard him by ^{the} soundness and

reasoning that he brought to bear upon those conclusions. And what did he say about this man? Did he discover in this man anything that was in the nature of a delusion, & illusion or hallucination? None whatever. He it was who examined this man at the former trial. He it was who gave his testimony at the former trial. He it was who examined this man on the 22nd of February. He it was who examined him again, and he stated that there was no change in this man's mental condition; that this man was in the same mental state that he was in at the time of the rendition of that judgment; that he understood the nature of this proceeding; that he understood what the question here involved was, namely the question of his sanity or his insanity; that he understood what it would be to carry out the sentence of this court. And in that the defendant himself corroborated the statement that Dr. Davis made.

There was Dr. Bluthardt, who had examined this man before the former trial; had been with this man nearly all the time; had seen him day after day, and several times from the time of the reprieve up to the time that he took the stand; had talked with him thirty or forty hours according to his testimony; had talked to him on all subjects, and upon all those subjects the defendant was perfectly sane, perfectly rational and realized and understood what was tak-

ing place here in his behalf.

Now take a doctor who had examined this man as Doctor Bluthardt and Dr. Davis had examined him previous to the other trial and up to the present trial, and then compare the testimony that was given by them relative to this man's condition with those who never saw him previous to the other trial, and tell me whether they are more capable of deciding whether this man has become insane since the rendition of that judgment or not.

There is another element in this case which has been brought to the attention of the jury. That is, it is brought here to this jury, that this defendant has no regard whatever for his attorneys, that he didn't wish to have them, as appeared by the letters that were introduced here in evidence. Now contrast that statement, as appeared in evidence relative to that fact, that this defendant did not care to have anything to do with his attorneys, with the treatment that this man accorded to his attorney down there in the cell. That was not brought into the case for the sake of casting any reflections upon his attorneys, but for the purpose of showing this man's attitude in the jail towards his attorneys, in contrast with what he would write to them, which letters he knew would be offered here in evidence for the consideration of this jury.

971

Then all the evidence introduced here by the defense showed that there was an antagonism between the attorneys and the client. But when the jail officials conversed with this man, what did he claim? He claimed for his attorneys that they were the equals of any attorneys in the country. That does not show but one of two things. That this man knew when those letters were written, that they would be evidence in his own behalf, and on the other hand he didn't know that what he said in favor of his attorneys as well as his acts would also appear in this case by contrast.

Now is that shamming or is it not? Is that acting a part or is it acting as an insane man would act? All the doctors who have testified here in this case have based their opinions solely upon what the defendant had stated to them. All that he stated to them has been stated to you, gentlemen of the jury, and as far as your intelligence goes, as far as you are able to observe, my opinion is that you are just as capable of analyzing, of deciding whether this man is sane or insane by the testimony that he gave, as the majority of doctors here, whether they be experts or whether they simply are medical men.

Now take the testimony of Dr. Andrews, that
venerable old gentleman. I have nothing to say against Dr.

Andrews personally, nor would I attempt to rob him of the lofty position that he holds in this community. But I ask you, gentlemen, in all fairness, if his responses to the questions propounded to him by my learned associate were answered with the same clean-cut and unhesitating manner that were the questions asked by the learned counsel for the defense of old Dr. Davis? I don't know why he did it. I don't know what actuated him to do it, but it did seem that the questions that he could answer with precision and with clearness and at once, when he discovered that by answering that way it would be giving testimony against the side that he represented, there was a hesitancy that was unbecoming in a man of his experience ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ and a man of his standing here in the profession.

I ask you if you noted anything of that character in the testimony that Dr. Davis gave? ~~xxxx~~ On cross examination the learned attorney who seems to have made a special study of mental and nervous diseases did not carry on the examination of Dr. Davis very far. He was satisfied to leave him alone as soon as he could, because every time that old man's mouth opened there emanated such volumes of truth that it shook this defense of insanity from stem to stern. He completely annihilated the defense that this man has become insane, and what he said about the jaw, the nose and

the ears, I ask you as men endowed with ordinary common sense if it did not appeal more to your reasons than the testimony of the learned doctors who could tell by the shape of a man's skull or size of his ears or the conformation of his chin whether he was sane or not? And what better logic could you ask from a man of experience in regard to the pretended inquiry whether the ears were indicative of insanity than he gave? In view of the fact that the ears are not the receptacle of the brain I cannot see wherein they have any bearing or control upon the mind.

I was very much amused at the statement that the learned gentleman made who just preceded me when he made the statement to this jury that Doctor Stowell in his testimony said that he had an interview with the defendant but could not tell a single word of that conversation. That is what I understood him to say. And so surprised was I at such a statement of facts that I turned to the evidence in this case and I find in the testimony of Dr. Stowell the following question and this answer given.

" Q State what you can remember of the questions asked and the answers given by Prendergast?

" A I asked him what his object was in killing the Mayor. He said there was no malice in the act, that he felt justified in so doing. I also asked him if he understood what this trial was for and he said he did. I asked him what it was for and he said it was to determine his condition."

And yet Dr. Stowell did not repeat a single word of that conversation. I ask you, gentlemen, if the witnesses who testified here for the people did not testify to facts and conclusions as to whether this man was sane or insane with as much fairness, even more, than those who testified for the defense? And with this addition that most of them had had an opportunity of seeing this man before the other trial and had an opportunity of comparing his statement at the other trial--I mean made to them previous to the other trial--with the statements that were made subsequent to the setting aside and the instituting of this proceeding?

If this investigation narrows itself down to this question whether this man's condition is the same to-day as it was at the time of the rendition of that judgment by the testimony of the defense in this case, by their testimony alone, the verdict of that other jury should stand and should be carried out and I take it that that is a question that we have here for investigation.

I infer what the instructions of the court are by what has been said in the trial of this case by the Court. During the examination of Dr. Ingals the Court gave utterance to the following expression, "I have been waiting with some patience "to reach what seemed to be a test in this case. I think we "are conclusively bound by the fact that he was found sane on "the 24th day of February. Unless argument can be made which

will change my conclusion I shall of course instruct the jury "that if his condition is the same now that it was on the 24th of February, then we are conclusively bound by the finding "that he was sane."

If that is to be the instructions of the court, if that is to be the law, that shall control this investigation, I contend that by the very logic of this case, that by the evidence that has been offered here by the defense, that they have not proven that that condition has been changed. If that line of inquiry that was laid down by the court in the remark that I have just read will be the law in this case, then I take it that by the testimony of the doctors who have testified here on behalf of the prisoner that the verdict of this jury ought not to be disturbed.

Dr. Brown in his testimony was asked this question:

" Q If he had become insane since then to what would you ascribe ?

" A To what would I attribute his condition of mind for the reason of the insanity?

" Q Yes.

" A Well, I don't wish to testify that I think he had become insane since the latter part of February."

" Q You think that he has been insane for over a year?

" A Yes sir.

was
 Then if he ~~had been~~ insane according to Dr. Brown's testimony for over a year, then the verdict of the jury is held that at the time of its rendition this man was sane is not in accord with Dr. Brown's views and the question is shall Dr. Brown's views predominate in this case or shall the verdict of that jury stand in the absence of proof that he had become insane since the rendition of that verdict.

In Dr. Head's testimony the following question was asked:

" Q Now in this man's case, let me ask you, Doctor, what did you say is the duration of his insanity?

" A I could not give an opinion on that.

" Q How long about, your best opinion?

" A Well, it has extended over a month.

" Q About how long, how much?

" A I could not say.

" Q Approximate it?

" A Perhaps a year."

That does not show by his testimony that in his opinion the condition of this defendant has changed. This question was asked of Dr. Head, following.

" Q You are not able to state that there is any change in "his condition then?

" A No sir, I am not able to so state. I can simply say that "he is insane."

Now as to Dr. Andrew's testimony. What bearing has
 977
 Dr. Andrew's testimony upon the question at issue in this case

The question at issue in this case is not whether Prendergast knew the difference between right and wrong and had the power to do or not to do the act for which he was indicted, but the question we contend is is he in such a mental condition that he understands what it is that is on trial here, that he understands what it is that we are investigating, that he understands what it would be to carry out the execution of this Court in case of an adverse verdict. Not simply upon the question as to whether Prendergast is sane or insane. That is not the question involved in this case.

Under the rulings of our Supreme Court as laid down in the case of *Dunn vs. The People*, a man may be insane. I simply refer to this case, not because it has any bearing directly upon the question at issue here because a Doctor may testify that the man is insane and stop there, as it was done by nearly every Doctor who testified in this case for the defense. And yet our Supreme Court in *Dunn vs. The People*, in *Hobbs vs. The People*, in the case of *Dacey vs. The People* and also in the case of *Jamieson vs The People*--in nearly eighteen cases--have never held that simply because a man is insane it released him from legal responsibility.

In this case of *Dunn vs. The People* the Court instructed the jury "That if from all the evidence in this case, you believe beyond a reasonable doubt that the defendant committed the crime of which he is accused in manner and form as

"charged in this indictment"--now that is the instruction that would apply to the other case where the question was at issue, whether this man was guilty of the crime for which he was charged and whether the defense of insanity having been interposed, whether that defense was a sufficient excuse for the killing and in order to make it a sufficient excuse the law has been laid down in this instruction which was given in the Dunn case and which was commented upon--"and that at the "time of the commission of such crime the defendant knew that "it was wrong to commit such crime, and was mentally capable "of choosing either to do or not to do the act or acts consti- "tuting such crime and governing his conduct in accordance with "such choice then it is your duty under the law to find him "guilty even though you should believe from all the evidence "that at the time of the commission of the crime he was not "entirely and perfectly sane."

Now in that case testimony had been introduced of the nature that has been introduced here. What is your opinion as to the defendant? Is he sane or is he insane? If it was said that he was insane under the law as laid down here it is no bar to the carrying out of the sentence of the court under the 5th and 6th instructions which I just read.

979 "If defendant was able to distinguish between right and "wrong he should be held liable. So that if at the time the "crime was committed the defendant knew that it was wrong to

"committ such a crime and had the power of mind to chose
 "either to do or not to do the act and of controlling his con-
 "duct in accordance with such choice, then he ought to be held
 "responsible although he was not entirely and perfectly sane."

That is the law that was laid down in this case at the
 other trial. That is not the test as will be applied in this
 investigation, as to whether this man knew the difference be-
 tween right and wrong at the time that he fired the fatal
 bullet. The jury has decided that he did. The highest court
 in the land has sustained the findings of that jury. Now it
 will be an anomaly to reinvestigate that subject and have
 the right and wrong theory as the test of this man's mental
 condition. We have passed from that and now we have come to
 this investigation whether this man realizes and understands
 what is going on here and what is taking place and what it
 would be to carry out the execution of this Court.

As to that point, Dr. Andrews was asked this question on
 cross examination.

" Q But did you not talk to him to ascertain whether or not
 "he was conscious of his responsibility?

" A You mean his moral responsibility or legal responsibility?

" Q Legal responsibility?

" A I did not ask as to his legal respojsibility. I was at
 "work on his moral ,responsibility.

" Q Now, Doctor, let me ask you as to this last interview

that you had with Prendergast if you discussed with him or "talked of the judgment that he was under or sentence of "death? Was that brought out in anyway?

A I can't say that it was at the last interview.

Q At any of the interviews? Put it that way?

"They were all subsequent to his sentence?

" A I didn't bring that point up to him."

Now as to whether he was insane or not, Doctors may differ. They may differ as to what constitutes insanity. As you know Dr. Ingals in his testimony said that he believed that a man could be insane as a kleptomaniac. The law does not so regard it. Such defenses as kleptomaniac and paranoia are not defenses that are acknowledged in law. And even the medical fraternity differ upon whether that is a mania or whether it is a crime, and we are trying this case now not upon what Doctors think as to what this man's condition is, but as to his condition applicable to the law and if this man realizes and understands his situation here then the sentence of this court should be carried out and the technical stay should have ^a ~~no~~ quietus put upon it by this jury. Can you as jurors say that since the rendition of this judgment this man has become insane and that he does not understand what is taking place here? Without going into any further analysis of the testimony of the Doctors take the testimony of the jail

officials and not a single jail official, men who have been there in constant communication with this defendant from the time he was incarcerated up to the time of this trial and the taking of their testimony, did they ever believe or consider this man insane. And their testimony is entitled to as much weight, even more, than the testimony of medical experts.

These men in the jail have been with this man constantly. They have noted his conduct and demeanor there. They have been in constant communication and association with him and while they are not endowed with all the intricate researches that the medical men have been endowed with yet they are endowed with common, ordinary, good sense and they had a right, had the power to look at this man, to communicate with him and decide whether this man was sane or insane and their testimony should carry as much weight as the testimony of medical experts who simply went in there for the purpose of talking and communicating with him/

Our Supreme Court in *Rutherford vs. Morris*, has given its approval to testimony of this character. It has placed as much confidence and reliance in the testimony of non expert witnesses as it has placed in the testimony of learned doctors.

Those witnesses from the jail who have been in constant communication with this man could tell you of their impressions, could tell you of what took place, could tell you how

they regard him in such a manner that you would have no trouble in understanding their meaning. They do not have to remonstrate and say, as Dr. Alexander did, that the jury or counsel were not able, perhaps to understand the emanations that he had given us. Our Supreme Court in this case says

"It must be apparent to everyone but few wills ~~whixkxxxxxxx~~ could stand the test of the fanciful theories of dogmatic witnesses who bring discredit on science and make the name of "expert" a by-word and a reproach."

We concur with the Judge above referred to that we would not give the testimony of these common sense witnesses as to what they know and saw almost every day for years for that of so-called experts who always have some favorite theory to support. Men often are as presumptuous as they are ignorant of the principles of medical science. That is what is laid down by the highest court in our land and that is demonstrated in this case by different technical names that these learned and distinguished doctors have applied to the class of insanity that this man is afflicted with. One contends that it has developed mental insanity, another that it is illogical insanity and another gives it some term--paranoia--and all these medical terms which do not carry with them the conviction that a scientific expert ought to carry. When an expert analyses the contents of the human stomach, when he gets through with

his chemical analyses and discloses by demonstration the presence of ~~maxim~~ poison, strychnine, arsenic or morphine, then he can take his time and testify as to his scientific knowledge because his qualifications have enabled him to demonstrate where the mind of the layman cannot investigate. But when a Doctor claims that he can penetrate beyond the frontal bone and take acts and conducts and accept those acts and conduct as true simply for the purpose of carrying out some pet fancy he is going into the domain that he has no more power to penetrate than any member sitting upon this jury.

Let them examine a Chinaman, for example, and do you believe that their medical science would enable them to decide whether he was insane any more readily than your own calling in life would enable you? Now the question is, gentlemen, is it more difficult to find out whether a man is sane or whether a man is insane? Can a man who has the power of doing all these things that a sane man can do plan, execute, reason, exercise judgment, subtlety and cunning? Simply because a man gave his expressions to some ridiculous fancy that may or may not be sincere and may be feigned--is that any ground work upon which to base the assertion or opinion that the defendant is crazy?

The number of delusions that have developed in this case

since its first beginning at the other trial up to its completion at this has been prolific. According to the testimony here he was the vicar of Christ. He was the natural successor of the Pope, and by his own statement in the presence of the jury he asserted that he was the pope, and the ridiculousness of the assertion commended itself even to the person who uttered it. Take then, the testimony where those questions were pointed and put to the defendant in clean cut and incisive language. Are you the emissary of the Pope? Do you claim to be the Vicar of Christ? Are you endowed with pre natural power? And where Dr. Caldwell asked him those questions he denied it.

Now I ask you, gentlemen of the jury if this man since the last trial has become insane and he has what is called developed mental insanity and he has developed these different delusions, that he has the power, that he draws his power from God, that he is the Vicar of Christ, the emissary of the Pope, that he holds his power in the same manner that St. Peter held it, whether when he was asked directly those questions if he had a fixed delusion upon that question whether he would not have persisted in saying that he was the Pope? But ~~xx~~ ^{he has} the power that was transmitted to him in the manner that it was transmitted by St. Peter from Christ. Oh, no, he made no conditions of that kind there. But for the purposes of this case those have developed here, but by the testimony of the doctors

who heard the truth testified to in this case no such delusions as that made there ever made their appearance up to the finding of the judgment in the other case. That is not the way that delusions manifest themselves. Even on the testimony of Dr. Church, as is here in the record, when a man commits a crime impelled by divine power he stands there in the presence of a victim and justifies himself saying that his God told him to do it.

1 Shearer, follows Briot, 11:30 A.M.

That is the general rule, says Church, and he was unable to give an exception to that rule.

May be you gentlemen have read of the celebrated Pike case, where Pike claimed that his victim had been unduly intimate with his wife. Acting under the command of God he walked upon his victim and shot him in the back of the head, and there, standing over his victim, looking up into the clouds he saw angels and chariots, and God Almighty telling him that by that act he had avenged all womankind. Was there anything, and has there been anything manifested in this man's case of delusions of that nature, or hallucinations No. His justification for this deed, subsequent to the finding of that jury, has undergone all the changes of the chameleon. He represents the Church to-day, according to Bluthardt, Benson, Sprague and Davis, no such contention did he have before the finding of the verdict. Now when Pike was conversed with he conversed upon all other topics rationally, but when the question of his delusion was touched the citadel of the mind was dethroned, and there sat upon that man's mental throne the creatures of his delusion. By that he avenged womankind, and then appeared to him the subjects of his delusions and hallucinations. But this man did not demonstrate that. Nothing of that kind has appeared here in this man's case; and if he was honest in the fact that he was the Pope, when he asserted that fact in the presence

987

2

of the jury his face would not have been lit up with a smile at its own ridiculousness. Talk about feigning! Is that sincere or is it real? Is it the genuine expressions of this man's mind? Is it the genuine condition of his soul? By your words you shall be judged, and ~~you~~ by your words you shall be condemned.

