

CLASSICS OF THE BAR



VOLUME VIII

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MODERN HISTORY

OF THE UNITED STATES

AND THE WORLD

BY J. H. B. HARRIS

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STORIES OF THE WORLD'S GREAT LEGAL
TRIALS AND A COMPILATION OF
FORENSIC MASTERPIECES

BY
ALVIN V. SELLERS

VOLUME EIGHT

BAXLEY, GA.

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*Mural Painting in the
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THE WISDOM OF THE LAW

Wisdom Attended by Learning, Experience, Humility, Love,
Faith, Patience, Doubt and Inspiration.

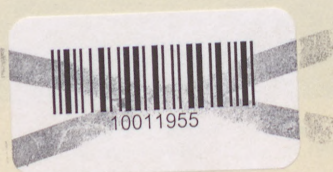


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CONTENTS

	PAGE
THE WISDOM OF THE LAW	<i>Frontispiece</i>
THE TRIAL OF ROSCOE ARBUCKLE	11
Speech of Mr. U'Ren	13
Speech of Mr. Schmulowitz	33
Speech of Mr. McNab	62
Speech of Mr. Friedman	98
THE TRIAL OF CLARENCE DARROW	140
Speech of Mr. Darrow	141
THE TRIAL OF EDWARD T. JOHNSON	218
Speech of Mr. Voorhees	218

Classics of the Bar

The Trial of Roscoe Arbuckle

TWO mistrials having previously resulted, there began on March 20, 1922, at San Francisco, California, the third and final trial of Roscoe Arbuckle, popularly known as "Fatty" Arbuckle, celebrated moving picture actor, who was accused of being responsible for the death of the beautiful screen actress, Virginia Rappe, which had occurred in that city in November of the preceding year.

A post-mortem examination indicated that peritonitis, brought about by a rupture of the bladder, was the immediate cause of Miss Rappe's death; the prosecution contending that this had resulted from an unlawful assault made upon her by the defendant at the St. Francis Hotel, where she had gone as a guest, and where an informal party was being given in a suite of rooms occupied by Arbuckle and two of his friends.

There was no eyewitness to the alleged assault but it appeared from the evidence, and the fact was strongly stressed by the prosecution, that for a period of time — the exact duration of which was indefinite under the evidence — Arbuckle was in one of the rooms alone with Miss Rappe, with the door

closed and locked, a room which she had entered in apparent good health and where, the prosecution averred, the mortal injury was received.

The charge was involuntary manslaughter — homicide committed without malice but in the perpetration of an unlawful act.

The defense asserted the true state of facts to be as follows: The defendant and his friends occupied a suite of three rooms. Room 1220 was the reception room or parlor; on its left was room 1221, while on its right was room 1219, both being bedrooms. The visiting guests were primarily in the reception room but, as occasion required, indiscriminately went into the other rooms of the suite. Miss Rappe left the reception room and proceeded to the bathroom of room 1221. Finding this bathroom occupied she re-entered and crossed the reception room and went into room 1219, unobserved by the defendant. Shortly thereafter the defendant, who was not fully dressed and was wearing a bath robe, entered 1219, which was his own bedroom, with the intention of fully dressing, and, to secure privacy, locked the door between the two rooms. The defendant testified that there was no one in room 1219 as he entered it, that he went into the bathroom adjoining, and here he said he found Miss Rappe ill and helped her to a bed.

The defense sought to maintain that the fatal affliction of Miss Rappe was either due to natural causes or, if to some external force, it was a force

with which the defendant had no connection and of which he knew nothing; that he had committed no wrong upon her and was absolutely guiltless of the crime charged.

The trial took place in the Superior Court in and for the County of San Francisco and was presided over by Hon. Harold Louderback. It lasted several weeks and much evidence was offered by each side, and covering a wide range.

The chief counsel for the defense was Gavin McNab, one of the famous lawyers of the West, assisted by his office associate, Nat Schmulowitz, together with Milton M. Cohen, Charles H. Brennan and Joseph McInerney.

For the State appeared District Attorney Matthew Brady and his assistants, Milton U'Ren and Leo Friedman.

In the following arguments of Mr. U'Ren and Mr. Friedman for the State, and Mr. Schmulowitz and Mr. McNab for the defense, will be found the story of this fatality from their differing viewpoints, and forceful presentations of the respective contentions in this world-famous criminal case.

Speech of Mr. U'Ren

MAY IT PLEASE THE COURT, AND YOU, LADIES AND GENTLEMEN OF THE JURY:

ON the third day of September, 1921, there left the city of Los Angeles a young woman, named Virginia Rappe, in company with Mr. Al Semnacher

and a Mrs. Delmont, for the purpose of visiting the town of Selma. They traveled by automobile, went to Selma, spent the night there, and then decided to come to San Francisco and then go back to Los Angeles. They arrived here on Sunday night about the hour of 9:30. Mrs. Delmont and Miss Rappe occupied one room at the Palace Hotel; Mr. Semnacher occupied another. On Monday morning, about eleven o'clock, a telephone call came to Miss Rappe, in response to which she went to the St. Francis Hotel, to the apartment then being occupied by this defendant, Roscoe Arbuckle, together with Fred Fischback and Lowell Sherman, his companions. A few minutes after Miss Rappe arrived Mrs. Delmont came up, and a little later Semnacher followed.

There is no doubt from the evidence that there was a party going on at the St. Francis Hotel on this day. A Babylonian feast was in progress there. The defendant had sumptuous quarters with his friends. He had come up here to have a "good time," and upon word being sent out by his friend Fischback that "Fatty" was in town, the people poured in. Food was spread, wine and liquor were served, and this modern Belshazzar sat upon his throne, surrounded by his lords and their ladies; there was music, feasting, singing and dancing.