Take this man's testimony as given here upon the stand, From the time that he was called up to the time that he left did he ever utter one single fact that would tend to incriminate himself? Did he act upon the stand as a man wrestling ^{an} with ~~the~~ uncontrollable impulse and delusion? Did he act upon the stand as a man whose mind had been dethroned, and insanity held sway. You remember the examination, searching as it was ~~up~~ that he underwent, when the judge, in such an able manner, conducted the examination. Whenever the Judge asked him a question that would in any way shed light upon the subject of his delusion, why how well he parried let the testimony in this case decide. He thought that Abel met with a just punishment, but when the question came down upon him unexpectedly, do you believe in capital punishment, what was his answer? No. And then whether he believed that the privation of liberty was a punishment for crime, how he parried with the Court. When he was asked how long before the 28th of October he had premeditated the killing of Harrison he claimed his constitutional right not to answer. When he

was asked where he got the revolver from, do you believe, gentlemen of the jury, that it was vanity that prompted his reply, or whether it was the intelligent conception of the situation? Do you believe, as the attorney who last addressed you said, that it was the vanity of this man that prevented him from disclosing where he got the revolver? There is no more truth, as far as the evidence of this case is concerned, or, as far as the evidence of the other, for that matter, to justify the conclusion that this man bought a revolver in a second hand shoe store, upon which to hypothesize the argument of vanity, than there is that this man, when he said in the presence of the Court and jury that he was the pope, that he believed it. Vanity! Do you believe that is vanity that took lodgment in his intelligence and dictated the subtle parrying with the Court upon every question, upon every topic that tended to incriminate himself. Vanity, yes, he demonstrated his vanity when he was allowed to talk upon those subjects which might find lodgment in your hearts, in regard to his insanity.

This man, if he had been acting under the uncontrollable impulse of delusion would not have said to the doctors, or to the guards that he would not do the deed again if he had the power to do it; but in the letters, and in the evidence before this jury, it appears that as far as his testimony is concerned that he is sorry for doing the deed. Why should

he tell Davis and Bluthardt, and a guard, that if he had this to do over again he would not do it, if acting under the impulse of an uncontrollable delusion, authorized by God, and sanctioned by the church. Take his testimony from beginning to end, and I ask you, gentlemen of the jury, where a man stood in the same relation to the law as this man stands, if he could have given a better demonstration of the working of his intellect than this man gave in response to the questions of the Court, and the analogies that he drew between being punished innocently, unjustly, and being punished justly, was the operation of a sane intelligence. And then, when the Court put the question to him, "Why haven't I the right to send you to the scaffold," you remember his response. Throughout that examination, from beginning to end, he demonstrated that he understood the nature of this inquiry; that he understood his attitude before the law; that he realized what it was, and what it would be to carry out the execution of the law.

Was there anything insane in his testimony to the Court? Was there anything that betrayed the presence of an uncontrollable delusion or illusion?

We are not trying this case upon the pathetic side. We are trying this case upon the law and the facts. As far as the sympathies for those who are remotely concerned with the issues of this case we have no right either to appeal to you

for a verdict one way or the other. You stated that you would lay aside sympathy, feeling and prejudice, and try this case solely upon the law and the facts, and these are the facts that I have been arguing to you, not for the purpose of inflaming your prejudice, but for the purpose of commanding your reason, and as far as the people are concerned they are not endeavoring to influence you to find a verdict any way but what your conscience dictates according to the law and the evidence in the case. It is for you to decide, after having listened to the testimony of this defendant, whether the claim that he laid before the Court, that he had a constitutional right in every instance where the evidence led up to the killing, or to the material facts pertaining to the killing, whether it was dictated by vanity, or inspired by precaution. To my mind the defendant will stand or fall by the testimony that he gave in this case, whether you believe that he has become insane since the rendition of the verdict; whether you believe that this man standing here before the bar of justice is endowed with faculties sufficient to comprehend what it is to carry out the sentence of this Court, or whether you believe that he is a demented maniac, oblivious to what is going on here, and not capable of comprehending the position that he is in before the Court. Those are the questions which you are called upon to answer, and in the light of those questions you are

to give your answer to your conscience, and to the people at large.

The people have some rights in this controversy. They are represented in this investigation the same as the defendant is represented. Their rights are as sacred and inviolable as the rights of the defendant,--no more, and no less. They have a right to demand of the juries, and of this jury in particular, that the spirit and letter of the law shall not be defeated by a legal technicality, when there is no evidence to justify the claim that this man has become insane since the rendition of that verdict. You have a right to take into consideration that the defence upon the last trial in this case was the defence of insanity; that this question was argued, was tried ably and well, but the defence put forward then was broader, and not so circumscribed, in my opinion, as it is in this investigation. This man was found guilty with that defence interposed, and that verdict of the jury was permitted to stand until eleven hours before the scaffold was erected, and then, after all efforts at law had failed, a petition was filed, which is a part of the record in this case, filed by the brother of the defendant, who on a former trial had testified he was crazy; that since the rendition of that verdict, up to that time, namely, within eleven hours of the time set for execution this man had become insane, and that is the issue that we are trying

992

now. If, according to the testimony of these doctors, that this man is insane now, and was insane a ~~week~~^{year} ago, I ask you which shall predominate in your judgment, the judicial decrees of this Court, judicially christened by the highest court in the land, or the testimony of these doctors, not one of whom had the temerity to testify that this man had become insane since the rendition of that verdict; that his condition to day is practically what it was a year ago.

Now that is the testimony on the one hand. The State's testimony on the other is to the effect that on the former trial he was sane. The jury believed them. The court, in rendering its decree upon the verdict affirmed the finding of the jury, and the Supreme Court would not interfere. Those doctors, Bluthardt, Baxter, Sprague, Davis and Benson had the approval of 12 jurors, that their testimony was correct. They have the approval of the Judge who found sentence upon the verdict. They have the approval of the Supreme Court, who would not interfere or stay the execution. They come here. They testify that this man's condition is the same to-day as it was at the time of the rendition of that judgment, or at the time that he fired the fatal shot. That is the testimony of men who have the weight of judicial sanction to it on the one hand, and the testimony of Church and Bannister, that the court did not approve and the jury would not acquiesce in---I ask you gentlemen, on which side

of the balance does the evidence weigh or the truth predominate. Coupled with that fact men who watched this man from the time he went into the jail up to the time that they testified here upon the stand, claim that this man is sane, and that he understands and realizes all that is taking place here; that he understood and realized what it was when the sentence of the Court was about to be carried out.

I ask you in all candor if justice shall be trampled upon, and if the administration of the criminal law shall be blocked by such technicalities as that, when in all the realm of criminal jurisprudence there cannot be found a case that compares with the one that you are called upon to try, where the defence of insanity was offered, where that defence failed when all other means of the law was resorted to, and then, as a last resort, claim that within eleven hours of the time that the drop would fall, twenty five days after the verdict was rendered, a man had become insane. I tell you gentlemen that you are called upon to discharge a sacred and solemn duty. You are called upon to decide whether the law is a potent factor in this community, or whether it can be twisted by technicalities and justice perverted. Yes, the people look upon you. They do not look upon you for the purpose of influencing your verdict, but they await with wrapped attention the decision of the question, whether a man who has been elected to the highest position in the people can be

994

shot down, a plea of insanity interposed, a verdict finding the defendant guilty, and sentenced to the gibbet within 11 hours of the scaffold, and that the plea of insanity shall prevail, and the law shall be cheated of its victim. This man's reasoning is no more illogical, is no more incoherent than was the reasoning of the assassin who struck down the President of the French Republic, but by the same course of logic, by the same reasoning powers that this man, do you believe that the plea of insanity could prevail, and if it failed another plea be substituted, and yet, by this man's own testimony, because Harrison had treated him in a brutal manner he took his life.

I submit this case to you, gentlemen of the jury, not having gone into the details of it to any great depth, but simply to call your attention to the salient facts which stand out in this testimony. I appeal to you, gentlemen of the jury, not to your prejudices or your sympathy, but I appeal to you for your love of law, for your love of justice, and for your love of the commonwealth, in which you live, that you will see to it that law is carried out, and that this man shall have the execution of the law carried out upon him, unless it has been proven here that he has become insane since the rendition of that verdict. If in your souls, and in your consciences you believe that the contention made here, namely, that he had become insane since the rendition of

995

that verdict has been honestly proven, has been successfully established, then your duty is to find him insane, but unless you do that, unless you so feel, it ~~s~~ is your duty to rise up, regardless of every other consideration and let your verdict be according to the evidence in this case, both the the people and by the defence. I contend that this ~~is~~ man's condition to day is the same as it was at the time of the rendition of that verdict. I thank you, gentlemen.

Recess until 1:30 this afternoon.

July 2nd, 1894.

1:30 P. M.

Met pursuant to adjournment.

Present as before.

Assistant State's Attorney Morrison addressed the jury in behalf of the respondent, and said:

May it please your Honor and Gentlemen of the Jury:

At the outset of this case I desire to thank you and each of you, on behalf of the People of the State of Illinois, whom I represent, with my colleagues, for the patient, careful and considerate attention which you have given to the evidence adduced upon this hearing and to the arguments of counsel thus far made to you.

We fully appreciate in this case the annoyance and discomfort that the isolation which it is the policy of our law that jurors should submit to in the investigation of capital cases and matters incident thereto. But while we have endeavored in every way in our power to shorten the length of this trial, to be as brief in the presentation of the testimony and of the arguments on the various phases which have arisen during the trial, and the arguments at the close upon the evidence and the issues, yet throughout this entire trial there has been a deprivation to each of you

of a great many comforts that the social ostracism, the result of your being members of this tribunal has borne upon you, on account of the severance of your relations with your families, with your business and your social intimates. All this has to some extent, to a large extent I should say, bothered, ~~xxx~~ annoyed and concerned you, and yet after all, gentlemen of the jury, there is at the conclusion of this case, and I hope there will be to each of you, the feeling that by becoming members of this tribunal you have aided to the best of your knowledge and ability in the administration of justice, and notwithstanding the great discomforts and annoyances that are incident to your membership in that tribunal.

I had hoped in this case that the closing argument would have been made by my associate, Mr. Trude, a man of ripe experience, familiar during the past trial as well as during the present trial with all the ins and outs of this case. But unfortunately the great demands upon his time and particularly while this trial has been in progress, by the heads of the great railroad corporations, demanding his attention to their interests, has precluded him from making the closing arguments in this case, and left it in the hands of those less able. But I shall endeavor in this case, gentlemen of the jury, to present to you the evidence and the rules

of law bearing upon that evidence, in a plain and simple way, avoiding any attempt at logical or oratorical effects, rather confining myself to an attempt to convince your judgment in this case and the judgment of each one of you by the plain, common-sense logic to be drawn from the evidence adduced upon this hearing, by the plain presentation of the rules of law which are to govern you in this determination.

The question here presented is one within a very narrow compass. The sole and only question for your determination in this case and upon which your verdict must be predicated, is whether or not Patrick Eugene Brendergast, on the 24th day of February, down to the present time has been afflicted with a lunacy or insanity such as to prevent the execution of the sentence of this Court; and whether or not that lunacy or insanity now exists so as to render inhuman the inflicting of the sentence of this Court against him. That and that alone is the question presented for your determination. It is not as contended by counsel for the defendants here, that you should exercise a broad sympathy in the determination of this question. That will find no place in this hearing: It is solely and alone, is he in such a mental condition, or has such a mental condition arisen with him that it makes it, under our law, a barbarous and inhuman thing that the judgment of death heretofore pronounced against

him shall be now executed ?

This case is without a parallel and without a precedent, both in the nature of the crime committed by the prisoner and in the nature of the legal history consequent upon that crime.

On the 28th of October last Carter H. Harrison, the then Mayor of a city of more than a million and three-quarters of people, well beloved and respected by all alike, was inhumanly shot down by an assassin, under circumstances so atrocious, under circumstances that even the cool temper of the best citizens of our community demanded at that time that we be relegated back to the law of nature and vengeance, without the means of human tribunals, be meted out against such a wrong, inflicted not only upon the person of their chief magistrate, but upon each and every human being within the jurisdiction of that magistrate. So in the very nature of the crime, circumstances of unexampled and unparalleled atrocity manifested themselves; and when we examine into the legal history consequent upon that crime, in the effort of the people of the State of Illinois to bring the assassin to justice, what do we find ? At the November Term of this Court the assassin was arraigned at the bar of this Court to plead to the indictment against him, and in his own voice he pleaded he was not guilty of the crime. Three weeks of the time of this Court and community were taken in the im-

1000

impanelling of a jury to pronounce whether that plea of not guilty was well taken. For the three weeks twelve good men and true sat in that same jury box now occupied by you. Three weeks further time were consumed in the testimony affecting not only the homicide, but the mental condition of the prisoner. Forty-eight witnesses testified on behalf of the prisoner, going back to the cradle, and year after year down to the time of the homicide evidence was adduced showing his mental condition and irresponsibility, showing the lack in his mind of the power to reject these evil influences but that he was impelled by an overwhelming impulse to this felonious homicide. A number of these witnesses, I believe seven, testifying on that trial also testified before you. And although forty-eight witnesses said Patrick Prendergast was not responsible for the crime of murder, that jury, in its deliberations and in its verdict disbelieved each and every one of them, and held him sane and accountable for the crime that he had committed, and fixed his punishment at death.

On the rendition of that verdict and from that time down to the 24th day of February exhaustive preparations were made by the four counsel that defended him there. Arguments were made lasting fully six days before his Honor, Judge Brentano, the trial judge in that case, asking him that this verdict of death rendered against this prisoner be set aside,

but that learned judge, who tried the case under the solemn oath of his office, put the confirmatory seal upon the verdict that such verdict was authorized both under the law and the evidence, and pronounced the judgment of the law upon that verdict, and sentenced Patrick Prendergast to expiate his crime upon the gallows.

His counsel, learned and able, not content with the outcome of the trial, with the verdict of the jury, prepared a voluminous record, which has been here before you, and presented it to the Supreme Court in this State. On the investigation of the record, each and every judge of that court, with not a dissenting voice, lent the seal of their approval to it and refused even to hear arguments, stating that the judgment of the Criminal Court of Cook County was just, and sentence pronounced by that Court should under the law be carried out. They said, "We give the seal of our approval to the statement that the evidence that this man is insane and unaccountable for his acts is disproven in the case, that the judgment of the Court is just and the sentence of the law should be carried out.

Counsel who represented the prisoner upon that hearing, not content with the judgment of the highest court of our commonwealth, applied to the courts of the United States, before his Honor, Judge Jenkins, and then and there asked that the United States Court pass in review upon the

judgment of the Criminal Court of Cook County and the Supreme Court of Illinois, and release this man whom they claimed to be insane; but the learned Judge of the Federal Court, after a full examination of the record before him, declined to interfere with the execution of the sentence; declined to say, as he was requested by the counsel, that the evidence here establishes an unaccountability for this act. He, by his order, declared him sane and accountable to the law that he had violated and outraged.

Following along the legal history past three courts of record, he went to the Governor of this commonwealth, who upon an investigation of the record in this case showing insanity, dating as is claimed from the age of puberty insanity which impelled him to the commission of this act, counsel alleging that the execution of Prendergast under the judgment of this Court would be a barbarism and an outrage upon the good name of the people of this State,--that same Governor of this commonwealth, on the examination of that same record, declined to put the staying hand to the arm of the law. The evidence shows him accountable, he said, under the law; This man is guilty of this crime under the law, and he must suffer this penalty. And there the death warrant was signed for Patrick Prendergast's execution.

From that time, which I believe was in the latter
 1003 part of February, down to the 22nd day of March, no claim was

made that any insanity had arisen subsequent to his conviction. No claim was made that he suffered mentally in any of the respects that was claimed upon his trial, claimed before the Supreme Court, claimed before the United States Court and claimed before the Governor of this State; and yet, within eleven hours of the time when upon the gallows this fearful crime of his should be expiated, an affidavit is presented to our Court, stating that he had become insane and is now suffering from it; and that is what we are investigating here.

Search the history of jurisprudence in England and America and you will not find a parallel to this case, where the avenging arm of justice has been so often stayed when ready to strike the blow. As against that verdict there was the application to three different courts. Is it a wonder that in the minds of a great many people the arm of justice is regarded as paralyzed, and that the blow the law should strike at the assassin will never be ~~xxxxxxxxxxxx~~ dealt?

Comment has been made, and you gentlemen have heard it, that this crime, committed on the 28th day of October last, remains so long unavenged. That this assassination, so brutal and atrocious in every circumstance, should receive the commendation of a number of citizens, who instead of aiding the law to bring the assassin to justice, have done

everything in their power through the medium of the public press and through the furnishing of counsel, to stay the arm of justice and let the assassin go unwhipped of the law: This is the condition, gentlemen of the jury, in which this case stands. In no case, and I have examined thoroughly the Criminal Law of England and America to ascertain if there existed one, but in no case, in my observation or in all my reading and investigation, and I challenge and defy the counsel who represent this petitioner to present to you one, has the arm of the law ever been stayed, after a full and fair trial before an impartial jury. In no case where insanity was charged as a defense to the crime charged in the indictment, where the want of mind rendered excusable the act, has that insanity ever been urged after verdict in arresting the judgment of the court.

And so this case stands unprecedented, unparalleled and unequalled in any case since common law was known in England and America. Of the countless thousands of cases of homicide tried before juries where the defense was insanity and where the defense was unsuccessfully contended for before the tribunal trying the case, there had been only, from out of these countless thousands, six cases where that insanity has been urged after the judgment of the court pronounced upon the verdict, to stay the execution. But let

me give this tribute to the law, let me give this tribute to the common sense and justice of our tribunals, that in never a single case where insanity was fairly and honestly tried, before a jury, upon the indictment, has a single execution of the sentence been postponed, or has the plea of insanity ever once been favored after verdict. Let me at this moment pay that tribute to the common sense of the law, and it will bear repetition, to show that the law is no farce, to show that the administration of criminal justice is stern in its character, that in the entire jurisprudence of England and America not a case can be found where a court ever stopped the execution of its sentence, where insanity was found, after the judgment of the court sentencing the prisoner to be executed.

And so the case of Patrick Prendergast, in the event that his insanity is established here, stands then as the first case during the eight hundred years that the common law has prevailed, where a jury would say, -notwithstanding you have ~~x~~ claimed that you were insane at the time you committed this act of homicide, notwithstanding the fact that the jury rejected that plea, notwithstanding the fact that the seal of approval was placed by three courts upon that judgment, yet we will believe you here to be insane and we will ~~xxx~~ stay the execution of that sentence.