Who the host of that party was, the defense will dispute. They will claim in their arguments that the host was not this defendant, Arbuckle, but was

some other person, either Fischback or Sherman, that the guests were self-invited, and that Arbuckle had nothing to do with their presence there. Opposing this, however, is the proof that Arbuckle occupied room 1219, that he was the most distinguished person in the company, that this was called Arbuckle's party by those who attended it, and that Arbuckle paid the bill.

Who were the guests? The testimony shows that they consisted of Lowell Sherman, Fred Fischback, Mrs. Delmont, Miss Rappe, Al Semnacher, Ira Fortlouis, Zey Prevost, Alice Blake, and some others whose names do not appear and whose names we have been unable to ascertain. And it is upon the testimony of these persons, who were in Arbuckle's apartments, who drank of his wine and ate of his food, that the People must largely depend for direct evidence connecting him with the death of Virginia Rappe.

You have seen some of these witnesses upon the stand, and you have observed the manner in which it was necessary for the People to proceed in order to produce their testimony. For hour after hour Mr. Friedman wrestled with Zey Prevost and Alice Blake to try to get them to tell their story in some intelligent, intelligible manner, so that you could determine in truth what really happened up there in the St. Francis Hotel. And you know—every member of this jury knows—that any evidence that either of them gave against this

defendant was true, although not the whole truth. You know from their attitude that if they could have helped this defendant any more than they did help him, *without committing absolute perjury*, they would have done so. We may be sure that any testimony given by Zey Prevost or Alice Blake to the detriment of this man on trial, was truth wrung from reluctant lips.

Let us, ladies and gentlemen of the jury, come to the time that Miss Rappe appeared in Arbuckle's rooms on the afternoon of September the fifth. It was there that she received a rupture of the bladder from which she died, and the only issue here is, what caused her bladder to rupture?

The defense contend that Miss Rappe had suffered for years from chronic cystitis, a diseased condition of the bladder, which predisposed it to rupture. Would it not be strange if, after years of such suffering, the bladder should only choose to burst spontaneously at that particular time and place, when Miss Rappe and this defendant were in a room together, the door closed and locked?

The People contend it could not have happened that way, and that when Miss Rappe entered room 1219 of the St. Francis Hotel, her bladder was only in such condition as probably exists in cases of ninety per cent of the women of today, and was no more susceptible to a spontaneous rupture than the organ of any person in this court room.

A commission was appointed by this court, con-

sisting of three eminent pathologists, one of whom was suggested by the court, one by the prosecution, one by the defense. This commission, consisting of Dr. William Ophuls, Dr. Ervin and Dr. Rusk, have presented a report to you, which they themselves have interpreted, and which shows that the condition of cystitis existing in the organ of Miss Rappe at the time of her death did not contribute in any way to the rupture.

Cystitis, as defined here by all the medical witnesses, is merely an inflammation of the mucous membrane of the bladder. When it progresses beyond the mucous membrane and invades the bladder wall it becomes, as Dr. Harrison told you, something more than cystitis; the bladder wall then itself becomes affected and weakened. But this report tells us that this bladder wall was not impaired; that the cystic condition did not, in any way, affect the bladder wall and did not predispose the bladder to rupture.

As to Miss Rappe's appearance and symptoms indicating her physical condition during her lifetime evidence has been presented by both sides. The People have produced in this case witnesses who knew her when she was a little girl six years of age. We have produced witnesses who were with that girl practically from her early childhood up to within a few days of her death.

Mrs. Fox knew her from sometime in the '90's up to about 1914, and was with her nearly all the

time during that period. Mrs. Hardebach also knew her as a little girl, and was with her, with the exception of a few years, right up to the time she died. We also have presented the young lady, Miss Hansen, who was with her constantly every day for a month or two prior to her death; and we presented the gentleman who directed her in motion pictures. We have presented the young man who drove her automobile, and we have presented a clerk of the hotel where she stayed for a year and a half.

And these people tell you what? They tell you that this young lady was absolutely normal in every respect; that they did not see a single symptom of this alleged disease which the defense would make you believe existed, and which the defense would ask you to believe caused her death.

We have the testimony of one witness for Arbuckle, and only one witness who testified as to seeing Miss Rappe in any condition that approximated her condition as it existed in room 1219 of the St. Francis Hotel on the afternoon of Sept. 5, 1921, and that witness is Mrs. Frances Bates, of Chicago. You remember how, upon her direct examination, she testified with such positiveness that she and Miss Rappe were working for Mendel Brothers in 1913. You remember also that the superintendent of the store came with his records, which showed that Mrs. Bates went to work there in 1909 but quit in 1910, and never went to work

again, and that she is the only Frances Bates who ever worked for the store. Those records showed further that Miss Rappe herself worked there in 1912 but not in 1913; moreover, that she did not work there at any time that Mrs. Bates was there.

With Mrs. Bates and her story fading out of the picture, there is practically nothing left upon which the defense can base any real claim of evidence of pain or suffering similar to that undergone by Miss Rappe when she was discovered writhing in agony upon the bed in Arbuckle's room.

There is no question that Miss Rappe was in this room of the St. Francis Hotel on the afternoon of September the fifth. It appears that she first went into room 1221 to go to the bathroom, that she could not get into the bathroom of 1221 because it was occupied, and returned to room 1220, and then went into room 1219, and that this defendant followed her into room 1219 from room 1220, and locked the door.

Why do we know that there is no question about that? Because the truth on that subject was dynamited from the lips of Zey Prevost and Alice Blake. After much hedging they finally testified that Arbuckle went into room 1219, closed and locked the door. Alice Blake said she saw Miss Rappe going towards room 1219 and the defendant following her, and then she, Alice Blake, went into room 1220. Zey Prevost told you that she saw Miss Rappe enter room 1219, followed by Arbuckle.

And both of those witnesses told you that they saw Mrs. Delmont hammering and pounding upon that locked door. Zey Prevost told you that she herself pounded upon it, and she told you that it was opened by this defendant, Arbuckle, from within room 1219, and that she and Mrs. Delmont thereupon entered and found Virginia Rappe, who a short time before had entered that room, apparently a well, healthy and happy girl, now lying upon a bed of pain. She declared she was dying, and we know from the testimony of Dr. Ophuls and Dr. Rigdon that she was suffering at that identical moment from a ruptured bladder.

Miss Prevost and Mrs. Delmont, when the door was opened by this defendant, entered the room, and some efforts were made to revive the stricken girl. They moved her from the first bed to the second bed because the first bed was wet. Fischback, friend of Arbuckle, came in, and they carried her to a bath and immersed her for a minute in cold water in an attempt to revive her, and brought her back and placed her upon the bed.

Then what happened? Those present evidently reached the conclusion that the young lady was suffering from something more serious than they first had supposed, and they sent for Mr. Boyle, the assistant manager of the hotel, secured another room, carried the young lady around the corridor, put her in bed and sent for a doctor. Dr. Kaarboe responded, but prescribed nothing, determined noth-

ing and went away. Dr. Beardslee afterwards came in; he was compelled to administer hypodermics to ease the pain and agony of the suffering girl. Finally he catheterized the patient and found she was suffering from an injury to the bladder.

We may safely conclude, and there is no question, I think, in the minds of this jury, that when the door of room 1219 was opened by Zey Prevost and Mrs. Delmont, Virginia Rappe was lying upon that bed suffering from a ruptured bladder.

We come back now to what is, of course, the issue in this case, and that is, what ruptured the bladder of Virginia Rappe? The testimony has, beyond all doubt, proved the fact that she entered room 1219 a vigorous girl; that while in that room, alone with this defendant, she suffered an injury to her bladder which caused her death. The defendant admits that he was in the room behind a locked door with this girl, and that the last time he saw her before she went into that room, she was alive and happy. The defendant admits that when he opened that locked door from within, the girl was lying upon the bed moaning with pain.

You listened attentively to the story of the defendant. First, consider, members of the jury, its probability or its improbability. He tells you that Miss Rappe was in room 1220 practically during the entire afternoon; that he was talking with her a great deal of the time, and that all at once she seemed to fade out of his mind; that he, then, in

order to meet some engagement with a woman whom he named, at exactly three o'clock, at precisely the minute that Miss Rappe was lying in agony in room 1219, went into room 1219 to dress himself to meet this engagement; he tells you that he locked the door of room 1219 (thus accounting for the locked door told of by Miss Prevost and Miss Blake) and went into the bathroom, and there found Miss Rappe upon the floor, apparently sick; that as he pushed the door open it struck her body; that he then assisted her to her feet and she vomited into the bowl; that he placed her upon the toilet seat; that he cared for her; that he then took her out into room 1219 and placed her tenderly upon the bed, with her head to the foot; that he then went back to the bathroom himself and stayed in there for some little time; that then he came back into room 1219 and found that Miss Rappe had fallen off the bed onto the floor; that he then lifted her up from the floor and placed her upon the bed nearest the wall.

I ask you now, was that the natural way for a man to act under such circumstances? If this defendant, innocent, had found that young lady in that bathroom, lying upon the floor, sick to the extent that he described, would he not have gone immediately out into room 1220 and announced that fact to the friends of this girl, and particularly to Mrs. Delmont?

Doesn't it seem absolutely and conclusively im-

probable that any man, finding a girl under those circumstances, would not summon help until the very last moment, when he says he went out into room 1220 for the purpose of telling Mrs. Delmont? And we find that, according to his own story, not finding Mrs. Delmont in room 1220, he didn't tell any particular person of Miss Rappe's condition, but merely observed in a general manner that she was sick; and he says that the only person in room 1220 at that time was Zey Prevost.

Now, isn't it reasonable, and isn't it logical, and isn't it almost an inevitable conclusion, that if Arbuckle had found Miss Rappe in this bathroom and had gone through these proceedings he has related, that if he had started out to summon help, he would have summoned help, and that if he had gone out to get Mrs. Delmont, he would have actually secured Mrs. Delmont whether she was in room 1220 or in room 1221, instead of merely announcing to the room in general that "Virginia seems to be sick"?

And, once having reached the people on the outside, would he not naturally have said to them: "I found her on the floor of the bathroom and I helped her to the bed; she vomited; she was sick; and I placed her on the bed and she fell off, and I then placed her on the other bed"?

And if he did not tell them then, and did not tell them after all the efforts to restore this girl had been unavailing, and it was found necessary to sum-

mon a doctor, and a doctor was actually called, and had actually visited the girl, and had actually spoken to the defendant himself, wouldn't it have been the natural thing for him to have told the doctor what had occurred?

Why did he keep this story buried deep in his breast until he took the witness stand at his first trial? He told not a single soul that Miss Rappe had fallen off the bed; and when those ladies went in and were doing their best to aid her, he said not a single word. He didn't tell Fischback, he didn't tell Semnacher, and he even, when the manager of the hotel was called, said not one word to him. He told no one on that day. Is that human nature? Is that the way an innocent man would act?