1006
Gentlemen of the jury, the theory of the present

is that the defendant, or rather the petitioner as I shall designate him, the petitioner Prendergast claims that since the rendition of the judgment in this case he has become insane or lunatic and is now suffering from that lunacy or insanity, and that therefore the judgment of this court pronounced against him should not be executed while that lunacy or insanity continues, but should be deferred until his restoration to reason. That is the substance of the petition filed in this case, and the substance of the issue that you are bound to try. The statute of this State provides if after judgment and before execution and sentence, such person, meaning the prisoner affected, becomes lunatic or insane, then in case the judgment be capital, execution thereof shall be stayed until recovery of such person from the insanity or lunacy. That is a wise and humane provision of our law. It is the statement of no new principle. It is no new humanity that is introduced; it is no new evidence illustrative of the wisdom of the law, this doctrine which is declared in the statute which I have just read: It is as old as the common law itself. As far back as Sir Matthew Hale, the famous author of "Pleas of the Crown", being the technical term for a treatise on Criminal Law; as far back as Blackstone, as far back as Hawkins and as far back as Foster, is to be found that great doctrine which has become incorporated in the law of Illinois. That doctrine is well stated

1007

by Blackstone when he said: "If a man in his sane memory commits a capital offense and before arraignment for it he becomes mad, he ought not to be arraigned for it, because he is not able to plead to it with that caution that he ought. If, however, he is pleaded, and the prisoner becomes mad, he shall not be tried, for how can he make his defense? If after he be tried and found guilty he loses his senses before judgment, judgment shall not be pronounced; and if after judgment he becomes of non-sane memory, execution shall be stayed, for peradventure, says the humanity of the English law, had the prisoner been of sane memory he might have alleged something in stay of judgment or execution." That is a doctrine as old as the common law itself. The part of it that has particular application here is this part: "And if after judgment he becomes of non-sane memory execution shall be stayed, for peradventure, says the humanity of the English law, had the prisoner been of sane memory he might have alleged something in stay of judgment or execution."

It has been from time immemorial the policy of the English law that no person should be held accountable for crime unless there was joint union of act and intention, the intention as well as the act; and intention means the existence of such a mental condition upon the part of the prisoner committing the act as to be conscious of the nature of the act, whether it be right or wrong, and the power to

choose to do it or not. If under the English law--and that law prevails here today---such a person should commit an act, a person of non-sound memory should commit an act, he is not held responsible to the law, and he should upon his trial be acquitted on the ground of his insanity. And so not only is that true with reference to the act itself, but it is true with reference to any proceeding had to bring the prisoner charged with a crime to a criminal accountability for it. If upon the arraignment of the prisoner he has become ^{of} insane mind or memory, he is not to be tried, for how can he make a defense; and it is the duty of the Court to see that he properly defends himself.

And so at each step of the trial, from the time of his arraignment to answer to the indictment, down to the concluding step when judgment is to be entered upon the verdict, any insanity during the trial puts an end to the proceeding and nothing can be done until the prisoner is restored to reason. That is the wisdom and humanity and charity of the English law, and that is the law of the State of Illinois today, and that is the law of every civilized country.

Let us apply the reasoning, "down to the time of judgment upon the verdict" in this case, to the case at bar. When Patrick Prendergast was arraigned in this court to plead to this indictment he pleaded as this record shows, in his own

proper person, not guilty. There is nothing observable in his conduct, there is not a suggestion upon the part of his counsel that he was of non-sound mind and memory and unfit to plead to the indictment at that time. And so from the time of his arraignment at this bar to the time that he was called for trial, nothing was observable in his conduct or demeanor, nothing was suggested by his counsel, that the trial should not be proceeded with and that he was not in a fit mental condition to undergo his defense. Throughout that entire trial not a suggestion is made as to his present mental condition making him incapable of aiding his counsel in the trial. He staked his all upon his plea of insanity before this jury, that he did not know right from wrong in this act of assassination; that he had not power of mentality to choose between the two. That issue was found against him, and down to that time the judgment of the law, as well, as a matter of fact, for all purposes of the trial, Patrick Prendergast was as sane as anyone of you twelve gentlemen or myself. No claim made at that time of an insanity preventing him from preparing for his trial. No claim of insanity down to the time when the judgment of this court was pronounced upon the verdict; no claim made of insanity preventing him from knowing these proceedings or preventing him from realizing his condition, preventing him from making

proper preparation to meet the doom that awaited him, until within eleven hours before the time fixed, and then it is in the shape of an inquiry to ascertain whether he had become insane after verdict.

So, gentlemen, as you will see that during all these proceedings, this is an after-thought of his ingenious and resourceful counsel, who have brought this plea into play. Prendergast himself nor his counsel never desired to stop these proceedings by any suggestion of insanity. They now conduct this proceeding with the hope of defeating the law and the administration of justice--they interpose this plea of insanity at this time.

Now, what does insanity mean with reference to the particular matter we have in hand? The purpose of the State and the purpose of the common law was after a judgment of the court had been pronounced upon the verdict of the jury, that should a mental condition arise between that time and the time when the sentence of the court should be executed which would prevent the prisoner from realizing the situation in which he was and the character of the proceeding about to be had under the sentence of the court and making preparation for death, if he was religiously inclined, that if that condition of affairs arose, it would not be human to execute the sentence at that time, and that the sentence should be

deferred until there be a recovery from that condition, where the prisoner could recognize his ~~ax~~ plight and prepare himself to meet death. That is the philosophy and that is the reasoning underlying this rule. It has no reference, as you can very plainly see, gentlemen of the jury, to whether the prisoner is guilty or not guilty of the crime charged in the indictment. That matter is supposed to have been settled and adjudicated by the verdict of guilty and the judgment of the court pronounced upon it. It is no longer a question whether Patrick Prendergast was right or wrong in his belief in the assassination of Carter Harrison. It is no longer a question of whether he had sufficient mental power to frame an intent to take life or have the power to resist and not yield to any temptation to take life. Those matters were adjudicated upon. The status of Patrick Prendergast as the offender before the law and of his personal liability to its punishment has been settled and adjudicated by the judgment of the court pronounced upon the verdict of guilty. It is no longer a question at this stage of the proceedings whether Patrick Prendergast was not in a fit mental condition or whether he was insane during the trial or whether he could aid his counsel or whether he recognized the proceedings being had against him. All those matters are affirmatively settled in favor of his sanity before judg-

ment of the court pronounced upon that verdict.

Come back now to this proceedings which I have mentioned as to the reason and philosophy of this rule of the common law, and it is the same that every individual in the exercise of his common sense will be led to. The reason for the law is that it abhors the spectacle of a gibbering idiot, a maniac, ascending the scaffold, oblivious of all surroundings, not recognizing the plight that he was in, not understanding the physical, the moral or the legal nature of the act about to be inflicted upon him; not understanding, if he believed in a hereafter, that he was about to enter it, and to make that preparation which the law in its humanity says each person shall be entitled to. That is the character of the insanity which the law says may interfere to prevent the execution of a verdict of the jury and judgment of the court, and that and that alone is the form of insanity contemplated by the law.

Does he realize the nature of the proceedings against him? If he believes in a hereafter, is he in that fit mental condition to make preparation for it? There is the philosophy underlying the reason of the rule of the common law, and that and that alone is the character of the insanity which will interpose to arrest the solemn judgment of this court pronounced after full hearing upon the verdict of the jury of twelve men sworn to try the case upon their oaths and

1013

determine whether or not the prisoner is accountable for his crime.

Apply, gentlemen of the jury, this test of insanity to this case, and what do we find? Do we find in this case, from the evidence adduced on the part of the prisoner Prendergast, from the evidence adduced on the part of the State, one scintilla of evidence that he does not now fully realize his plight and condition? That he does not know the nature of the act, both physical and moral and legal, which will be inflicted upon him in the event of the execution of this sentence? That if he believes in a hereafter that he is not in a fit mental condition to prepare for it? Bear in mind, gentlemen of the jury, that is the character of lunacy or insanity that will prevent this execution, as I believe his Honor will instruct you.

Now, taking that for the basis, I challenge the counsel for the prisoner to point out where in this record ~~xx~~ ^{the} testimony of anyone witness, one syllable of testimony, that this prisoner does not now fully recognize and understand his plight and that he is not now fully conscious that he is under sentence of death, that he is not now fully conscious of the moral and legal nature of the acts that will be carried out under that act; that he is not now fully conscious and knows full well that in the event of death

there is a hereafter that he must enter, and that he is in a fit mental condition to make his preparation for it ?

There is the test in this case. It is no longer here, was he accountable to an outraged law ? It is no longer the question here as to whether he believed he was right or wrong in the murder of Mayor Harrison; and the sole and only question we have to deal with is one of humanity: the humanity that pervades your bosom as well as that of every other person in this court room: That is the same humanity that pervades the bosom of the law.

On every subject other than the subject of the supposed delusions there is an intellect, perverted it is true, but plainly alive to everything that transpires throughout this entire trial; in the examination of the witnesses, in the arguments of counsel before the court there has been the keenest appreciation, the most alert and active intelligence upon the part of the prisoner, misguided and perverted it is true, ill-educated, only partially understanding the full measure of the learning that he pretends to have, but with a mind keenly alive and alert to everything that transpires. Can you for one moment say in the application of the test I have given you that he does not now realize his plight, that he does not now know the nature of the sentence of death, that he does not now know that in the event of death there is a hereafter, for which he must make prep-

aration? On your conscience, gentlemen, I feel sure that not only does the evidence fail to show the negative of any of these propositions, but there is the affirmative testimony of each and every witness produced upon the stand, the affirmative testimony of the ~~XXXXXX~~ prisoner's conduct in this court room, the affirmative testimony of his entire jail life. The claim made by the counsel who represent the prisoner Prendergast and the theory of the entire case presented by him is that the prisoner Prendergast is afflicted with an insanity designated by some of the physicians as arrested development, by others paranoia, by others monomania, and by others mono-psychosis. It is not claimed by any of the witnesses who testified on behalf of the prisoner Prendergast that this insanity is one except upon a very few subjects; that upon every other subject except these delusions he is sane. It is not claimed that if he is questioned upon any subject, that his answers, even upon the subjects of his delusions, are incoherent or illogical. As one of the physicians who testified in behalf of the prisoner said, and I believe him to be the best of all of them who testified for Prendergast, that the nature of Prendergast's trouble was that while his logic and reasoning upon the premises of his delusion were correct, the nature of his insanity was in the creation of false premises. But conceded that if the premises of his delusions were correct, that his logic

and reasoning upon those was reasonable and in no degree manifested insanity.

I have already argued to you that the character of the insanity which would prevent the operation of the sentence of this court is one which creates a mental oblivion, obliterates from his mental deliberations all the surroundings of the prisoner and discloses his mental unfitness to meet death. I believe I have shown to you from the testimony in this case that there is not a scintilla of evidence to show the prisoner is afflicted with any such insanity or lunacy.

It is my purpose as best I can within the short time allowed to me, to consider with you as to whether or not these delusions which it is claimed by the witnesses do in fact exist, and if they do exist to what extent they impair the mental functions of the prisoner.

Do these delusions exist? That jury has answered no, they do not. The verdict of this jury upon the judgment of the court was pronounced on the 24th day of February, has said this man is not insane: These delusions do not in fact exist, and as far as the purposes of that trial are concerned that is res judicata---a matter decided--and the judgment of the court, so pronounced upon that. There is but one answer to it.

Now let us ascertain from the testimony in this

case whether or not delusions exist according to the testimony of the witnesses who testified on this hearing. We have heard the testimony of Dr. Brandt, Dr. Ingalls, Dr. Sanger Brown, Dr. Head, Dr. Powell, Dr. Andrews, Dr. Church, Dr. King and Dr. Bannister. They testified that in conversation that they had with the prisoner these delusions manifested themselves, and they, as a result of that conversation and based solely upon that, believe him insane.

On the other hand, with the exception of two physicians, that was Dr. Bluthardt and Dr. Benson, all the physicians who have gone to see Prendergast in the Cook County jail, from the rendition of the judgment of this Court on the 24th day of February last down to the present time, he has refused to see each and every one of them, except when they had to resort to pretext. He was suspicious of every physician who called there and received none, according to the uncontradicted testimony in this case, except they were vouched for by a note from his attorney.

MR. DARROW: How about Dr. Spray?

MR. MORRISON: Dr. Spray was the only one, and I have excepted two.

MR. DARROW: You excepted Bannister and Bluthardt.

MR. MORRISON: Bannister was your witness, and he testified Prendergast was insane, without having seen him. He

wrote an article, as I understand it, that was read before the Medico-Legal Society in December or January last, and he said that in his opinion the prisoner was insane, was suffering from paranoia, without ever having seen the prisoner up to that time. That was Dr. Barnister. That is the character of most of the witnesses who appear for the prosecution in this case, or rather for the petitioner in this case. Each and every one of them, so called insanity experts. But, gentlemen of the jury, I do not believe it an exaggeration to say that I could take any one of you out of here to their offices, and the ~~chances~~ chances would be ninety out of a hundred in favor of their declaring any one of you insane. They are insane upon the subject of insanity, every one of them; and I would sooner take the judgment of the common sense layman or jurymen than I would the judgment of all the insanity experts in the world. They come in contact with thousands and thousands of insane cases, and constant contact and meeting with them, constant evolutions of insanity upon the part of their patients, gets their minds in a sort of perverted mental condition, and they themselves become insane upon that subject. Their form of insanity is paranoia, to take a bad expression of these experts. Their form of paranoia is to regard everybody offered to them for examination as insane.

So, gentlemen of the jury,, this digression.

But we come back to consider the issues here, whether from the time of the rendition of the judgment of this Court down to the present time, the prisoner Prendergast has become insane. We find he has steadfastly declined to see every doctor sent there by the State for the purpose of ascertaining his mental condition. There is not a particle of evidence in this case to show that Prendergast refused admission to any doctor sent there by his attorneys to him from the time the judgment of this court was rendered against him. He attempted, it is true, to write a letter, on the 28th day of April to the jailer, stating that he would not see any more physicians, because they came in at odd hours and he thought they were making examination of him for the purpose of giving testimony on the trial. Mr. Gregory admits that he called upon him after that letter was written, and upon the 8th day of May he gave another order to his jailer that whatever physicians were sent there by his attorneys, to allow them to come and see him; and the doctors Caldwell and Corbus went there and talked with him. They, I believe from the nature of their reception thought if they said they were physicians they would not be permitted to see him, and they had to use subterfuges in order to meet him and make such casual examination as they could. There we have an evidence of the cunning insanity this prisoner possesses. Does he

know the nature of these proceedings here? He did, and he would not give such opportunities for making an examination of him to us as he accorded to his own physicians, so that the State could not have the benefit of these physicians employed, before this jury, as to the character of his mental condition. There is one mark of insanity.

Now let us see what evidence of insanity there is in this record which to my mind, and I believe it is to yours convincing that he not only is sane, but that these delusions do not as a matter of fact exist. I now refer to the testimony of Prendergast himself. First let me state to you again the character of the examinations made by the prisoner's physicians, upon which they base their statement that in their opinion Prendergast is now insane. Each and every physician who testified on behalf of the prisoner, testified that the only judgment they could form was one based solely upon his conversation. There was not a single objective symptom of insanity present during any examination that they made. The only ground upon which they based their conclusions that insanity was present were the delusions told of by the prisoner himself. Here is this prisoner with a motive so powerful, a motive of life itself, knowing the nature of this proceeding now being carried on, knowing that upon the issue of sanity or insanity his life was involved: This prisoner possessed of a sub-acute intellect, with a faulty mind

to be sure but a mind, I believe, which could appreciate that if his insanity was established he could prevent the rope being placed around his neck, and that if his insanity could be manifested by delusions, with conversations with physicians,-- that he would feign such delusions as these.

These delusions are three in number, that of track elevation, the vicegerency of Christ, and the divine mission to kill Mayor Harrison. Upon no other subject is the claim made by these insanity experts, as they term themselves, that this man does anything else than converse in such a way as not to indicate the slightest insanity. But track elevation existed in his mind and was the impelling motive, as it is claimed by his counsel, for the murder of Mayor Harrison. That I have no doubt existed, but it did not exist as an evidence of mental unsoundness. It existed in the same way that the divine mission existed in Charles J. Guiteau to kill President Garfield, the same as the divine mission existed in the anarchists who were hung in yonder building seven years ago, the same divine mission as induced Caesaro Santo to take the life of the President of the French Republic one week ago; the same divine mission animated the throwing of the bomb at Barcelona; and the same divine mission that animates any depraved and criminal mind, that was the divine mission that Prendergast had upon that night: Notoriety, and a desire for fame; a desire that he should achieve

a prominence which in the legitimate walks of life could never be his, a morbid desire manifested through his entire life to become a public spectacle, to be gazed upon by the public. That same morbid desire, that same insanity if you choose to call it that, characterizes crankism and notoriety seekers is the only insanity that afflicted Prendergast. If on his reading, as he termed it, of the evil of grade crossings, he believed reform should be accomplished, was there anything in that same reading, was there anything in the mental condition present at that time, to show or indicate that the taking of life was necessary to accomplish it? Has that been manifested here or shown to you in testimony? His whole life, as shown by his own testimony, and by the testimony of witnesses upon the stand, his only desire during life has been to get before the public, and the culmination of that desire was had in the present case by the commission of this atrocious murder.

So much now for the testimony of these physicians who have testified for the petitioner in this case. Each and every one of them, as I have shown you, regards the slightest deviation from the perfection of a human mind to be a manifestation of insanity. The delusions which are only present, as I have shown you, when Prendergast was being examined by his doctors, were never present since the 24th day of Feb-

ruary, when he was ~~xxxx~~ examined by the doctors for the State, and the same delusions during his entire period of residence in the county jail, were never manifested to the jailer nor to the eight guards who were placed upon the stand on this trial. We have had here from the jail the testimony of Mr. Morris, the jailer, and of his several associates, each and every one officials of this County, serving for periods varying from ten weeks back to the 29th day of October, when Prendergast was brought there, each and every one of them meeting him every day and watching him inside and outside his cell; and yet they tell you that they never heard of an insane delusion upon the part of this man: Never has he conversed in regard to track elevation or the vicegerency of Christ. Where are these delusions testified to by his physicians? Not a single syllable comes from these men who have been by his side during the entire period, showing that he is possessed of a single delusion. These men constantly with him, constantly around him, observing him in the routine of jail life, who of all men ~~xxx~~ should know whether Patrick Prendergast was insane better than those men?

Counsel may show in this case that the prisoner has incurred the enmity of these guards, but has there been a particle of enmity manifested in them by their testimony?

1024

The testimony shows they entertained the most kindly feeling

towards him. There they are day after day and night after night, from the 28th day of October, observing his conduct and demeanor, conversing with him with reference to the incidents of life in a common jail, and yet not a single one of these eight men who heard any evidence of a delusion, or the slightest evidence of an insane mind, or the slightest pretense that he was insane.

Gentlemen of the jury, it must be manifest to you that these delusions were the creation of his doctors, and never existed. There has not been a single witness called to the stand who testified that he was possessed of a delusion except the physicians sent there by his counsel to examine him. Not a single witness among these jailers who observed his daily life since he has been in there, not a single visitor who visited him there and talked with him, not a single person is brought forward here to show that these delusions had any existence, as a matter of fact, in any conversation that they ever had with Prendergast.

Then is not the inference justifiable that when you find only a certain class of witnesses testifying to delusions, that these delusions were prepared for the occasion?

Not a single witness is brought here to testify that prior to the 28th day of October, when he took Mayor Harrison's life, that he ever had a delusion on track elevation or a delusion of his being the representative of Christ

or any other, and this evidence does not come to us now only through these expert physicians.

These witnesses who testified that he is insane, their testimony is based, as I have shown you, upon conversations that they had with the prisoner, some lasting twenty minutes, others extending to three-quarters of an hour or an hour, and I believe in the case of Dr. Church and Dr. Sanger Brown they had seen him both prior to the trial upon the indictment and subsequent to that time; seen him two or three times. I have already indicated to you, gentlemen, that these witnesses are not of the class known as insanity experts. We do not believe in this case that men who make a profession of the treatment of insanity are competent witnesses to testify to insanity. Our Supreme Court, in a case reported in the 77th Illinois, which my associate read to you this morning, put the seal of condemnation upon the so-called insanity experts and refused, as it has done in a number of cases since, to place any credence in their testimony. And our Supreme Court, as well as that of various states of the Union, and all the law writers upon the subject, as well as the experience of common sense men who pay attention to matters in litigation in tribunals, will show that with reference to the determination of the mental conditions of a subject they prefer the judgment of men of good, fair experience in the world, and that it is far more valua-

1026

ble in determining the question of sanity or insanity than that of insanity experts. That is the opinion of the learned judges of the Supreme Court of this State; it is the opinion of the learned judges of the Supreme Courts of other States, and I believe it is the opinion of every common sense person who has given any attention to the subject. Doctors in general practice, lawyers, merchants, mechanics, meeting the world, and all classes of people; and I believe in this case it might have been properly submitted to you without a single witness on the stand, upon the testimony of Patrick Prendergast alone, so ably conducted by his Honor, Judge Payne; that your own judgments, as men coming from a variety of occupations in life and coming in contact with the people of all kinds and all conditions of mental soundness and unsoundness, physical soundness and unsoundness --that from the examination which you have seen conducted on this witness stand, you are better qualified to pass upon the question of whether he is now afflicted with insanity or lunacy, than Dr. Sanger Brown or Dr. King or any of these other titled men who make a study of insanity and who are too prone from the very nature of their studies to find every person insane.

In this case, Dr. Davis is not an insanity expert. He does not desire either for professional revenue or fame to pronounce every person insane. He tells you that he has been in practice over half a century, fifty-seven years,

that he examined Prendergast on three different occasions, and he then found that he was a man of faulty mind, intellectually perverted; still, that he was perfectly conscious and morally and legally accountable with reference to the power to do what is right or wrong, and with reference to an understanding of all the various matters pertaining to his worldly existence; that he was, in short, perfectly sane on all those common subjects. There can be no question with reference to Prendergast, that he is not a model man, mentally and physically. There can be no question that he is faulty intellectually; there can be no question that there has been arrested development there. Those are not the tests; those are not the criterions by which we are to determine whether an outraged law shall be satisfied or not. The test is the common sense test applied by Dr. Davis, in which he says this man understands and knows everything he is about and everything he is about to do. So we get information from Davis.

Bluthardt is an insanity expert; but owing to his long experience in handling cases of insanity as County Physician he was called as a witness. I believe he said he examined some eight or ten hundred cases as physician to the Criminal Court and physician in charge of the insane during a long period of time. In the repeated interviews he had with the prisoner he found a perverted mentality, but found there no insanity. These delusions which he claimed were

simply the ~~exclusions~~ creatures of an abnormal intellect, but not insanity; and the Doctor said that this man knows the nature of the act by which he took the life of Mayor Harrison as fully and as completely as he understood his present there in the County Jail. And so did Dr. Martin and Dr. Price and Dr. Caldwell, neither one of them insanity experts in the sense in which that term is used, but of long general practice in the community, with a mind not bent upon the subject of insanity. Each and every one of these witnesses say, we have met insanity in our practice, and we have treated insanity, and we have examined this man, and while we find him perverted intellectually, we find that he is of sound mind and memory, fully realizing and fully conscious of all that has transpired in the past and all that he expects to transpire in the future.

Now then, gentlemen, contrast the testimony of these witnesses, taken from the general practice of medicine in Chicago, not from any one college or from any one Medico-Legal Society, as the witnesses brought here by the petitioner, but taken, some from the south and some from the southwest and the north and the northwest; and add to their testimony the testimony of the jailer of this prisoner, and of the eight guards who have seen him continuously from the time he was put in there, and put that evidence in the balance as against the testimony of the members of the Chicago Medico-

Legal Society, and Sanger Brown, Church and Barnister; and where do you find the weight of the evidence? And then, if you doubt the existence of this man's sanity, go back to last Wednesday morning, when Patrick Prendergast took the stand and was examined by his Honor in regard to his mental condition. Could you ascertain, except once or twice where the cunning and ingenuity of the prisoner showed itself, any fault in his reasoning, any fault in the logic of his answers, not misunderstanding a question put to him by the Court was answered responsively. There was a full conception of the ideas sought to be conveyed to him, and there was an intelligent answer to every inquiry, except when the inquiry brought him into matters connected with the homicide or brought him into the dangerous points which his counsel tried to avoid in this case, to the thought of revenge; or to some apparently peculiar or insane expression such as, "I do not want to talk any more; my constitutional rights are involved here." But upon every subject he did not regard that he would be getting into danger, upon each and every topic upon which his Honor inquired of him, there was a full and complete understanding of the question, there was a full and complete answer given to it. His conduct in this court room, observing everything that has taken place here from the very inception of this proceeding down to the present time---at no time has there been a manifestation upon his part that he

lacked understanding or lacked appreciation of the present condition and status of things.

So, gentlemen of the jury, it is apparent to you from all the credible testimony in this case, from the testimony of the medical practitioners, from the testimony of the guards at the jail, from the testimony of the prisoner himself, that not only is there no insanity, not only has he a full appreciation of the conditions that surround him, but that no insanity ever existed, and the impulse that caused the assassination of Mayor Harrison was the impulse of revenge, and not in an insane delusion.

So much, gentlemen of the jury, I have tried in my feeble way to cover the idea of general insanity upon the part of this prisoner. Now let me come down to a narrow, restricted view of it which really I ought to state to you rather than the general view, ~~and~~ and that is, Has the prisoner become insane since the rendition of the verdict in this case?

You will remember in my reading of the statute to you that the language is substantially, if after judgment and before execution such prisoner become lunatic or insane, then in case the judgment be capital, execution thereof shall be stayed until recovery of said prisoner from the insanity or lunacy.

1031 So you will understand from this reading of the

statute that it is not only essential that the prisoner be now insane, but that the insanity shall have its origin subsequent to the rendition of the judgment of conviction. What evidence is there here of a change in the mental condition of this prisoner subsequent to the rendition of the judgment in this case? Each and every one of the witnesses who testified for the petitioner, with the exception of one, and that is Father Dore, and his testimony I will discuss in a moment, testified that the prisoner is now suffering from an insanity which dated anterior to the commission of this crime. Some of the witnesses put it, I believe, back three or four years, and I believe the lowest number of years mentioned by any of the witnesses was that of one year, which I believe was mentioned by Dr. Cool.

So in reference to the testimony in this case, so far as the legal test mentioned in the statute is concerned, namely, that the insanity should arise subsequent to the judgment or conviction, the testimony is uniformly in this case, with the exception of Father Dore, that the insanity existing at the present time is the same insanity, the same delusion that existed at the time of the commission of the crime and existed for a long period prior thereto. Not only that, but the testimony of Dr. Spray, who was called in this case for the purpose of making that proof by the State, a witness on behalf of the prisoner at the trial last

December before Judge Brentano---

MR. DARROW: Oh no, you have got your facts mixed.

MR. MORRISON: It is not material. But he testified at the time he made an examination of Prendergast ~~xxx~~ prior to the trial last December. I believe I am accurate in that statement; and that his opinion was that he was a man of faulty make-up. He also testified subsequent to the rendition of that judgment in this court, and pronounced the prisoner insane then, as he said, a man of faulty make-up, faulty memory, as he put it, a paranoiac. But this was, for the purpose of the State, in showing that it was the same insanity now that existed in the former trial, the same identically, and none other, that exists here at the present time.

Doctor Spray is an insanity expert, but he was called to say that it was the same insanity urged before the jury who tried him for murder, that is being urged now.

Gentlemen of the jury, in consider~~ing~~ing this matter, bear in mind the fact, and it is a powerful, controlling fact in this case, that a jury sat in this box and heard the testimony of forty-eight witnesses upon the trial in December; many of the doctors who now appear on behalf of the prisoner---

MR. DARROW: Three only.

MR. MORRISON: And that they put their seal of condem-

nation upon the testimony of these doctors, discarded their statements and refused to believe them, and by their verdict found Patrick Prendergast, guilty of ~~xxxxxx~~ the murder of Mayor Harrison, sane, and that he should be punished.

So, gentlemen of the jury, with reference to what is the legal test in this case as to insanity, there can be no claim made, ~~xxxxxx~~ except the testimony of Father Dore, that subsequent to the rendition of the judgment he became insane or lunatic. Now then, what does Father Dore say ?

It is not necessary to read the testimony.

Father Dore testified that he was the spiritual adviser of Patrick Prendergast and called to see him at the jail; that he believed at the time he first met him, shortly after the assassination of Mayor Harrison, that the prisoner was sane and responsible; but subsequent to the judgment or conviction, on the 24th day of February, he came to the conclusion that he was insane, and from that time on down since he saw him in the court room, it was his opinion that Prendergast was now insane, and that his insanity originated since the verdict.

It seems to me this testimony, standing alone in this record, without any discussion of the testimony of Father Dore in this respect, could be submitted to the jury, because, as I believe, he has ~~xxxxxx~~ told simply the truth here before you, but the premises upon which the reverend

father comes to his conclusions are too weak to support it. He bases his conclusions solely upon the ground that he had received a couple of letters from the prisoner, one of them asking the father to come and receive his confession, and the other a long screed with reference to the personal characteristics of Christ, and containing also a copy of some passages of the New Testament gospel, Saint Matthew. Those are the premises that Father Dore bases his conclusions upon, but manifestly they are too weak to support it, because the conduct of the prisoner is entirely in line with his conduct prior to the 24th day of February. Father Dore, in his conversation, testified upon the stand that he never heard of any delusion upon track elevation or of the vicegerency of Christ prior to the 24th of February. Here he was, the spiritual adviser of this prisoner, called to see him when he made his rounds of the jail, and at no time did any of the conversations that he had with the prisoner impress him that he believed that the prisoner was insane until he received these letters. And yet at the same time, running through all this testimony down to the 24th day of February we find certain presence or manifestations of these delusions. We find the writing of these letters, we find a similar character of correspondence going on, and yet the jury which tried this case, said that all of it, while it may indicate an intellectual perversion, yet none of it indicates an in-

sanity which makes this man unaccountable for his acts. All the witnesses who testify anything at all upon this point, testify that he was afflicted with the same form of insanity prior to the 24th day of February. As they describe afterward. They tell you nothing except that which gives evidence of a moral depravity, of an intense egotism, of an abnormal desire for prominence and notoriety, and not insanity. Now then, gentlemen, I believe that is all I care to say to you upon that subject.

Now with reference to the topic of insanity, as presented by this evidence; it must be manifest to our minds, as it is to the minds of every person that has paid attention to this testimony, that this present proceeding is a mere pretext, a mere desire on the part of the prisoner and counsel to re-try an issue which was once tried and decided against this prisoner by a jury at the December term of this Court; that whatever insanity there was, whatever claim was made of an unaccountability on behalf of this prisoner, was based entirely upon the same evidence, before the December jury, as was presented to you.

Never in the history of the law has two trials been granted in a case of homicide after the determination of a question of fact. His sole and only defense upon the trial on the indictment against him was not a denial of the act, not a denial of firing the fatal bullets which took

the life of our Mayor; no pretense at that time, no defense of his person, but it was alone and solely that claim made by his counsel, that he was impelled thereto by an insane delusion, and that insane delusion was the efficient cause of the act, and that delusion existed at that time. So here upon this hearing the same claim that was made before that jury is made before you, the same kind of insanity urged, which was urged as a defense to the indictment; that same claim, made in so many words. It is true this man is under sentence of death. It is true the same claim was made before, but now they say as a matter of mercy, as a matter of humanity we will make the claim, that you may in an excess of mercy, in an excess of mistaken humanity, blind yourselves to the law and the due administration of justice, deprive justice of an opportunity to satisfy justice and render an example to the community to deter them from similar crimes or those of its members that are perverted the same as Prendergast is, deter them from the commission of like offenses. This, outside of the personality of the victim of this assassination, is not an ordinary case. The prisoner has from the day of the assassination down to the present time been surrounded by the best talent that this bar can afford. At no step in the proceedings had against him since the 28th day of October last has he been

1037

deprived of counsel. Every effort that human ingenuity and resourcefulness could bring to mind have been used in order that an outraged and violated law should not be avenged in this case, that Patrick Prendergast should not expiate a crime of which he has been adjudged guilty.

I will be followed in a short time by an eloquent counsel who will make the closing argument for the petitioner. He will picture to you Patrick Prendergast as a weakling, defenseless in this case, and that arrayed against him has been the power of the State of Illinois. I submit to you, gentlemen, in all candor, has there been any evidence in this case from the time the jury was selected down to the present time that he is alone in his defense and unsupported by anyone? Eminent counsel have addressed you, eminent counsel have caused to be brought hither men who fill chairs of high position in our medical colleges and hospitals. All that money could do, all that shrewdness and intelligence of counsel could do in this case has been done. The State has been overmatched by Patrick Prendergast at every step in this proceeding. They have been ready with evidence upon each and every point, prepared upon the law and prepared upon the facts. Nothing has been spared in this case, no time or money. Everything that was possible to influence you in arriving at a verdict favorable to this

prisoner has been done. And see the contrast of the two positions. You know in the opening argument of Mr. Gregory he referred to matters that have all been reviewed before. Mr. Darrow will refer to the widowed mother, and the brother of this prisoner, and tug at your heart-strings, that your sympathies may be aroused and overwhelm your judgment. He will picture to you the scene of a heart-broken, ~~and~~ widowed mother, and the discouraged brother. All of that Mr. Darrow is exceedingly able to do. In that lies their only hope in this case that the administration of the law shall be defeated. There can be no question that setting aside sympathy in this case, for the purpose of ascertaining this man's mental condition, under the law and under the evidence, it can result in but one conclusion, and that is that he is sane and accountable for his acts.

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There is but one hope ~~of~~ counsel for the State has in this case, and that is that the law may not be cheated, justice be not perverted from its course by feelings of sympathy or compassion, not for Patrick Prendergast because the crime which he committed renders abhorrent the personality of that individual, but that you may be influenced on account of the relations and friends of this prisoner.

We are not permitted in this case to make any appeal to your sympathies: We would not do it if we could.

The sole question that we have to determine is whether he be now sane or insane, and if insane, has he become so since the verdict.

I am not permitted to picture before you the murdered Mayor, who in response to the ringing of his door-bell, upon that fatal night of the 28th of October, living in the full peace of the people, in a community where he was universally beloved and respected, goes forward to meet the stranger and meets his death. In his own home, that he loved so well, shot down like a dog by a man whom all the evidence in this case shows, by a man whom your own judgment, as you have seen him here, knew full well the nature of the act, and had the power at that time to refrain from doing it.

Counsel will speak to you of home, and of this man's being taken from it. Oh, I believe in the home; I believe in the sanctity of the home. I believe upon ~~that~~ ~~that~~ when that night of the 28th of October last, ~~when~~ Carter M. Harrison was in his home, upon that night feeling confident in the peace of the people, having that confidence in the security afforded by our laws, supposing that he was protected there in the enjoyment of his rights in his home, *free* from the assassin's bullet, at that time there was nothing upon the part of Patrick Prendergast to indicate that he was

about to despoil the sanctuary of our honored citizen or that he was about to violate that honored home by the commission of a foul crime.

Another argument that may be addressed to you is that upon the rendition of your verdict in this case, finding him now insane---And mind you, gentlemen, when I anticipate these arguments it is because nothing has been suggested in the opening argument of Mr. Harlan, but I have reason to believe that this will all be covered by Mr. Darrow when he comes to address you, and he has the closing argument in this case and I am not permitted to reply to it, and that is the reason I refer to it now---Another argument that will be made by counsel is that if you find the prisoner now insane it does not mean that he is relieved from the execution of the sentence against him, except temporarily; that as soon as he recovers and reason takes its place, that he will then be returned to this jail and the sentence of this court executed upon him. His Honor will instruct you, as I believe, that the sole and only question for you to determine is whether or not Prendergast has become insane since the 24th of February.

Prendergast Case.
Benedict.
Relieved Geer at 3 P.M.

But the sole and only question with you is the determination of the issue here presented, and not the consequences of your verdict either to the prisoner himself or to society.

But the answer to that, gentlemen of the jury, which I wish to make now is that if Patrick Prendergast escapes the gallows at this time, we may say farewell, in this case, to the proper administration of justice. We may as well say, so far as the murder of the chief magistrate of our city is concerned, that one jury, in the administration of the law, found the assassin accountable, and another jury has come along and said: "Why, he may be accountable, but we will not execute that sentence." That is a practical defeat of justice in this case. It is equivalent to opening the iron door and giving Patrick Prendergast his freedom. It would be an outrage upon the law. It would be an outrage upon the administration of justice. Considerations of that kind, gentlemen of the jury, should find no lodgment in your minds, should find no responsive echo in your hearts, because I say here that a verdict finding this prisoner insane, under such circumstances as that, is a denial of justice and is a stab in the very heart of justice itself.