And he went away! He went away the next day without seeing the girl, without inquiring about her, without one word! He went away!

And then, when the girl died, he was in Los Angeles, and he came to San Francisco. With whom? He tells you he came with Mr. Dominguez, his attorney, and Mr. Anger, his manager. And they drove up here in an automobile, and he would have you believe that upon that long trip he told not one word of his story to the lawyer whom he had employed to come along with him.

When he arrived in San Francisco what do we find? He appeared before the Captain of Detectives, and he was asked to make an explanation, and his reply was what? That upon the advice of

counsel he refused to answer! Then he tells you that he afterwards told Mr. Dominguez his story for the first time, when he was in prison.

And remember, ladies and gentlemen, remember this: All this occurred before the so-called processing of witnesses! All this occurred before Miss Prevost appeared before the Grand Jury! All this occurred before even Miss Blake or Miss Prevost was put in care of Mrs. Duffy! And yet, they would have you believe that Arbuckle refused to make a statement because he was afraid of the District Attorney! This man afraid of the District Attorney when he had so simple a story to tell?

Then what do you find? A Coroner's inquest. Any explanation from the defendant at that time? None.

A Grand Jury investigation. Any explanation from this defendant at the Grand Jury meeting? None.

A preliminary examination to determine whether he should be brought to trial. Any explanation from the defendant at that time? None.

The only person upon earth to whom he told this story, excepting Mr. Dominguez, was Mr. McNab. Not even to Mr. Anger, his manager. To no one else, he says, did he tell his story, until he got on this witness stand, after the People had presented their case. Not until every defense which this million-dollar array of counsel had brought forward had crumbled to the ground, did the defendant take

the stand and tell his story. Is that the way a man who had nothing to fear would act?

Suppose you had an entertainment at your home and one of the guests subsequently died; suppose you knew you were under grave suspicion of having killed that person, and you were invited to make an explanation. What would your instinct be? Wouldn't you cry aloud, "I am not guilty; I never had anything to do with the death of that person, and here are the facts"?

If, instead of being responsible for her death, you had found her sick and helped her, wouldn't you say so? Would you travel with an attorney and a manager for five hundred miles in an automobile and tell neither of them what occurred? Would you refuse to make a statement to the police authorities? Would you refuse to go before the Coroner's inquest and tell what you knew? Would you refuse to go before the Grand Jury? Would you refuse to testify at the preliminary examination? I say to you that no man except one conscious of his guilt would act as Arbuckle acted.

Arbuckle did tell a newspaper reporter in Los Angeles that Miss Rappe had had some sort of a fit, that she was taken ill in some way, but that there were no locked doors. At that time Arbuckle did not know that the People could prove, and prove beyond a reasonable doubt, that there was a locked door, and that he was behind it with Virginia Rappe. He shifts his testimony here to fit

the story the People have established. What he tells here contradicts what he told Mr. Woolard in essential particulars.

If Arbuckle has made false statements; if he has testified in any trial to any occurrence in room 1219 which is not true, and you are convinced that it is not true, that it conflicts with stories that he heretofore has told; if his story is improbable and contradicts the testimony of his own, as well as that of the People's witnesses, what should you do with it except reject it entirely?

And with Arbuckle's story out of the case, with Mrs. Bates out of the case, and with the other witnesses who have fallen by the wayside as they came under cross-examination and rebuttal testimony out of the case, what is left to the defense? Nothing but a smouldering ruin.

The People's case stands unshattered. We have the story here of two people entering a room, one a man and one a woman. When they went into that room, they were seemingly in the best of health; immediately upon entering the room the door was locked by the man. One of these people entering the room was a young woman about twenty-three or twenty-four years of age; the other was a man, a strong man, weighing 266 pounds.

They remained in there a short period of time, the exact time no one knows, until the friends of the young lady became alarmed, and kicked and hammered upon the door. After repeated knock-

ings the door was opened by the man. He was still alive, well, strong, healthy. But the girl was lying upon a bed, in pain and anguish, suffering from an injury from which she died in a few days. And the man, when given an opportunity to tell what had happened in the room, remained mute. He said not a word to the people that gathered around; he said not a word to the doctors called in attendance.

Wouldn't you suppose under such circumstances that the one who came out of the room alive and well and healthy would give some explanation as to what had happened in the room, and how the other person was hurt? In the absence of that explanation, you have a right to presume that he committed the deed; and when you know that when he did eventually give an explanation he gave a false one, that presumption you have indulged becomes fixed in your minds as a certainty, because you know that if the defendant had a truthful story to tell, he, naturally, would have told it in the beginning.

What else? Out of the mouth of Miss Blake comes the testimony that when the girl was lying upon the bed she said, "He hurt me," and that Arbuckle, not Fischback, not Semnacher, not Mrs. Delmont, not Miss Blake, not Zey Prevost, not any one else in the room but Arbuckle, said, "Shut up or I will throw you out of the window." Why should Arbuckle say that, if his guilty conscience didn't tell him that the dying girl was speaking of him?

Then we have the ice episode. These reluctant witnesses tried to shade it and explain it away but the fact remains that Arbuckle did make sport of the body of Virginia Rappe with pieces of ice. And when Arbuckle told Semnacher the next morning about it, was not the language he used such as would indicate the lowest kind of thought towards the girl, and indicative of some gross, brutal act that he had done?

Oh, if the mothers of the children of America could have seen Roscoe Arbuckle making such sport of the poor, sick, senseless body of Virginia Rappe! This moral leper make the world laugh? Thank God, he will never make it laugh again!