As well may we abandon our system of remedial criminal justice. Day after day in this court-room, while you

gentlemen are pursuing your various vocations in life, his Honor upon the bench and the attorneys for the State and for the defendant are attempting as best we can to administer justice and protect property and vindicate the violation of law. We are thwarted, we are foiled, at times, in the administration of justice, because false ideas, false conceptions, misguided sympathies, misguided compassion, interfere with the administration of justice.

And, gentlemen of the jury, this case is important, not on account, as I said a few moments ago, of the personality of Mayor Harrison, but it is to the civilized world a declaration whether or not the Criminal Court of Cook County is powerful enough to administer the criminal laws of the State. That is what the world is looking at in this trial. That

is what the world wants to know---if the criminal court of Cook County, in the majesty of the administration of the law, is strong enough to cope with its violators; whether the ingenuity, the resources, of counsel, the technicalities that are interposed in its administration, shall prevail to the extent that the most cowardly assassination that has occurred in the history of this municipality shall go unavenged.

Counsel disclaimed, in their opening argument, any other motive, in their presence in this case, than the desire to aid in the administration of justice. I have no comment

to make with reference to their conduct at this trial.

It is the ultimate that I am looking at; and that the contention made by them, presented with all the acumen of trained lawyers, presented with all the resources that technicality can suggest, presented here at every turn of the record, filled with exceptions in this case---that after your verdict, even if unfavorable to them, may be taken to higher courts; that if the law can be controlled, throttled, and justice thwarted in this case by people sworn to obey and uphold the law, it shall be done; and that is the ultimate of the counsel's position---that, no matter the heinousness of this crime and no matter the enormity of the assassination, if human ingenuity and the resources of trained and experienced lawyers can defeat justice, then that is going to be done.

It has been apparent to you, in the course of this case, that I don't believe in the ^{ensorious} ~~extensive~~ treatment of opposing counsel in the trial of cases. I never do it if I can; but it must be manifest to you that the ultimate object sought to be attained by the proceedings in this case is the defeat of the law by gentlemen who profess that their presence in this case is to aid the law in its due and orderly administration.

The very foundation of this entire proceeding consists of perjury. It was the brother who committed it; and that saves him, so far as I am concerned, of censorious treatment. But the petition filed in this case, upon which all these proceedings are based, is upon the oath of John Prendergast that his brother, Patrick Eugene Prendergast, became insane; not that he was insane prior to the judgment and conviction, but, in the language of the statute, he became insane since the rendition of the judgment of death against him, and now remains so. Upon all the undisputed evidence in this case it was manifest that he committed perjury. It cannot be defended. There is not a single witness in this case, as I have already argued to you, who had the temerity to say that his insanity originated since the verdict in this case. Father Dore said he did not believe him insane until after the verdict. That is simply his opinion; but he does not undertake to say that he became insane subsequent to the verdict. He simply says that he formed his own opinion. And I say that the whole proceedings here---your summons from your homes to try the question of insanity which had for its origin the sworn statement of the brother of the prisoner that he, Patrick Prendergast, became insane since the judgment in this case and remained insane---are based on perjury.

Now, I believe I have substantially stated here the ger-

eral grounds, both of law and of fact, upon which the State says that the solemn sentence of this court, pronounced after full hearing, upon the 24th day of February, where the able and ingenious counsel who are now prosecuting this case on behalf of the petitioner endeavored for six entire days, before Judge Brentano, to obtain a new trial, where these same counsel now before you presenting the issues that have been tried and decided---I have shown that under the law and the undisputed facts in this case any claim of insanity for the prisoner certainly never had its origin since the judgment in this case; that the sanity, as a matter of fact, does not exist, and at most it is simply a perverted intellect, due to a dominant egotism, a dominant desire for notoriety overriding his judgment.

And I believe I have also shown to you that the character of the insanity in this case is not such an insanity as would be admissible in the trial of the case. His Honor, I believe, stated the same to you. An insanity such as creates a mental oblivion to what is transpiring and what is about to transpire.

I have no doubt you gentlemen will, in the argument of the gentleman who will follow me, listen to him with the same patience that you listen to me, and that you will be

10416 guided simply by the law and the evidence in the determination of the case,

and that no consideration of misguided sympathy or compassion will interfere in the verdict you will render. And that being so, I ask at your hands the same considerate treatment and attention that you have given to my associate during the trial of this case; and at the end of that, when his Honor instructs you, I believe there can be but one verdict in this case, and that is that in the contemplation of the law, while you may believe that the defendant is ~~an~~ eccentric, that his mind is not up to the normal standard; that, at the same time~~s~~, agreeing that the jury should try him upon the charge of murder; that he understood fully the nature of his act, understood fully from that time on all the proceedings of this case, and that he was in the same mental condition at the present time as he was at the time of the commission of this homicide, and that, under the law of this State, he should meet the penalty which outraged law demands that he should meet---then those being your considerations by your verdict find him sane.

I don't believe you should be influenced in this case on one side or the other by any considerations of public feeling; that the mere fact that in this community there may be a large number of persons believing upon the one side or the other of this question, that there may be a universal demand either that he should be released or that he suffer the penalty which the law provides---I don't believe any of

1047

these considerations should enter into your deliberations in this case; and I don't believe they will.

But, gentlemen of the jury, in the name of the law, in the name of justice, I ask that the sentence of this court, solemnly pronounced upon this prisoner, be carried out. I ask that justice be no longer thwarted in this case. I ask that the arm of the law, which has been so often stayed by the ingenuity and resources of his lawyers, be now let fall upon the culprit, who has taken up more time in the disposal of this case than the entire number of prisoners in the jail.

There is nothing in the history of this prisoner; there is nothing in the assassination, which at all appeals to you. Cowardly and brutal it was; cowardly and brutal has been his conduct ever since.

Let the people of the State of Illinois understand that the law is both strong enough and able enough, and its officers powerful enough, to see that it is enforced, and that can be done in this case, gentlemen of the jury, by saying, with reference to Patrick Prendergast, that there has been no change in his condition since the 24th day of February last. He is mentally fit and responsible, not only for his crime, but mentally fit to prepare himself for the doom which his crime so deservedly merits.

MR. DARROW'S CLOSING ARGUMENT.

If the Court Please, and gentlemen of the jury:

It is not often that I take part in a criminal case. Before engaging in the present trial I had supposed that there were certain tried standards which the ethics of the profession had enjoined upon prosecutors that should be followed by honorable men. I had never believed that the State was so interested in taking the blood of any human being that lawyers should travel beyond the truth and beyond the record and beg the jury to violate their oath for the sake of giving justice a victim, as these gentlemen put it.

I had supposed, gentlemen of the jury, that the great State in which we live owed as much to the weakest defendant in a court of justice as to the strongest and most powerful of its citizens, and that it should be represented by men who, on their conscience and for their profession, would scorn to ask a verdict upon false statements, irrelevant matters, and the passion and prejudice that might be engendered at the time.

In a measure I have been undeceived.

It seems to me that the arguments I have heard advanced to this jury as an excuse for taking a human life would not be warranted amongst savage tribes; that this record which

stands here before this jury is the one upon which this law is tried, and that any effort to urge you beyond the facts and beyond the law is unworthy of those who pretend to represent the State.

It has been said by counsel that back of this defense was some effort upon the part of lawyers and doctors and others to cover up a crime, and that some potent, unseen agency was present to defeat justice in its temple.

I believe that those connected with the State know full well that this is not true; that the only reason that either counsel or physicians have given their services and their energies to defend this case is for the honor of the State and their loyalty to the law.

You, gentlemen, have been urged to forget your oath; to forget that you are here as jurors to pass upon the facts of this case; and for the sake of permitting this sacrifice to hide beyond the judgment of a former jury and surrender your consciences for these men's lust for blood.

Two things have been said by these gentlemen as the chief reasons why you should consent to the hanging of a lunatic boy. First, that another jury tried the case; and, second, that, forsooth, this boy became insane before the 22nd of February instead of after the 22nd of February. And then you are informed that we are quibblers, who are here to de-

1050

feat justice by a trick, when they have dared to stand before you and ask you to consent to the hanging of a lunatic, because his lunacy dates before the 22nd instead of after the 22nd day of February.

More than that has been said, and more injustice and more damnable things have been said than that.

Before you has been paraded the verdict of another jury. Gentlemen, there is no power on earth that can relieve you from the obligations of your conscience; that can satisfy you if you seek to ~~examine~~ shelter yourselves behind any excuse. Between this poor boy and the gallows stands this jury, and it must be by your consent that his life shall be taken if these gentlemen succeed in their pleading for his blood.

You may give Mr. Morrison and Mr. Todd the grim satisfaction which the savage feels when he places another scalp at his belt, by hiding behind the supposed verdict of a supposed jury; but you cannot satisfy your consciences and your oath if, in this day and in this age and in this nation, in defiance of the civilization of the present, you permit a lunatic to go upon the gallows, and plead as an excuse that you hid behind someone else.

You have been told that from the time of the shooting of Carter Harrison until now this prisoner has been ably def-

ended. The record doesn't show it, and it isn't true, and they know it, too.

It is not for me to say, and it cannot be for you to find, what are the facts as to the former trial of this case. That is a sealed book. And they have no right to refer to it, but they choose to do it that you gentlemen might see fit to escape from the strength of this case by shielding yourselves behind twelve other men who acted from motives that we cannot fathom and in a case which we cannot understand.

Mr.Morrison: If your Honor please, I shall object to this indirect mode of referring to the other trial. Counsel ought not to be permitted to do by indirection what is not permitted by direction, and it is manifestly improper on this line of argument. I think I may as well interpose an objection now as later on.

The Court: I think I will defer anything I have to say about that until I instruct the jury.

Mr.Darrow: I think I am simply following in the line of his argument.

Gentlemen, more than that, it has been said that I would work upon your sympathies; that by art and device I would seek to conjure you to go beyond your duty, to violate the law, to cheat justice of a victim, as they are pleased to call him. I shall not do it. If the evidence we

have presented here is not sufficient for you gentlemen, in this age and generation, to say that it would be an inhuman spectacle to lead this man to the gallows, then the responsibility is with you and not with me.

I shall be satisfied to argue this case as this case was made to you; but I must protest against gentlemen who misrepresent the State and seek, by unjust means, to wring a verdict from you that would take the life of a fellow-being however humble and wretched and worthless he be.

The only issue before you, gentlemen, is the condition of this man's mind. Nothing else. And yet counsel have paraded to you the horrible details of a horrible assassination. They have pictured the blood of the victim and the sorrow of the family and the mourning of the city and the great concourse that followed the victim to his grave; and they have done this, gentlemen, that you might be blinded by the sight of this blood and forget the question of the mind of this unfortunate being, which alone is the issue in this case.

In insincere words they have talked of the sanctity of the home, and paraded its inmates, and even the fiancée of the dead, that they might wring from you a verdict that would consign a lunatic to the gallows, that, forsooth, they might get more praise and more cash.

1053

The State should have no motive such as that. Its hands should be clean and pure. It is as much bound to protect this boy as it is any other citizen. It has no right to urge this jury, by any means beyond the consideration of this case, which alone is the question of the condition of this young man's mind.

How has this been done? You are asked, gentlemen, to ignore the evidence, to ignore experts, to ignore professional men, to ignore civilization and your conscience, to hide ~~XXXX~~ behind someone else, to let these men of the law have another victim.

You have been told that experts are of no value, and, insincerely, they have said to you they did not see fit to bring them here because they did not believe in experts. They did not bring them because they couldn't get them. And they know the reason why.

The testimony in this case shows that the expert whom Mr. Morrison characterized as simply an insanity expert, Dr. Church, was employed by the State. It shows that Dr. Flood and another of their doctors without reputation and without standing, examined the prisoner in the jail, together with Dr. Gapen, the head of the largest insane asylum of the State of Illinois, and that he did not go upon the stand. These gentlemen know that the reason they have introduced in

1054

this case doctors without name and without reputation, is because they couldnot get any other to seek to swear away this boy's life; and I say to you that some time, when the record of this case is complete, you must meet the facts, and over and over again you have been advised by reputable men of this boy's condition, and that in spite of that you have gone up and down through the sewers of the medical profession and searched for men who would be willing to tie the rope around this boy's neck; and in that day, if you succeed in compassing his life, all the flood of all the seas can never wash the stain away.

Talk of experts! Can it be that a man lives in Illinois so ignorant that he does not believe that special skill is necessary in treating diseases of the mind? Can it be that any counsel expects any intelligent jury to say that a man who has studied his profession, who has carefully and conscientiously made a life study of the human mind, is not competent to speak, and that a miserable political guard out of the jail, who knows nothing whatever about anything on earth except setting up a ward caucus, can stand here, against all the integrity and learning of all the physicians who have made a life study of this work, as an excuse for you gentlemen to help take this boy's life?

1055 And yet that is the argument of the State.

Now, gentlemen of the jury, the assassination of Mayor Harrison has nothing whatever to do with this case. I do not yield before these maudlin gentlemen in the respect I pay to his memory, and the respect I had for him while living, and I believe, on my conscience, that I represent that great man better in standing here and urging you to save a lunatic's life than I would if I joined with them to hunt him to his grave. I knew him. I respected and regarded him. I was one of those whom Mr. Morrison described as following him to his last resting-place; and I ^{believe} ~~think~~ that, could he speak to you today, from his great heart and his charitable mind he would ask you to save the city that he loved and the State in which he lived from the infamous disgrace of sending a lunatic to the scaffold. What the offense or the great crime was is outside this case. You may take this boy's life; you may send him to the scaffold to satisfy these gentlemen who represent the ~~city~~ State; but that cannot bring back the great dead; it cannot bring back to ^{the home} ~~him~~ the father that was taken away; it cannot bring back to the city the public-spirited man who is gone; it cannot bring us back the Mayor of Chicago.

No, gentlemen, to take this lunatic's life cannot even place a single flower upon his grave or add a single garland to his fame. His record is made. His life is done.

And I might call your attention to the fact that in his dying moments, when his friends stooped over him to give him comfort and consolation, and asked the name of the being who had brought him low, he waved them aside, understanding and believing, as I believe, that that being was not responsible for the act, and that in his death there was no malice against the unfortunate human being who had been born and developed through all his life into the one under consideration now.

Gentlemen of the jury, is there any question about the facts in this case?

You have been asked to excuse yourselves behind another verdict of another jury. You have been asked to forget the prisoner and look at the bloody marks upon Carter Harrison's body. You have been asked to overlook the question of the condition of this man's mind. You have been asked to ignore all the learning and all the science of the past. You have been asked to forget all the humanity of the civilization which the year of progress and enlightenment have given to the world. You have been asked to do all of this for the sake of giving the law a victim.

If this were a case where no appeal like that could be made this jury would never leave its box before it would declare that this boy was insane.

1057
Not only that, gentlemen of the jury, but you have been urged further yet. Mr. Todd and Mr. Morrison both, in their

statements to this jury, likened this man to the murderer of the President of the French Republic.

Gentlemen, a statement like that was an insult to your intelligence and your conscience. It had no business in this trial. It is an insult to the State who, for the time being, is so represented. For an assassin to plunge a dagger into the President of the French Republic was terrible, but for an attorney, beneath the shadow of the law and in the holy temple of justice, to seek to drag that incident into this court to influence this jury to tie the noose around this prisoner's neck, is more damnable still. It is inexcusable.

Gentlemen, here, beneath the protection of the law, in the temple erected to its preservation, where all men stand protected until proven guilty, where the strong arm of the law is thrown alike about the strong and the weak, no man, whether representing the State or the defense, has the right, by unfair means, to urge a jury to violate its oath, to look beyond the case, to stir in their hearts feelings of hatred, revenge and blood, that they might compass their ends.

The question for this jury is simply as to the condition of this young man's mind; and I assume, gentlemen, that while the most of you truthfully answered me in the beginning that you had an opinion in this case, that you were prejud-

iced against this boy, that you also truthfully answered when you said that you could lay aside those prejudices, and, on your conscience and your oath, believing in the sanctity of human life, determine fairly the issues on the evidence produced in court.

I assume that you answered truthfully, and I shall treat you as if you did.

Now, what is the evidence in this case?

In the first place, Mr. Morrison has read to you from books showing the reason why you are investigating this case, and has told you, ~~that~~ with about the same show of sincerity* as all his other statements were made with, that for 800 years no such case as this is reported in the books. If he were industrious he would find them---plenty of them, in this country and in England. But if this were the first case, what of it? I believe it is the first case where the officers of the State, confronted by such overwhelming evidence as they have had both in and out of court, have asked for the conviction of a lunatic---that he be sent to the scaffold. That may be the reason.

You gentlemen are placed here by the law. The case is before you under the law. Whether it is new or old, is no concern of yours. Every one of you has sufficient conscience and enlightenment and intelligence to know that in

this age and in this generation it would be a terrible blot upon the great name of this proud State if a lunatic were executed upon the scaffold. You have sufficient intelligence to know, and sufficient humanity to know, that if in the State of Illinois the life of a lunatic should be taken, we would deserve to be cut off from the civilization of the world and should be relegated to the barbarians of remote ages and remote climes.

Each one of you gentlemen answered to my question that you did not believe that a lunatic should be punished with death; and yet this proud State of Illinois, through these attorneys, have begged of you to hang a lunatic, provided you believe he became lunatic before the 22nd day of February.

I believe these gentlemen know not what they do. To say that a known lunatic should be executed because of a mistake of the law, because of a mistake of counsel, because of an uncertainty of a jury, if he became a lunatic on the 21st instead of the 22nd of February, is a mockery of justice and a condemnation of the civilization of the day.

You are told of other verdicts. These men know full well; all men who have read history know full well, that many an injustice, many a crime, and many an outrage has found a sanction in the law; some through mistake, some through design., It is for you, gentlemen of the jury,

forming the panel in this case and called upon to say whether this boy shall die---it is for you to be responsible and not charge up on any other body of men the responsibility, no matter whom they may be.

Now, what is the evidence?