What else? Bruises upon the body. Dr. Beardslee said he found bruises upon one of the arms; Miss Halston found bruises upon the arms and body; Dr. Ophuls found them; Dr. Strange found them. Counsel for the defense by their cross-examination would have you believe that such bruises just appear in peritonitis cases, but the answer of Dr. Strange, the physician who had the peritonitis cases, was to the effect that he had not noticed any bruises upon the bodies of his patients. How did the bruises appear upon her arm? The testimony is here that they had the appearance of having been made by fingers.

Then we come to a person who was not a member of the party, a poor, ignorant, foreign serving maid, who looked from afar upon the luxuries and pleas-

ures of the rich. This girl tells you that she wanted to know what was going on in those rooms. She listened from every place that she could listen from. As she said, "I would stay there merely a second and then I would run away, because I didn't want the boss to catch me. I didn't want him to know I was neglecting my duty." She was so interested in the Babylonian feast staged by this modern Belshazzar, that she forgot her duty to her employer and listened; and she heard from that room the words of protest uttered by Virginia Rappe; she heard that girl say, "My God! No! No! No!" And she heard a man's voice say, "Shut up!"

If there be lurking in the mind of any member of this jury the thought that this could have been what some call "a social accident," the testimony of Josephine Keza wipes it out.

We have also the testimony of a man who appeared before you in his simple, uncouth way, a man who is an inmate of the Soldiers' Home. He tells you that while he was employed as a watchman and janitor at the studio in Hollywood — of which Arbuckle occupied a portion, and of which Miss Rappe occupied a portion — this defendant came to him and asked him for a key to Miss Rappe's dressing room, saying that he "wanted to play a joke on her." And the good, honest, sturdy man said "No," and Arbuckle took a roll of bills from his pocket and offered him money for the key, but still the man refused. You have a right, my friends, to

judge whether this defendant had not designs upon the girl at that time.

In this case we have also, written upon the walls of the St. Francis Hotel, evidence that convicts this man. Upon every finger Nature has left a pattern which cannot be changed. It was placed there before birth, it remains there throughout life, and even when the body is placed in the grave, so long as the flesh remains, this pattern remains, and without a duplicate in all the world. Oh, it will not do to say that we have conjured up spooks out of doors; nor can counsel's ignorance of the use of finger prints in the identification of criminals be covered up with sneers or sarcasm. Police departments all over the world use the system.

We have upon the door the finger prints of Roscoe Arbuckle covering the small, delicate hand of Virginia Rappe, covering it in such a manner that he is grasping it and pulling it off the door. Then we have the testimony showing the man's hand covering the jamb of the door and holding the door shut. And what inference can we draw from that? This: that, pursued by this defendant, the girl made an attempt to escape; that she rushed to this door and grasped the handle of the door and put her hand up in this way (indicating); that he came running after her and put one hand over her shoulder, grasped her hand, put his other hand against the door jamb to prevent it from being opened, and pulled her away from the door. That

is the explanation of those finger prints and the permissible inference to be drawn from their position upon the door; that, ladies and gentlemen, is what happened in that room.

When those finger prints were developed in this case and shown me, I thought and I thought again of the feast of Belshazzar. As the Babylonian king sat in his palace, surrounded by his knights and their ladies, a hand appeared upon the wall and wrote, and the king's knees smote together, and he sent for his soothsayers and his fortune tellers, and they could not decipher the writing. Finally he sent for Daniel, and Daniel came, and as the hand wrote again, Daniel interpreted the writing as meaning: *God hath numbered thy kingdom and finished it. Thou art weighed in the balances and art found wanting. Thy kingdom is divided and given to the Medes and the Persians.*

And that night Belshazzar, the king, was slain, and the Medes and the Persians took possession of his kingdom and divided it.

Roscoe Arbuckle's kingdom is ended! He has been weighed in the balances and found wanting! God has finished his kingdom!

Ladies and gentlemen of the jury, the People have presented to you a complete case. We say to you in all solemnity at this hour that we have proven the guilt of Roscoe Arbuckle as charged in this indictment. We find his story untrue, his witnesses false, and every circumstance and incident

pointing away from the theory of his innocence. From the very first the defense has wiggled and twisted, and twisted and wiggled, while we have placed the evidence before you as fully and fairly as has been within our power.

We wish the truth to prevail, and we ask that you consider the evidence according to the instructions of the court, and that you permit nothing outside of the record to interfere with your deliberations. We ask you to do your duty as men and women of San Francisco. We ask you to do your duty so that when you return to your families and take them to your breasts, when you take your little children upon your knees, you will know and feel that you have done what you could to protect them from this defendant, and from all the other Arbuckles in the world, now existing and yet to come.

We ask you to do your duty so that this man, and all like him, will henceforth know that the womanhood of America is not their plaything.

Speech of Mr. Schmulowitz

YOUR HONOR, AND LADIES AND GENTLEMEN OF THE JURY:

I DO not care to caution you about your duties as I did the counsel who has just preceded me. I know that you will perform your duties as jurors in this case, and that whatever your verdict may

be, it will be according to your conscience and your oath.

However, it will be my office to call your attention at this time to certain assurances of proof and promises of testimony that were given to you by the District Attorney when this case was opened. It may seem like a long time ago; you may have forgotten the exact words; permit me very briefly to recall them to you.

The District Attorney stated to you:

"We will prove to you by witnesses whom we will bring here, and have sworn in this case, that Virginia Rappe, during many years prior to her death, enjoyed the best of health. We will prove to you that Virginia Rappe, on the 5th day of September, 1921, was a normal, healthy young woman. We will prove to you that at that time she was not suffering from nor was she affected with any disease of any kind or character."