I assume that some of you gentlemen know something of the physicians of Chicago; know something of the standing of those men; can tell the difference, for instance, between Dr. Martin and Dr. Andrews and Dr. Church, or any other physician called upon the part of the defense. It is an unusual thing for the State, which is able to procure all the evidence it may desire, which is amply able, which has all the machinery of justice and injustice under its control, which has men and money without limit---it is unusual for the State to cry out against physicians, against experts, who can be employed for cash. And yet, gentlemen, this case is so plain, the medical profession of Chicago is so thoroughly agreed upon it, all reputable physicians are so thoroughly agreed upon this case, that these gentlemen are asking you to say that men who have made a life study of their profession are liars and frauds and humbugs, in order to take this boy's life. You gentlemen may excuse it to your consciences, but if you should overlook, if, by reason of an appeal to the abuse that they have been heaping upon

1061

these medical gentlemen by these attorneys you should turn your backs upon the experience and the study of the ages, if you should set up your own judgment against the learning and skill and science of these men, then the responsibility must be yours, and it will stay with you forever.

It is singular indeed that a boy without money, without friends, without intellect, could array around him all the leading physicians of this city, who declare that his mind is insane and unsound, and that it would be inhuman to hang him.

And while so much has been said of experts I wish to say to you, gentlemen of the jury, that the conduct of the reputable physicians of Chicago in this case who, without money and without price, for the sake of the high and holy profession which they have chosen, for the sake of the law under which they live, for the sake of the civilization of the age, have come to this poor boy's defense and to the defense of the law; that this conduct of the physicians is one of the grandest things of modern times; and you gentlemen can ill afford to abuse these men of standing--men whom you sought to hire but couldn't (turning to the attorneys for the State).

Mr. Morrison: We must object to this, your Honor. The gentleman is traveling outside this record.

The Court: That last remark was improper.

Mr.Darrow: Dr.Church swore they tried to emply him and that he came at their expense.

Mr.Morrison: I object to the statement about "without money and without price."

Mr.Darrow: Three physicians swore to it before you objected to it.

Mr.Morrison: I dislike to interrupt counsel, but I think it a duty I owe to the State when it is so manifestly his intention not to argue the case in ther ecord but to argue the case outside of the record.

Mr.Darrow: I have traveled very much closer to the record than you have.

The Court: We won't debate that now. That last reference is not supported by the evidence. Go on.

Mr.Darrow: The evidence in this case shows that Dr. Church, whom they abused, was called by the State and testified for the defense. The evidence in this case shows that this boy, without any means on earth and with no friends except his mother and his brother; the evidence in this case shows that the best men of the medical profession of Chicago have come before you gentlemen to give their testimony to save his life and the honor of the State. And from this, gentlemen, I am warranted in saying that the conduct of

these men has been moved by the purest and highest motives; their devotion to their profession; their devotion to the State; and their devotion to the civilization in which they live.

The evidence in this case shows that those who have been called upon the part of the State were, with possibly ~~one~~ one exception, men without professional attainments or professional standing in the community. These gentlemen have seen fit to decry expert testimony.

Let me ask you, gentlemen of the jury, what is left of their case without expert testimony? What is their entire case except so-called expert testimony? Eight men were called from the county jail. Eight men who have a job of watching prisoners in the county jail; and you gentlemen know how all those positions are obtained; and I have nothing to say against their testimony. In the main it was true, except their opinion. But not one man of the eight had ever said scarcely a word to this prisoner except good morning or good evening, or to wait upon his wants, or converse with him about matters in the jail.

Sometimes a case is shown by what is not proven as well as by what is proven; and you gentlemen, when you come to explain your conduct for seeking to send this man to the scaffold, must confront the fact that you have called here

some ten physicians, almost all without standing in their profession, and supplemented it by eight turnkeys who know nothing whatever about this case or about anything else on the face of the earth except watching prisoners and carrying caucuses.

Mr.Todd: I object to that, if your Honor please. The record does not disclose the fact that there was any physicians here for the State who was without standing in his profession.

The Court: No, there is no evidence of that.

Mr.Todd: That statement is false.

The Court: You stated that the evidence showed such a state of things. There is no such evidence.

Mr.Darrow: Except as is drawn from the physicians themselves. That I will argue later on. I said with one exception.

Mr.Trude: Do you mean Dr.Benson?

Mr.Darrow: Yes, sir; I do exactly. I refer to Dr. Davis as the one exception, and I will discuss him later.

Now, let us see what the evidence of this case are as to his sanity or insanity.

We have called here some twenty witnesses, 14 or 15 physicians of the highest standing and attainments; three priests who minister to the people in the jail; and two or three

1065

other witnesses; all of whom testified that this boy is insane. We honestly and boldly placed this boy upon the stand and instead of examining him ourselves left him in the hands of the court to ask such questions as he saw fit.

We have read to you the letters and communications written by this boy from the 22nd of February down almost to the present time. We have given this jury every possible chance to learn all about his life and his antecedents, and all the surroundings of the case. We have ~~xxxx~~ done what is seldom done in a criminal case, and what is generally dangerous to do in any case of this character---placed this boy on the stand and left him in the hands of the court and in the hands of his enemies to be examined~~x~~ as they saw fit.

We have done all these things, gentlemen, to give you twelve men a chance to ascertain the facts in this case. And what are they?

There are some things that are practically undisputed in this case. Mr. Morrison, in arguing to you, said that in some respects this was a man of unsound mind. He said he was depraved. There is not, in all this evidence, one single word or one single scrap of evidence, that could show that this man is depraved, except the killing of Harrison, which I believe, and which I think you believe, and which some of the witnesses for the State say they believe, ~~with~~

1066

this boy thought was a justifiable act.

You have heard his testimony for half a day. You have heard his letters to different people, and in them all there is not one word or thought that is unholy or impure or in any way tainted, or that shows that he is depraved.

If this young man, in cold blood and malice, took the life of a human being it was a cruel and terrible act. I don't think he did. But outside of that there is not in this whole record, do far as appears from his whole life, anything impure or wrong that has developed in his conversation or his conduct. And yet Mr. Morrison, to excuse himself, to excuse his own logic, after admitting that this boy is unsound mentally, adds that he is also depraved. And this without evidence; this without proof; this against the evidence; this against what he has said and written; against his conversation; against his letters; against the whole tenor of his mind.

I am not here to pay any eulogies to this defendant. No one could abhor murder more than I. He needs none. I am here in the name of conscience and humanity, to ask you that if this man's mind be unsound, if he be a lunatic, not alone for this boy, not alone for his mother and his brother, but for the honor and the glory and the dignity of the State, that you spare us the spectacle of this execution.

1069

Half of the witnesses for the State have said that they believed that he believed he was to be made corporation counsel. Half of the physicians, at least, to say nothing about the guards, for they spoke ~~xx~~ nothing about it to him; half of them said that he believed he was the one who could enforce track elevation in the city of Chicago, and that was the reason that he wished to be made corporation counsel; and that, according to his own statement, the taking of the life of the mayor of this city, was because of his failure to elevate the tracks and because of his failure to make him corporation counsel that he might elevate the railroad tracks.

Every single physician called here by the defendant, and all the letters read in the case, and all the testimony given by this boy, shows conclusively that at this time he believed that he was fitted to be corporation counsel; that he was promised the position; that he was to get it in order to elevate the tracks; that mayor Harrison stood between him and the city and that consummation; and that therefore he took his life.

Is there any dispute about that? Is there one of you gentlemen who can doubt, upon your reason and your conscience, but what this helpless, ignorant, feeble boy, without friends, without attainments, a boy whose business it had been to

carry papers through the streets and deliver them from door to door, a boy without legal education of any kind; that he conceived that he would be made corporation counsel, the chief law officer of this great city, and that upon him had devolved the responsibility of raising the tracks of this city.

If anything has been proven overwhelmingly in this case it is the fact that this boy believed that this was true and that his act was caused for that and for that alone.

Now, gentlemen, let us see how this evidence stands; and I ask you to carefully analyze it, remembering the serious duty that devolves upon you; remembering that you are here not alone to enforce the law of the State; that you are here not alone to protect the life of this individual; but that you are here to protect the name ~~of the~~ and the good honor and ther eputation of this proud commonwealth in this the twentieth century.

Every witness called by us has conclusively shown that this boy believed these things were true. Dr. Bluthardt, one of their whief witnesses, also said that he thought this boy believed it true. Dr. Benson, another of the chief witnesses of the State, also said that he believed this boy thought that this was true.

1069 I need not give the names of all; but nearly half the

physicians of the State have seen fit, to sustain their case against the learning and reputation of the medical profession of Chicago, to say that they had no doubt about the honesty of his answers, the integrity of his purpose, and the delusion which he entertained.

But now Dr. Spray, who was also called by the State, said he did not believe that this boy thought he would be corporation counsel; but he said if he did believe it then he would believe this boy was insane.

Gentlemen, I have a right to rely upon your analysis of this evidence. I have a right to believe that you will fully comprehend and fully weigh it all; that you will not overlook it or pass it by. ~~upon the testimony given by the State alone~~ Upon the evidence of the State alone we might rest our case. Nearly half of their witnesses have sworn that this boy, in all he said, was insane; that they had no doubt but what he thought he would be made corporation counsel, and that he was the one who could elevate the tracks.

1 follow Benedict 4:15.

Dr. Spray said, that if he did so believe, then this boy is insane. But it does not rest with him alone. Dr. Davis, of whom they have spoken so much, the great Dr. Davis, upon whom the state relied, said that if he believed that if this boy had these delusions, then it would be evidence of insanity, but he did not believe it. Dr. Davis swore to you, gentlemen of the jury, that if he believed that this boy had these delusions, it would be evidence of insanity. But he did not believe it. Is there any question whatever, that he did have these delusions ? Is there any dispute in this evidence but what he did have these delusions ?

If so, Dr. Spray, their own witness, swears he is insane, and Dr. Davis, whom they paraded before you, swears that it is evidence of insanity as well.

I wish to examine to a certain extent the testimony of the State, and I cannot characterize it too strongly. I assume that some of you gentlemen know something of the reputation of the physicians of Chicago, and that if you do not enough was developed upon this witness stand to tell who these men were. It is almost always the case that the State can get the best experts, because they can pay the best price. It is almost always the case that the defendant, who is generally poor and weak, is unable to procure those experts whose words weigh and whose judgment is good; but in this instance it has been reversed. They have paraded before you a list of ten experts, as against some fourteen or fifteen produced by us; and to give these men credit, they say they are not experts. Think of it, gentlemen. You are asked to take away a man's life upon statements like that, upon reasoning like that. They have called ten doctors, and then come before an intelligent jury and say that these ten doctors are worthy of greater credit because they are not skilled in insanity and in diseases of the mind. I do not believe, and I sincerely hope, that never before in the history of the State has a quibble of that kind been used to take away any human being's life. They have

1072

asked you to believe these men because they were not skilled , and boldly paraded to you the lack of their knowledge upon this subject as a reason why you should take the responsibility of this boy's life, and nothing else. I cannot conceive it; I cannot conceive that in an age of books and newspapers, schoolhouses, colleges and professions, that any lawyer should come before any jury and ask that his witnesses be believed because of their lack of special knowledge upon that subject of which they speak. And yet that is the dilemma to which they are reduced in order to ask you twelve men to shelter yourselves behind twelve other men absent from this court-house and beyond responsibility, and consent to the taking of a human being's life upon the scaffold.

And who are these doctors ? Well may it be said by the gentlemen that they are not experts. No, not one of them could be called an expert in an insanity case, or skilled in diseases of the mind. If anyone of you gentlemen had a friend, a daughter, a member of your family, any close friend whose mind you thought might be affected, you would no sooner have called upon one of these gentlemen to examine that friend than you would have called in a car-driver, a merchant, a bookkeeper, or any person skilled in any other profession or calling in life. You would have gone to these gentlemen who have testified to the insanity

1073

of this defendant. You would have gone to them to ascertain the condition of mind of your friend, and you would have rested with the utmost confidence and the utmost reliance in the skill and integrity of these men who have come here for the sake of this boy's case and for the sake of the law.

Their experts almost provoke a smile. I could only characterize their experts by a certain kind of fish called the skate, I believe, which is all head, and after you cut the head off nothing is left. I compare them with a fish, too, because a fish is so scaly. They first paraded Dr. Nathan S. Davis for the head, and after he was gone their experts were gone; there was nothing left. And he, like the celebrated fish, or fish's head, has been ossified for at least twenty-five years. Dr. Davis is a man who has standing in his profession. I do not mean to state anything to you gentlemen that is not borne out by the evidence and by what you see. Dr. Davis is a man who has a ^{long} history, all, of course, backward. He has had a standing in his profession, but he is perhaps eighty years old, and he comes here as a relic of some forgotten age. Pretty nearly all that is known about insanity in the present day has been known since Dr. Davis ceased to learn. Pretty nearly all in the mechanical world has been known since Dr. Davis ceased to learn. And you gentlemen

all know how hard it is for an old man to learn; and he comes here from a remote ~~age~~ ^{day}, when lunatics were chained and imprisoned and hung because of their lunacy, instead of from this day, when science and civilization and progress have built asylums and tended them with care, because of their infirmities and afflictions. That is the excuse for Davis. He has for twenty-five years been ossified in almost every member but his tongue, which still ~~retains~~ retains its pristine vigor. He may have been good once, and upon some subjects, and these gentlemen excuse him further by saying that he is not an expert in insanity, which is also true. Now Dr. Davis in the days of his usefulness and vigor was no doubt a good man to write prescriptions, but he writes them in the past, he lives in the past; the modern progress of science is not for him, and could not be for such as him. He has been brought here as a relic of antiquity, that they might have one single name to conjure with, to furnish one single excuse for the deed they wish to perpetrate: ~~The only name~~ ~~that~~ ~~shines~~ ~~with~~ ~~any~~ ~~splendor~~ ~~that~~ ~~is~~ ~~deserving~~ ~~of~~ ~~any~~ ~~distinction~~ ~~or~~ ~~of~~ ~~any~~ ~~consideration~~; and this is a man who lives in the past and who never made a study of mental science, and who gives opinions that are antiquated with age.

1075 And they sustain him next with Dr. Bluthardt.

Now if Dr. Bluthardt had on a white apron we would all take him for a butcher: He looks like it, he testified like it. He showed the interest that he manifested in this case, but in spite of that he was bound to swear that he believed this boy had these delusions, that he believed it, and although it was wonderfully strange and wonderfully uncommon, still he thought he was a proper subject for hanging.

Doctor Bluthardt, a political doctor, a man who from his testimony* shows that his education has come from holding county jobs, a man who from the beginning has shown his interest in this case in interviews and other ways which he admitted himself, a man whom I am glad to place beside the scientific gentlemen of education and refinement and conscience who have come here to ask you gentlemen to save the spectacle that these people so fondly wish!

And then the next was a man named Martin, who has an office on Blue Island Avenue---another insincere statement that they took men from all sections of Chicago, Blue Island Avenue and Halsted Street--because they could get them from nowhere else. They either come from the archives of the past or from their county jobs or from Blue Island Avenue or Halsted Street, to swear this maniac's life away.

And who was Martin? I shall not discuss what he said of medicine. He is not worth discussing. He ought to study English. We said he came because his partner

was away. I suppose he came from the Rocky Mountains. By the way, he used the word "pardner", and he had heard where to "git at this man". And he called paranoia "paronia". He did not even understand English, let alone knowing anything whatever about medicine. No one knows where he came from, no one will know where he goes to, unless sometime the State should be forced to the same extremity to tie a rope around a lunatic's neck, and then they might call Dr. Martin again to testify in this case.

And we had another remarkable man. Gentlemen, when this list of witnesses is known to the medical profession, and when you place these people whom the great State of Illinois has dared to place to ask this boy's life, in comparison with the men who have come here to tell that he is insane, it will show one of the darkest spots upon the history of the State.

Next we had Dr. Corbus. And who Dr. Corbus was is beyond my ken, except as he exhibited himself here upon the witness stand. And I want to refer you to Dr. Corbus. And, gentlemen, if there is any human being in the world except Morrison who would hang a man upon the testimony of Dr. Corbus, I would like to see him. Corbus! I do not know anything about his professional attainments, except as he exhibited them ^{here}, and I believe no one else did. He said

he asked the jailer to introduce him as a business man, so he could deceive Prendergast and he would not think he was a doctor. That was entirely unnecessary, for no human being would ever have supposed he was a doctor anyway, even if he had said so.

Who was Corbus? This man went to the jail to visit this lunatic. He was introduced as a business man. He asked the boy if he wanted some money. It is not in evidence that he gave him any, because he had not^{yet} got his fee from the State. He was introduced as a business man. He asked him if he would bring him some fruit on the next trip. The boy thought he would like a little fruit, and he got into his good graces, as Corbus said, by those means. Now, gentlemen, I do not mean to argue to you it would not be right to ~~xx~~ lie to this boy to throw him off his guard, I want to say that. We have sought to give this jury and this Court every means in our power to judge of this boy's intellect, and if it could be accomplished by lying, all right. I have nothing to say to that. But in some particulars Dr. Corbus should have been honest. Let me show you the infamy of Dr. Corbus, and it is not only the infamy of him, but of two thirds of the witnesses who have testified in this case against this boy's life. He swore that he got the boy's complete confidence; that the

boy did not tell him a lie in any particular; that he believed every single word he said. And then he proceeded to ask the boy his age, how many brothers he had, how many sisters he had, about his father and his mother, and a thousand other details of life. He had the boy's complete confidence, by a promise of money and a promise of fruit. He could believe everything he said, and what did he do?

This eminent gentleman, whom they place here to help tie a rope around his neck, swore that he knew this boy had a delusion on the question of track elevation, ^{Corporation counsel,} the representation of the church, that he was the successor to the Pope; and yet he swears that he neglected to ask him a single question about any one of those delusions that he knew were in that boy's mind.

Gentlemen, it is hard for me to tell which fact in this case is more infamous than the other facts. It is impossible for me to characterize some of these proceedings as I wish I might. I cannot understand, I never can understand, how any officers of the State should think it necessary to resort to such means to take the life of a creature like this. But this statement is so infamous that it is hard for me to think that any lawyers could be parties to it.

Here was a man who swore that he knew that in insanity people were perfectly sane except upon certain things

Before he went into that jail he found out what this boy's delusions were, he gained his complete confidence by telling him lies, and then he failed to ask him one single question or utter one single word to determine his mental state.

And yet gentlemen, for the sake of celebrating the Fourth of July, the birthday of our Independence and our pride and our greatness, for the sake of celebrating that birthday by the hanging of a lunatic, they parade Dr. Corbus and ask you to believe him, and upon that take this boy's life.

Who else did they have? I will not go over all of them. They were all alike, except that each one was worse than all the rest. A great crowd taken collectively. If they had been here last year they would have been a great attraction for the Midway Plaisance. They could have made more money there than out of their profession, assuming that they have any other profession except testifying in court.

Who else did they have? A Why they had Dr. Spray. Now you gentlemen remember Dr. Spray. He was the man that had the moustasche and the jag.

MR. MORRISON: I object to that, if your honor please.

MR. DARROW: It is true whether you object or not.

MR. MORRISON: He is trying to make a burlesque out of this trial.

MR. DARROW: I say I think the evidence shows conclusively that Dr. Spray was full and you, gentlemen, know it. One of your associates knows it, anyway.

MR. MORRISON: It is out of place in a court room, and you need a lecture, anyhow.

THE COURT: Gentlemen, we will not have any side excursions. Mr. Darrow, that is not dignified. Go on.

MR. DARROW: It is true whether it is dignified or not.

THE COURT: There is no evidence of the fact.

MR. DARROW: I insist there is, that the conduct of that man showed his condition.

THE COURT: It is not a proper subject for comment in this proceeding.

Mr. D ARROW: You gentlemen saw his condition. You are the judges of it. You had a chance to observe him. I think everyone who observed him understands it, but it is a matter I care nothing about what his condition was. I am pretty well satisfied with Dr. Spray's testimony, and perhaps if the others had been in the same condition they would have been more honest.

What did Dr. Spray say ? Dr. Spray testified that this boy was , to a certain degree insane, and always had been. He also admitted that he sent a letter to the governor asking that this sentence be stayed, and that he based it upon the grounds that he had not had sufficient time to observe his conduct, and that he might still be insane.

Now think of it. Here was Dr. Spray, called by the state, and he admitted that he sent a letter to the governor, asking him not to execute this boy because he was of unsound mind and that he had not had sufficient time to find out the extent of his insanity, and therefore he had better give him time, and from that day to this he had seen him but once, and then only fifteen minutes and no more. He had seen him thirty or forty times up till then, but only fifteen minutes since.

Gentlemen of the jury, another statement was made by counsel which is not true, that to find this boy crazy means to open the prison doors. I believe you are men of intelligence; I believe you know and understand that to find him insane simply means that his execution to be postponed until he becomes sane, and Dr. Spray, who is called by the state, who is their witness, testified that he advised the governor not to postpone his execution to do what I am asking you gentlemen on your consciences, on your oaths, and for the benefit of humanity to do according to the evidence in this case.

I cannot notice all their men, but amongst the rest there was one Stowell, who did not understand a medical term or definition; who looked at him through a screen; who learned nothing from his talk and who thought him sane. Good enough evidence for the state. Good enough to take away a life when it is such a life as this, and this is paraded with all the rest as an excuse for you to do what they wish done in this particular case.

Dr. Caldwell was another, and Dr. Caldwell came upon the stand and he brought out a little memorandum, and he had upon that memorandum answers that Prendergast made to such questions as, how old are you, and whether he had any brothers or sisters, or whether his mother was alive or whether his father was alive. Dr. Caldwell swore that he did say something about track elevation, something about corporation counsel, something about being a divine agent of the church, but he failed to take a single memorandum of one of those statements, and he could not tell what this boy had said.

Gentlemen, when men will ask that a human life be taken upon testimony like this, then human life is cheap indeed. Here was a man who went into that jail, understanding perfectly well that is was claimed were the delusions of this boy, and deliverately took notes upon every subject except

those. He said the boy told him about that, and yet he could not repeat from the witness stand a single word that he said upon a single one of those delusions, saying that he had a poor memory and that he made no notes.

It is hard for me to understand the motives of men. It is difficult for me to tell what agency may be influencing the minds of these prosecutors that they will rake from the medical profession the samples that have been arrayed before you upon such flimsy, uncertain evidence as they give, distorting the truth and asking for this boy's blood.

I need not turn to the jail officials. I do wish, however, to say a word about it and only a word. There was not one single jail official who ever had a word of conversation with him about a single one of his delusions except one, who said the boy once commenced to talk with him and he turned away, for he did not care to hear about it, very properly, too. Each one of these jail officials said they simply saw him, they spoke to him now and then about his food and about his daily wants in prison life and that was all they knew. Yet they said, he is sane. They would have you believe that because this boy could tell the difference between the morning and the evening, could say good morning and good night, could tell the difference when he wanted a drink of water or a piece of bread, that therefore he was sane, and

that the evidence of these guards is better than the scientific testimony that has been trown upon this defense, which is sufficient to shelter him from any just imputation before any fair mind in the light of the civilization of the of the present day. They would ask you to believe these guards, men who knew nothing of what they spoke. I won't say they lied, for there is no evidence of that. They answered truthfully, but they knew nothing of the case and had tried to discover nothing about the case, but they came here to say that the boy knew how to say good morning and good evening, and that, they say, is stronger evidence than church and Brown and all the men who have made a life study of the insidious disease that afflictsthis poor hoy.

What facts do these guards bring out ? I wish to call your attention just a moment to that, and only a moment, for it seems to me hardly worth speaking of, but they called eight of these men to fill it up, and, gentlemen, when you think of the ten doctors that they called and the eight guards whom they called, it is the strongest condemnation of their case that could possibly be conceived by the mind of man. These guards ^{said} that he was sane because he could tell them his daily wants, because he could pass the time of day, because he could distinguish between his enemies and his friends, and one fact that Mr. Morrison paraded here with so much

show, to his evident entertainment, was that this boy was not insane because one day when his attorney visited him in his cell he kissed him.

It does not seem to me to furnish a mark of sanity.

It was paraded seriously and as a joke by Mr. Morrison, that this boy was sane because he could tell the difference between his enemies and his friends, and that in an impetuous moment, he kissed his attorney. Gentlemen, the human heart is a wonderful instrument, and when it is swung by the various passions and feelings that agitate the frame, it plays some marvelous tunes, and each one is peculiar to each separate human heart. The savage warrior sits beside the coals that are roasting his enemy to death, and the only expression that comes from him is a grunt of approbation at the sufferer's pain. So Mr. Morrison could see in this a joke and nothing else, that because this boy, surrounded by his guards and under sentence of death, penned in a prison, recognized a friend in those surroundings, who had come to him unsolicited, simply from a faith in the justice of his cause and from a devotion to the law, that he would recognize and appreciate that friend. Gentlemen, they may treat it or you may treat it as you will. I do not what the future is or may be, but if there ever comes a time when I shall be called before a just and righteous judge who views my acts according

to the motives and desires that urged me on, I would rather stand before that judge with that one token of the appreciation of this poor, demented boy for my devotion and friendship in his **cause** than with the fulsome praise of the press or the strongest adulation of the multitude.

A little babe will turn from its pain and its anguish and look lovingly and affectionately into its mother's face, and a crazy boy, surrounded by his guards, the death watch outside the door, waiting while the seconds of his life tick rapidly away, could tell a friend who stood for him and the law whom the state would outrage by a verdict.

This is substantially all as to the testimony of the guards. I cannot refer in detail, for the time is speeding fast, to the evidence of all the witnesses that have come here to ask you, to implore you, gentlemen, to save this state the disgrace of a horrible execution such as they wish. They are names which stand the highest in the medical profession in Chicago, they are names which stand unblemished and untarnished. They are men who showed by their evidence and by their position that they were men of integrity and truth, and it seems to me that I cannot understand the jury or the court that could brush aside the testimony of all the valuable witnesses in this case and take the careless and in some instances, worse than perjured testimony, of the men who seek to tie a rope around this boy's neck.

1087

Who has testified on the other side of this case? In the first place the men who have made insanity a study for years, and they have come here unanimously and uncontradicted giving their testimony for justice and humanity, and, gentlemen, you could believe them. You have no right to disregard them. There is Dr. Church, Dr. Brown, Dr. Head, Superintendent of the Insane Asylum of Wisconsin, Dr. Kuh, Dr. Bannister Dr. Oscar King, all these men connected with institutions for ~~years~~ years, all these men who have made the study of insanity a life study, who know whereof they speak and who have declared unqualifiedly that this poor boy is insane.

We have supplemented those by men in general practice who are known all over the city of Chicago and to the medical profession of the ~~United States~~ United States. Here is the aged and the honored Dr. Andrews, known to every man who has ever had reason to know a physician, the principal of the Chicago Medical College, a man who has practiced medicine for years in Chicago, a man of honor and attainment, who has come here to give his testimony in favor of saving this boy's life.

We have Dr. Ephriam Ingalls, almost as well known, more venerable, a practitioner for forty years in Chicago, who says without hesitation, without doubt, that this is a lunatic on trial before you to-day.

We have Dr. Stevenson, one of the best known of the women physicians of Chicago, a woman of breadth and attainments, well known all over the city, who gives her testimony in this case.

We have Dr. Alexander and Dr. Hunt, who for years have made a study of insanity, who know whereof they speak, who give their testimony unreservedly to the insanity of this poor boy.

And you, gentlemen of the jury, are asked to disregard it all. You are asked to throw away the testimony of these men and women of attainments, you are asked to throw away all the science and the learning of the past, and you are asked to take the testimony in their place of guards who stood beside the cell door and peered in at this prisoner under sentence of death, and you are told that this testimony is the best; that you can excuse your conscience and your judgment by throwing away the testimony of these men of learning and intelligence who know whereof they speak, and taking the testimony of guards so dumb that you could scarcely draw a word out of them upon the examination before you.

That is not all. What is the relative means of knowing of these men? All the guards together never talked with this boy an hour in their whole lives. All these physicians who have testified on the part of the state, with one excep-

tion, and that is Dr. Caldwell, did not visit him over fifteen minutes and failed to ask him a single question about these delusions which most of them knew were present.

They went there to find reasons for hanging, they went there to make excuses for your conscious, they went there to prejudice your judgment, they went there to extort reasons from this weak mind, not to investigate the case and to ascertain the truth. Gentlemen, there was no chance, no excuse on earth for their being misled.

Let me ask you as men of sense, let me ask you as honest men, if you have a little son or a little daughter, and you suspect that the great affliction of insanity may have been visited upon them, the great affliction, the greatest that can be visited upon mortal man -- not the crime of insanity, but the affliction which the Infinite places upon some of his unfortunate children for some unknown reason which we cannot solve -- if one of your children were suffering from this ~~the~~ disease and you would call even old Dr. Corbus, would he not ~~ask~~ ask you everything about that child, would he not ~~ask~~ ask you what the child had said, what it had done, inquire for its hallucination, inquire for its delusions, find out everything he could, and then would he not gently and tenderly take that little child, get his confidence, honestly, carefully and patiently searching for the truth, and inquire about each of those delusions to find out the state of its mind?

Gentlemen, it makes my blood boil with indignation to think of the damnable course of these men who disgrace the medical profession; these men who have used a high and divine calling, that of the saving of human life and the alleviation of human pain, who are called here by these attorneys, and who went into that jail, imposing upon this poor, weak mind, who got his confidence through deceit and lies, and then after that failed to ask him the very things that would manifest his state of mind. They had no right not to know his condition. Had they been honest men they would have inquired of his antecedents. They would have asked who was his father, who was his mother, was his grandfather insane, how many brothers and sisters did he have, what were his delusions, what was his faith, what did he believe; and then on all of those they would have made the strictest inquiries to find out the truth.

Ah, but gentlemen, these so-called doctors went into the prison pen of that poor boy as a ferret goes down into the hole of a rabbit, to drag forth their victim. They asked their questions as a hunter would set a snare to catch a bird and they used the power of the State and their superior intellect and learning, not to find out whether the State was about to make a sacrifice in the shape of a miserable victim, but to find excuses to salve your conscience,

stultify your intellect, overcome your reason and help in the erection of a scaffold and the tying of a rope.

These men scarcely dispute but this boy is crazy. But to excuse themselves and you they ask you to find that he became insane long ago. It is hard for me to deal with patience upon a state of facts like that; That the great State of Illinois could say, "Gentlemen of the jury, you may hang a lunatic provided he was insane on the 21st day of February, but you must save his life if he became insane on the 22nd." It is beyond my ken. And yet half the argument of these men was an appeal to you gentlemen to hang this man unless his lunacy dated from the 22nd day of February.

Gentlemen, wherever the English language is spoken, wherever the spirit of liberty has prevailed, wherever we have the semblance of liberty and of freedom, it requires the judgment and conscience and decision of twelve jurors before any human being can suffer death. Before this boy can be offered up as a sacrifice to the state, each one of you gentlemen must consent that in his poor, weak, deluded condition he should suffer this cruel death. You are the ones; you cannot excuse your judgment nor your conscience by charging it to other juries or to other courts. It has been the shield of freedom and the shield of life for centuries, this trial by jury, and that protection and

that shield is as available to this poor, demented boy as to anyone of you, gentlemen of the jury, if sometime you might through some great affliction stand in his stead. And yet these lawyers, these lawyers have begged of you to hang this boy, for the difference of a day, out of technicalities. Shame on the men who would represent the State of Illinois and beg a jury to hang a prisoner because he became insane on the 21st instead of the 22nd. A man who would make an argument like that ought never to rest upon his bed at night again.

But, gentlemen, what are the facts in this case? They say his condition is the same. What is the evidence? It is almost undisputed that he is now a lunatic, almost undisputed. When did this arise--I have no doubt that since nature made him he has been approaching lunacy. I have no doubt that he is one of those unfortunate beings which for some mysterious way, beyond the ken of man, the great Supreme Being, wise or unwise, knowing or unknowing---I cannot tell--but for some mysterious way, it laid its heavy hand upon this boy's brain and made him what he is. I beseech of you, gentlemen, knowing his affliction, knowing the heavy hand that God Almighty laid upon him, you will not add to the burdens which came with him into the world. He may have been more or less insane for many years. But does not the

evidence show that his condition has materially changed ?
Is there any doubt of that ? Let me see. I can rest
his case on that lone, confiding in your judgment, confiding
in your intelligence, confiding in the broad humanity which I
know must permeate every human being that lives in this civi-
lized land, except, perhaps, the prosecutors in this case.
I can rest this case upon the testimony of these witnesses
you have seen who have seen this marked change. And what
is it ? Gentlemen, I wish to call your careful attention
to that, your patient attention to it, in view of the damna-
ble effort made by these men to hang a man because his
lunacy dated from the 21st instead of the 22nd. Father
Dore swore he visited him day after day~~s~~. He talked with
him more than all their physicians and all their jailers
put together through all their visits. He was a priest,
and this boy was reared ^a Catholic. It was not strange
that he should gain his confidence. He believed up to
the day of that execution that the boy was sane. He swears
he saw a marked difference, that he saw a marked change,
that he wrote rambling letters, saying he would excommunicate
the priest, that he talked of being the successor to St.
Peter, the Vicegerent of Christ ^{on earth}, and standing in a peculiar
relation to Christ. And I want to say to you, gentlemen of
the jury, what Mr. Todd has said, and what I implore you to

remember in this case, that up to the date set for his execution not one human being in this case has testified that ever in the world did he say he was the vicegerent of Christ or the successor of St. Peter, or that he had any of these different religious delusions. And how do they explain it? By the breath of counsel they say it is a sham, that the boy is fooling.

You saw him. Is he shamming? You heard his testimony. True, it was coherent and reasonable on some things, but detaching those things it was as wild and unreasonable as any lunatic's could be. Scarcely a physician whom they have produced says that this boy is shamming. Dr. Caldwell is all, and Dr. Caldwell is about the biggest humbug that has been developed in connection with this trial. He is the man who made notes of all unimportant things and purposely omitted to say anything upon important ones. All these other witnesses admit the sincerity of the boy, admit he told the truth, and universally it is shown by his letters and his words that never a single thought of this kind came into his brain until after the time set for his execution.

And is it strange? Why, gentlemen of the jury, there are instances where men's hair has grown white in an hour. There are instances where under some great and sudden emotion or some great blind terror men have fallen dead in their

tracks without bodily harm. There are instances where insanity has come upon men like a stroke of lightning from the heavens above, and here was this poor, weak, friendless boy, standing for weeks and months in the shadow of the gallows, weak in intellect, weak physically, born deformed, standing with the noose about his neck for weeks and months. Is it strange that insanity grew upon him, that new delusions developed, that there was a material change in his mental condition from what it was before ?

It does not rest on Father Dore alone. Dr. Archibald Church, whom the State first employed, swears that his condition is materially changed; that these new delusions first came after the day set for the execution.

Dr. Walls, who visited this boy every day for five months, one man who came out of the jail and gave his voice to humanity, one man who had been connected with the State and had not lost his conscience and his heart; one man whose associations in this building had not torn from him every remnant of the humanity that ought to belong to every civilized being of to-day. He was the jail physician, he saw him every day for five months, and he says that since the day set for the execution his disease has progressed rapidly and materially; that new delusions have developed; that he is much more insane now than then.

And who disputes it ? Where is the evidence against it ? These death watches who looked through his grated doors, these doctors who deceived him and who seek to deceive you, these men who have never had a ^{word of} conversation upon these delusions, these men ~~along~~ stand to contradict it. Why, gentlemen of the jury, I could rest this case with the utmost confidence upon the testimony of these witnesses who saw him before and since, saying nothing about the testimony of all of our other medical men, who, while they did say that this boy had been insane for years, still said that under these conditions no doubt the disease had rapidly developed.

Gentlemen, your own common sense will tell you that. Here is a boy of weak intellect penned in prison, only waiting for the doors to open to step upon the gallows. He stays there for months and months surrounded by his guards, subject to the excitement of the hour. Is there any possible doubt that his condition would change ?

Gentlemen, reprieve him according to the laws of Illinois, according to the humanity of the day, according to the evidence in this case. Reprieve him but one year and that question I believe will be settled forever, the boy will be dead and humanity and the law will live.