The District Attorney also said:

"We will prove to you that during the first trial of the case of *People v. Arbuckle*, the court made an order appointing three doctors to make microscopic examination of the bladder of Virginia Rappe; one of these doctors was appointed by the People, one of these doctors was appointed by the court, and one of these doctors was appointed by the defense. We will prove to you that these doctors made a microscopic examination of the bladder of Virginia Rappe, and they found a condition of inflammation, or, as the doctors will term it upon the stand, cystitis; that it was so slight it was not visible to the naked eye. We will prove to you out of

the mouths of these three doctors, appointed under the authority and sanction of this court, that this condition of cystitis had absolutely nothing to do with the rupture of Miss Rappe's bladder."

It must be obvious to you that these promises were not justified by the evidence in the case.

Much testimony has been introduced from medical experts and much time has been consumed tracing the physical condition of Virginia Rappe from as early as 1897 down to and including the day of her death.

It became important to determine whether or not there possibly could be associated with the event of death, and cause of death, any organic ailment suffered by Miss Rappe; and if so, whether it was an ailment chronic or acute in character, and if one or the other, whether it predisposed the bladder to rupture.

The prosecution has claimed that the deportment of Miss Rappe, as it was observed in the rooms of the St. Francis Hotel on September 5, 1921, was most unusual in character; we insist for the defense that her deportment at that time was no different than her deportment on many occasions in her life, when she was observed by friends, by companions, by doctors and by nurses.

Counsel has suggested to you that during these years of Miss Rappe's affliction she never had ruptured her bladder. That may be conceded; but have any witnesses who have testified to deportment

displayed by her on the many occasions prior to her death, likewise disclosed that she fell to the floor of a bathroom, or struck against the edge of a bathtub, or fell from a bed to a floor? Have any witnesses testified that she was ever, prior to the fatal afternoon, suspended in mid-air by being held up by her ankles? Have any witnesses testified that on any previous occasion when they saw her in a spasm, if you please, she was given a bath in a tub filled with cold water and then massaged by the hands of a strong man?

Furthermore, there is a finality to all things. For instance, take a rubber band; it comes from the factory; you buy it in the store; you subject it to strain, and time and again it will be useful to you, and then suddenly it will break. Have you forgotten the story of the pitcher that goes to the well just once too often?

Have we not here the history of an inflammatory condition of the bladder extending over a period of years, and being subjected to strain after strain, to inflammation after inflammation, and the not at all improbable fact that on September 5, 1921, the inflammatory condition then existing, Miss Rappe, quite involuntarily perhaps, permitted her bladder to become over-distended? And we have unanimity among the medical experts, that a bladder in a state of over-distention is definitely predisposed to a rupture.

What is the force necessary to rupture an over-

distended bladder? The medical experts have told you that if the over-distention be great, the force necessary to rupture the bladder may be slight; if the over-distention be slight, the force required may be considerable.

What character of force was it possible for Miss Rappe to have encountered to have ruptured an over-distended bladder? Might it not have been a force such as can be produced by colliding with the edge of a door? Yes, the doctors say. Might a blow from the edge of a toilet seat rupture an over-distended bladder? Of course it might, the doctors have told you. Might a fall by a person to the floor cause a sufficient force, by the concussion, to rupture an over-distended bladder? The physicians say so.

Do not carry with you, ladies and gentlemen of the jury, as the District Attorney would have you do, the impression that it is the contention of the defense that the bladder could only have ruptured spontaneously. With the precision and omniscience that only goes with those who are divine, the District Attorney is willing to say to you positively and with the greatest amount of self-assurance, that Miss Rappe's bladder could only have been ruptured in a certain, particular way. We claim no such knowledge on our part. We do not know how nor when Miss Rappe's bladder was ruptured; we can only argue, from all the facts, the probabilities.

According to the testimony of Mrs. Hardebach

and Mrs. Fox they became acquainted with Virginia Rappe in 1897 and 1899 respectively. During those years Miss Rappe was living with a woman whom she believed to be her sister, but who in fact was her mother, and with another woman whom she believed to be her mother or her grandmother, but who in fact was not related to her at all.

Up to 1900 Miss Rappe lived in the city of Chicago, and between 1900 and 1905 she lived in the city of New York. During that interval of time the woman whom she believed to be her sister, but who in fact was her mother, died. Sometime in 1905 she returned to Chicago with the elder of the two women. Upon her return to Chicago there commenced an intimate acquaintanceship between her, Mrs. Fox and Mrs. Hardebach, and, a little later, with Mrs. Burkholder, that extends, according to the testimony of those witnesses, over many years, down to and including the year 1915.

Between 1905 and 1913 Mrs. Fox, Mrs. Hardebach and Mrs. Burkholder want you to believe that they saw Virginia Rappe every day, every other day, or two or three times a week, and that during that entire period of time she did not suffer any human ailment. I believe that Mrs. Burkholder did mention a temporary ailment due to a sex condition, and that Mrs. Fox recalled a toothache suffered on one occasion by Miss Rappe during the entire period of her acquaintance with her.

The defense, on the other hand, has produced the

friends, the acquaintances, the doctors, the nurses and the companions of Miss Rappe, who have testified to various periods in her life when she was either well or ill.

Let me say here that if the exigencies of this case made it necessary to disclose either the mode or the station of Miss Rappe's life at certain periods, it was not at our instance that anything of a depressing character was developed. Let me ask you to remember in this regard that the defense, in the examination of the witnesses produced by both sides, was most zealous to prevent any disclosure that would in any manner reflect upon Miss Rappe. It was only by the heartless cross-examination of defense witnesses by the District Attorney that certain unfortunate episodes in her life were unnecessarily disclosed.

Between 1908 and 1913 Virginia Rappe was ill on a number of occasions. In 1908 she was ill at Mrs. Rafferty's in Chicago. She was attended by Dr. Schultz and Virginia Warren. Of course Mrs. Fox, Mrs. Hardebach and Mrs. Burkholder did not know of that; and for the purpose of this argument, I am perfectly willing to accept their statements as the truth. It is quite possible that a young girl, ill under embarrassing circumstances, would not make confidants of girl friends who were about her, and unless Virginia Rappe informed her friends of her illness, how would they know it? But whether they knew or not is a matter for you to determine.

Dr. Barnes admitted a long acquaintanceship with Dot Nelson, known to you as Mrs. Fox, that began at the time when Dr. Barnes was a student in the medical college and when he was merely known as Charley Barnes. Dot Nelson knew him then. Dot Nelson met him again in the spring of 1908, when Virginia Rappe, the girl in whom she was interested, was giving a public exhibition of dancing in a public café; and so proud was Dot Nelson of her protégé and prodigy, that she introduced her to Charley Barnes and to the other persons present. He was the same man who lived in the same home at one time occupied by Dot Nelson. Dr. Barnes was then out of medical college and was a practicing physician in Chicago. He so informed Dot Nelson and gave her his address. About a year later he finds her in his office, accompanying Virginia Rappe to be treated by him.

You heard Mrs. Fox say, with the greatest audacity, without any possible mistake, "Positively not," when inquiry was made of her as to whether or not she ever knew of Virginia Rappe being treated by any physician. With remarkable indifference to the truth, with an absolute disregard for the oath which she took, Mrs. Fox denied even an acquaintanceship with Dr. Charles Barnes.

In 1910, in the spring, Mr. Barker becomes acquainted with Virginia Rappe. Two weeks thereafter he receives a telephone message; he responds to it and finds Miss Rappe ill at Mrs. Rafferty's.

Then Mr. Barker leaves Chicago and goes out on the road; two months afterward he returns to Chicago and sees Miss Rappe ill at her home on Logan Square. At the same time he sees her mother, or grandmother.

True, as has been suggested here, in cross-examination, Virginia Rappe's mother, or grandmother, is now dead, but surely Mr. Barker cannot be regarded as having been responsible for that event, nor can he suggest more than the fact that Virginia Rappe's mother, or grandmother, if alive, could have corroborated his testimony.

Several weeks after that an incident occurs in the Italian restaurant. Mr. Barker, quite naïvely, states to you that Miss Rappe's mother, or grandmother, permitted her ward to take a little red wine. Without any motive on the part of Mr. Barker to tell anything untrue, with the kindest attitude to the memory of Virginia Rappe, he describes to you her condition within an hour or so after she indulged in this wine. She becomes ill, nauseated; she begins to vomit; she tears her vest; and Mr. Barker and Miss Rappe's mother take Virginia home in a cab.

Mr. Barker also recalled to you the circumstance of the Thanksgiving dinner. He said that Virginia Rappe's mother, with an elderly gentleman, whose name he had forgotten, and Virginia and he, himself, were present; he said that some alcoholic beverages were consumed there, and he described Miss Rappe's deportment upon that occasion. Was

her deportment then very different from her deportment on September 5, 1921, or from that described by many witnesses on many other occasions during her life?

When Dr. Ophuls, Dr. Ervin, Dr. Shiels, Dr. Collins, Dr. Rigdon and Dr. Harrison were asked to give you the symptoms of a person suffering from a spasm of the bladder, did they not disclose to you the very symptoms that Miss Rappe displayed at the time of the Thanksgiving dinner and at the many other times described by the witnesses, indicating that upon all of these occasions it was more than likely that she was suffering from an inflammation of her bladder?

In 1908, at Mrs. Rafferty's, we find evidence that Miss Rappe was suffering from an inflammation of the bladder. In 1909 we find that under the treatment of Dr. Barnes she was suffering from an inflammation of the bladder. True, as counsel suggests, the opinion of Dr. Barnes, when he completed his treatment of her, was that he had cured her. But, if you remember, Dr. Shiels stated that once a hollow organ is inflamed it never again goes back to its first condition. The acute inflammation from which Miss Rappe was suffering in 1909, when treated by Dr. Barnes, might very well have subsided, to occur again, however, when irritated by alcoholic beverages.

You will also recall the testimony of C. E. Teeters, who said that at the Palm Garden Café,

in the summer of 1911, after certain drinks were served, Virginia Rappe tore her clothes, placed her hands upon her abdomen, and gave other evidences of hysteria, identical with those described by the witnesses as having occurred at the St. Francis Hotel on Sept. 5, 1921.

Dr. Rosenberg, who appeared before you through a deposition, testified that in 1913 Virginia Rappe suffered from chronic inflammation of her bladder.

So that, from 1908 and up to 1913, the evidences of inflammation in the bladder indicated that it had become chronic in character.

Helen Madeline Whitehurst became acquainted with Miss Rappe in 1913. Mrs. Whitehurst recalled quite vividly that upon her birthday, Oct. 29, 1914, there was a party at which she, Miss Rappe and two gentlemen escorts were present. Oh, how counsel for the People did drive upon that October event! How they sought through Mrs. Burkholder, Mrs. Fox and Mrs. Hardebach to establish as a fact, if they could, that Miss Rappe was not in the city of Chicago in the month of October, 1914! And how utterly did they fail! Mrs. Burkholder would have had you believe that Miss Rappe visited some people by the name of Gallagher in the city of New York continuously from the late summer of 1914 until November following. They should have let the matter rest there, but quite unwittingly they produced a witness who lives in San Francisco, Mrs. Blake, a photographer, who established the fact that

Mrs. Blake took a photograph of Miss Rappe in San Francisco in September, 1914.