That is not all. Not only do these delusions come upon him, not only was the evidence of insanity more marked and

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the disease progressed further, but it is shown here by his own mother and his faithful brother that after the day set for his execution he turned against them, the friends of his boyhood, the friends of his adversity, the ones who had stayed by him through the great trouble and tribulation. That is a sure sign, as stated by all these medical men, of the progress of this disease.

He turned from the priest. Here was a boy bred a Catholic, raised to understand and believe in the rites of his religion, and the priest coming to him in that last dark hour, when he could only look for the rising of to-morrow's sun as the setting of his own; when he could only think of to-morrow as being the day that he should meet death and in that last day, when, I say, all good Catholics, even though they might have wandered far from the fold, would turn their thoughts ~~XXXX~~ to heaven and turn their thoughts to the priest for consolation and help-- in that last moment, the fathers who went there to console and comfort him found this boy, raised a Catholic, turning from them, asking no consolation from the church, in defiance with all his past, in defiance with all his nature, of every word he had ever read, of every word he had ever spoken, showing that this mania had developed to the extent which we find it now.

1098
Gentlemen, there is no contradiction or dispute of this

evidence. It stands here alone. No one could dispute it. It is only disputed by the breath of counsel, that he is shamming. Do you believe it? Are his acts the acts of a man who is feigning insanity? Can you excuse your consciences for sending him to the scaffold on the ground that this poor, weak boy is playing a part? I do not think it. I do not think these counsel believe it, nor their doctors do not believe it, and there can be no doubt that his condition is very materially worse than it was at the time of his reprieve, and is growing worse day by day.

But Mr. Morrison says, how insane is he? How insane! Let me see. Alas for the rarity of Christian charity under the sun. Alas for the humanity of men who, through some mysterious means become attached to the State, and to what they call the administration of justice. Gentlemen, in this case they do not represent the State. In this case my faithful associates and myself stand here as representing the State, and we are pleading with you for the honor of the great State we love, for the honor of the proud city in which we dwell, to save its name and its fame from the terrible blot that these would be defenders of her honor would place upon it.

How insane do they want ~~any~~ man to be to say he shall not be hanged? Mr. Morrison read from his book that an in-

sane man ought not to be hanged because standing upon the scaffold he might offer reasons why he should not be. Is he fit to offer such reasons? He stands here to-day and has stood here pleading justification, saying that he was justified by his conscience and his God for taking this life, unable to give reasons, unable to defend himself, unable to say a word, and you gentlemen know it.

Another reason is that the humanity of the law, the humanity of the law, gentlemen, which in the progress of ages has been growing and developing and humanizing until the law itself, fairly administered and honestly carried out represents the best conscience and the best intellect and the best reason of the world--- the humanity of the law says that a lunatic should not suffer death upon the scaffold. Is he insane enough for that?

They say that because this boy knows the difference between life and death therefore you should hang him. Because he appreciates his condition and surroundings, that he is sane enough to hang. Is it so? Why, gentlemen, I speak to you, believing that I am speaking to human beings. I appeal to you, believing that in your hearts there are beats for humanity, believing that you can feel those sentiments that are the only humanizing and civilizing sentiments of the age, the only difference between the savage of the plains and

the civilized beings of to-day. Do you agree with Mr. Morrison that because he knows the nature of an execution that therefore he is to suffer death?

I saw a little child in this room awhile ago. I will guarantee the Sheriff could take that little child by the hand and lead her up the steep stairs to the gallows, could point her to the noose, could tie her in the shroud, could explain to her the drop, could show her the tightening rope and the fall through space, and that the little child would know that that meant death, but I do not believe that even Mr. Morrison would say that for that a child should suffer death.

He knows what is death and what is life. So does all animal life and vegetable life as well. The instinct of life tells us that. Why, the delicate flower folds its leaves and petals at the approach of night and frost, and the ox in the shambles grows crazy at the approach of death, and the helpless young and the helpless old, and the born ~~maniac~~ imbecile and the born lunatic alike-- in fact, all who live, feel a shudder at the approach of the waves of the cold, dark sea. All life knows what it is to die. That is not the test. Does this boy know that when he goes upon the scaffold he goes there to expiate a crime, that he goes there because he has offended against the laws of his conscience

and the laws of his God. Does he know that he goes there as a condemned felon, deserving to meet death, and that therefore, according to his own belief and training, he should make his peace with his God ?

Aye, he may know what is death. So do we all. Many of us have stood by the bedside, ~~not~~ by the dying bed of a little babe. We know it can feel the approach of death., We know that every sense may be dulled by age and disease, and yet we know that the sufferer knows when the hand of death comes upon him. But that is not the test. I ask you, gentlemen, in the name of the humanity which must animate your hearts, in the name of the civilization which you have received from the present and the past whether you should say that a human being should be led to the scaffold and hanged by the neck simply because he knew the meaning of death ?

Talk about the humanity of the law! That would be the barbarism of the law, and a State that would enforce a law like that or have a law like that deserves no place in the civilization of to-day. This man does not understand it. He would go to the scaffold believing in the justice of his cause, believing that he was right, believing now what he has believed, believing that he was the successor of St. Peter, refusing the consolation of the church, believing he was not

suffering for a crime, but that he was sacrificed for humanity.

Gentlemen, I am sorry my time is so near gone. I would like to have said much more, for I believe in this case as my very life, and I feel it is not only important to this boy, but that your verdict will go toward making history. It will count for civilization or barbarism. It means much to him, it means more to us. It means much to him and his poor mother and his brother and friends, but it means more to this great State which we love whether in this day and generation, in the nineteenth century, we shall put a man to death of the mental calibre of this. The question of insanity is largely a modern one. In ancient times lunatics were chained and prisoned. They were executed upon the scaffold. The world cared nothing for them. They were confined in filthy pens. They were loaded with chains. All sorts of indignities were heaped upon them. But we have builded asylums, we have learned something of humanity, we have become more civilized and enlightened as the years have moved along, and we have recognized insanity as a disease and treated kindly and patiently and carefully those who have received this terrible affliction from the hand of God.

They tell us his life is not worth saving; that he may be insane, but what of it? Hang him anyway. Gentlemen,

I cannot tell what harm would come from hanging a crazy boy. I cannot analyze it, you cannot, but I don't know that in the wise provisions of nature not a sparrow falls to the earth unheeded. I know that not a drop of water falls into the sea but it creates an effect upon every wave in all the oceans of the earth. I know that not a drop of human blood is shed except it creates an impression on the world; and I believe, gentlemen, that to lead this poor lunatic up the steps of the scaffold, to sew him in a shroud, to tie a rope around his neck, to drop the scaffold from his feet, to leave him dangling in the air, in the presence of the humanity of to-day, would work infinite harm to infinite human beings on the earth. I know there is no power on earth to tell how many hearts would be calloused, how many souls would be wrecked, how many blood stains would come upon the consciences of men. I know, gentlemen, without analyzing it and without knowing how to analyze it, that that terrible spectacle would leave a stain of blood upon countless thousands of babes who lie sleeping in their mothers' wombs.

Ages ago, at least eight centuries ago, a great poet and student of philosophy and of life studied the questions of human nature as men have scarcely studied them to-day, and he arranged various human beings in the shape of vessels fresh from the potter's hands, and he made each one of these pots to

plead its cause. And one poor, deformed vessel spoke up from amongst the rest and said: "You leer at my misshapen form, but did the hand of the great potter shape?" Gentlemen, here is Prendergast, the product of the infinite God, not of his own making. He comes here for some inscrutable reason, the same as you and I, without his will, without his knowledge, because the infinite God of the infinite universe saw fit to make him as he willed. His fault is not the fault of Prendergast. It is the fault of the infinite power that made him the object you find to-day. I beseech of you, gentlemen, do not visit upon this poor boy the afflictions which God Almighty placed upon him for some inscrutable reason unknown to us.

I have finished this case. I believe, I trust, that you gentlemen will take it feeling the same sacred duty, the same care, that I have felt. This poor, weak, misshapen vessel I place in your protection and your hands. I beg of you, gentlemen, take it gently, tenderly, carefully. Do not, I beseech you, do not break the clay, for though weak and cracked and useless it is the handiwork of the infinite God.

Adjourned until July 3, 1894, 10 o'clock A.M.

your deliberations.

It may not be inopportune to note that this trial, perhaps more strongly than any in the history of our jurisprudence, illustrates the patience of our people and their devotion to the law.

Patrick Eugene Prendergast, the prisoner at the bar, on the 28th day of October, 1893, when the sun of the World's greatest exposition was setting in this city and the fame of Chicago was being sounded in all the languages of the earth, went to the residence of Carter H. Harrison, Mayor of the city, and without warning, took his life. No vengeance was visited upon the prisoner; on the contrary, in the manner provided by law, he was regularly indicted by a grand jury, and, on the 6th day of December following, his trial was entered upon and continued until the 29th day of the month, when a jury of his countrymen, after due deliberation, pronounced him guilty of murder, and by their verdict declared that he should suffer the penalty of death. Forty-five days thereafter, on the 14th of February, arguments upon his motion for a new trial were commenced and continued until about the 24th of the month, when a new trial was denied, and the solemn sentence of the law pronounced upon him and his execution fixed for the 23rd of March. His case was then taken for review before the Supreme Court of

the State, which, after consideration, declined to interfere with the sentence of the Criminal Court, or to grant a stay of execution. Other remedies were tried on behalf of the prisoner, but without a different result.

Thereupon, on the 22nd day of March, the day next before the day fixed for his execution, there was filed in this Court a statement under oath alleging in substance, that since the 24th day of February, the day of the judgment and sentence of the Court, the prisoner had become and was then insane or lunatic. Such proceedings were had that the trial now in progress was ordered, and now, more than eight months after the commission of the murder, after all the means ordinarily known to the law have been tried in his behalf, we sit to determine whether the prisoner has such mental capacity as to make him a fit subject for the just punishment of a violated but humane law.

The law of this State provides in terms that a lunatic or insane person shall not be found guilty of any crime, provided the criminal act was committed when such person was in a condition of insanity. Besides this general law, we have the statute under which this proceeding is had. It is as follows, and I quote from the statute :--

*A person that becomes lunatic or insane after the commission of a crime or misdemeanor, shall not be

tried for the offense during the continuance of the lunacy or insanity. If after the verdict of guilty and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. If after judgment and before execution of the sentence such person become lunatic or insane, then, in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all of these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of the impanelling, insane or lunatic."

Thus you see that the wisdom and humanity of the law, not only provides that a person who commits a crime while lunatic or insane shall not be convicted, but deems it possible that a man may lose his reason after the commission of a crime, and between any one of the several stages of his trial, before execution. Note the several stages: --

First: If a person become lunatic or insane after the commission of the offense, he shall not be tried while such lunacy continues:

Second: If sane when tried, he become insane after conviction but before the court pronounces judgment

judgment shall not be given while such lunacy continues:

Third; If after judgment and before execution, where the case is capital, that is where the prisoner is sentenced to death (as the fact is here) the execution shall be ~~executed~~ stayed until the recovery of such person from such insanity or lunacy.

What is meant by insanity or lunacy? From the evidence introduced you have not failed to notice that the medical profession differ as to what is insanity or lunacy. It is no part of our duty to refine on this question. The Supreme Court of this State has laid down the rule affecting the question of insanity where a person is charged with crime, which is plain and easily understood. It is:

"If at the time the crime was committed the defendant knew that it was wrong to commit such a crime and had the power of mind to choose either to do or not to do the act and to control his conduct in accordance with such choice, then he ought to be held responsible, although he was not entirely and perfectly sane."

This is the doctrine which applied to the case of the prisoner when on trial for the murder.

In this proceeding the question for you to determine simply is, Does he understand and appreciate the fact

that he has been tried and found guilty of murder ?

Does he understand the nature of this proceeding?

Is he so far sane as to be capable of making preparation for death ? Or in a word, is he so far sane that it would not be contrary to humanity to execute him ?

This is the test, and whether he be sane or insane in any other sense, does not concern us to inquire. If you believe from the evidence that the prisoner has insane delusions in respect to some subjects, yet, if you are further satisfied from the evidence that none of these delusions render him unconscious of his present condition or unfit for making preparation for death, then you are instructed that his delusions do not constitute such insanity or lunacy as to afford a reason for staying the execution of the sentence of the Court.

Under our law every person accused of crime, is entitled to one fair and impartial trial, and no person can be punished until convicted according to law, by an impartial jury of twelve of his fellow-citizens, freely and fairly chosen. More than that, no man is entitled to. The law does not contemplate that a person accused of crime, having been once fairly tried and convicted, shall have a second trial. When the prisoner was placed upon his trial in December, for the murder of the late Carter H. Harrison, he pleaded "Not guilty

0111

ty", and as a defense interposed what is commonly called the plea of insanity; that is it was claimed that when he committed the act he was insane to such an extent that he was not responsible ^{and} under the law could not be convicted. The jury heard the evidence on that issue, both for and against the prisoner, and by their verdict decided that he was not insane, but on the contrary was sane and responsible. This finding was approved by the court, and on the 24th day of February judgment of death was pronounced against him. The effect of the verdict of the jury and the judgment of the court conclusively settled the fact that the prisoner was sane and responsible at the time of the killing, at the time of his trial and on the 24th day of February, the day of the judgment and sentence of the Court, and by that verdict and judgment we are bound.

The petition which forms the basis of this inquiry states, first, that the prisoner has become insane or lunatic since the 24th day of February;

Second: That he was insane or lunatic at the time of the filing of the petition on the 22nd day of March. The oath which you took requires you to inquire and a true verdict return, whether the prisoner was insane or lunatic at the time you were impanelled. If you believe from the evidence and your observation of the prisoner that he became

insane or lunatic after the 24th day of February, or is now insane or lunatic, it is your duty to so find and return a verdict accordingly. If on the other hand you find from the evidence and your observation of the prisoner that there has been no substantial change in his mental condition, and that he is not now insane or lunatic, it is your duty to so find and return a verdict accordingly.

All men are by law presumed to be sane and responsible, and this presumption continues until removed by evidence. The prisoner having been found sane and responsible on the 24th day of February, the law presumes that he continues so until evidence shows the contrary. If you are satisfied from the evidence and your observation of the prisoner that his mental condition is the same now as at the time of his trial, you will be justified in finding that he is not insane or lunatic, for if his condition has remained the same ever since his trial, to find that he is now insane or lunatic would be to disregard the verdict and judgment of the court which pronounced ^{him sane} ~~him sane~~, at the time of his trial, and would in effect be simply a retrial of his case.

Something has been said upon the doctrine of a reasonable doubt, as to whether the prisoner is insane or lunatic: That doctrine has no place here; this is not a criminal trial. In England and America, in all criminal

trials, the prosecution must prove the accused guilty, so conclusively as to exclude every reasonable doubt of his innocence; and where before trial and judgment in a criminal case, the question of the defendant's sanity is raised, the prosecution must prove beyond a reasonable doubt that the accused was, under the law, sane and responsible at the time of the commission of the crime. This doctrine goes only to the ~~extent~~ ^{question} of guilty or innocence, and grows out of the anxiety of the law lest some innocent man should be unjustly convicted. It is intended as a shield for the innocent, not a protection to the guilty. Here no question of guilt or innocence exists. The prisoner after a fair and impartial trial stands before you convicted of murder and condemned to die, the only question for you being, is he in a fit condition to undergo the sentence of the law, and this question you must determine from all the evidence in the case, including your observations of the prisoner. Of this evidence you are the sole and exclusive judges. The Court is not permitted to express to you any opinion as to the facts, nor to control your conclusions derived from their consideration, nor to influence you as to your opinion of the facts, by anything said to you in these instructions, or otherwise in your presence.

1114

You are also the exclusive judges of the weight

to be given to the evidence of the different witnesses who have appeared before you. The law permits professional and non-professional persons who have had opportunities for observing the conduct and demeanor of the prisoner, who have conversed with him, to testify and express their opinions to you as to his sanity or insanity, and the evidence of such witnesses must be received by you and be given such weight as in your judgment it is entitled to. You have the right to consider among other things their relative intelligence, their opportunities for observation, their fairness, or bias if any, or the probable value of any opinion they may have expressed, in so far as these things have appeared from the testimony of the witnesses or their manner and appearance on the stand.

Notwithstanding what I have said to you as to the force and effect of the verdict of the former jury and the judgment of the Court and as to the necessity of ~~proving~~ proof of a change in the prisoner's condition since the former trial, which I trust you will keep in mind, I desire to add, if after a fair and candid consideration of all the evidence in this matter, and your observation of the prisoner, you reach the conclusion that the prisoner is now insane or lunatic, that he does not understand the nature of these proceedings, that he does not understand his present situa-

tion, that he is incapable of making preparation for death; in short, that it will be inhuman to enforce the sentence of the law, then you will find him insane or lunatic. I state this to you freely, because you have been drawn from the body of the people: You have the power of observing and reaching a just conclusion. You have patiently heard, and I believe will carefully consider the entire evidence, and will render your verdict uninfluenced by passion, prejudice or sympathy. If the prisoner is a fit subject for the execution of the sentence of the law he deserves and should receive that punishment. If on the other hand twelve jurors, good men and true, having in their keeping the honor, the good name and the justice of the State, reach the conclusion that such an execution would be inhuman, then it ought not to take place. And having given this subject such full and fair consideration, as I am sure you will, such verdict as you may render in this matter, will settle the controversy for all time and be accepted as conclusive, by an enlightened public opinion.

I cannot too strongly urge that you continue to manifest the same patient desire to arrive at the truth, which I have already noted, and that you will earnestly endeavor to reach a verdict. Should you not at first agree, remember that it is your duty ~~to~~ to reason together, fairly and patiently, and having due regard for the opinion of each

other, you will be able, by discussing the evidence in a kindly way, to agree.

The matter is now in your hands; do your duty under the law and the evidence, without regard to the consequences of your verdict.

If you find that the prisoner is not insane or lunatic, the form of your verdict will be:

"We the jury find that the prisoner, Patrick Eugene Prendergast, is not insane or lunatic.

If you find the contrary, that he is, the form of your verdict will be :

We the jury find that the prisoner, Patrick Eugene Prendergast, is insane or lunatic.

Gentlemen, you will retire and consider your verdict.

At 10:20 A. M. the jury retired, in charge of the bailiffs, to consider their verdict.

The Court adjourned.

The defendant, Prendergast, sat sullenly in his chair for five minutes, and then asked the bailiff to take him back to his cell.