Obviously Miss Rappe could not have been in New York at the very same period of time she was in San Francisco. If she was in New York in the late summer, she must have left New York in time to be in San Francisco in September, and if she was in New York on Thanksgiving Day, November, 1914, then, obviously, she must have left San Francisco and gone to New York. And is it so unreasonable to suppose that, sometime between the time that she left San Francisco, in September, 1914, and arrived in New York, in November, 1914, that the intervening month, namely, October, was spent in the city of Chicago, when Mrs. Whitehurst had the occasion to be at a party with her?

Mrs. Whitehurst likewise recalled certain other events which occurred either at her home or at Heinley's Café or at Lipmann's Café. Mrs. Whitehurst recalled the fact that Miss Rappe had been visited by Dr. Graves and Dr. Miller.

Paul Ralph Herschman testified to a certain condition in which he observed her once after she had indulged in alcoholic beverages. That was in 1914.

Mr. Eugene W. Presbrey, a rather distinguished gentleman, disclosed to you that, in March, 1917, Miss Rappe, after having indulged in two glasses of French liqueur, tore her clothes, clenched her teeth, and held her abdomen, all the while weeping copious tears.

Later on, in November, 1919, we have the incident at the home of Philo McCullough and Jerry Sundin. In March, 1920, we have the incident at the home of Lew Cody, testified to by Lucile Shelton; and in March, 1921, just six months prior to the death of Miss Rappe, we find that she came into the cider mill of Mr. Seymour, in an apparently intoxicated condition, and there tore her clothes and her hair, and cramped herself from one side to another, and gave evidences of hysteria similar to those which were described by the witnesses as having occurred on September 5, 1921.

We, therefore, find Virginia Rappe on September 5, 1921, in the St. Francis Hotel, with this previous history of recurrent inflammatory condition in her bladder, showing signs of occasional spasms of the bladder, sometimes after a history of indulgence in alcoholic beverages, and on other occasions without the history of such indulgence.

We find her entering the rooms of the St. Francis Hotel at the noon hour. We find that she remains in room 1220 for approximately three hours. We find that in the meantime she has indulged in some beverage consisting of gin and orange juice. Shortly prior to three o'clock she seeks to enter the bathroom of room 1221. The prosecution witnesses observed her leave; they heard her call to some one who was in the bathroom; and they heard the response, "No, go to the other bathroom; you can't come in here now."

She came out of room 1221, unobserved by the defendant, and entered room 1219. Where is the most natural place for her to go when she enters room 1219? She most naturally would go to precisely the same kind of a place where she intended to go when she entered room 1221. What is that place? The bathroom! She went to the bathroom of 1219, and that is where the defendant found her.

Permit me to digress here for a moment. We have learned that gin is diuretic in character. We have also learned that gin secretes the fluid from the kidneys into the bladder more rapidly than does water. We have learned from some of the witnesses that orange juice, while perhaps not quite as diuretic as gin, is nevertheless more diuretic than water. Between twelve o'clock and three o'clock, having indulged in gin and orange juice, it takes no great stretch of imagination to know what the reason was for Miss Rappe's desire to enter the bathroom.

We have learned from the medical experts that a person who desires to micturate is not always able to do so; and we have learned that the inability to micturate may be due to a stricture of the urethra, as some of the medical experts have described it to you, or to a spasm of the sphincter muscle, or to a spasm of the entire bladder wall.

Let me here recall to your attention the fact that all of the medical expert witnesses have testified that alcohol acts as an irritating influence upon

an inflamed membrane; that alcohol may cause a chronic inflammation to become acute, and that if there be an acute inflammation, it may develop a contraction of the sphincter muscle, which would cause retention of the urine, which, in turn, would cause a distention of the bladder; and that when there is a distention of the bladder, we have the primary and classical predisposing cause to a rupture.

Now, given a bladder in a state of over-distention, we have had from all of the medical experts the statement of the fact that that portion of the bladder where the rupture here occurred, is always regarded as the weakest, and that the force necessary to rupture a bladder may vary, as I have already indicated, from that which is great to that which is slight, depending entirely upon the degree of the over-distention.

When Virginia Rappe, therefore, desired to enter the bathroom of room 1219, it is safe to assume that, suffering from a spasm of the sphincter muscle, having indulged in gin and orange juice, her bladder was over-distended, and that there was a desire to micturate, but inability to accomplish it.

Now, let us consider some of the possibilities. True, no one saw Miss Rappe actually enter the bathroom of 1219. No one can testify of his or her own knowledge just what occurred in there. But isn't it possible that she bumped against the door as she entered? If she did, is it not possible that

that force would be sufficient in degree to cause a rupture of an over-distended bladder? If Miss Rappe's bladder was ruptured by such a force, was it ruptured by the agency of the defendant?

Permit me here again to impress upon your minds that it is not the claim of the defendant or his counsel that the bladder of Miss Rappe could only have been ruptured spontaneously. We concede that a force external to the body might cause a rupture of the bladder, just as a force entirely within the body might cause such a rupture, and there were many forces external, as well as forces entirely within her body, exclusive of any agency of the defendant, that unquestionably occurred on that afternoon, and that might have produced a rupture of her bladder.

After entering the bathroom, did Miss Rappe become ill? Did she vomit? We have the testimony of the defendant that she did. We have the testimony that he found her lying upon the floor. How did she come there? No one knows. Did she fall? If she fell, did she strike against the edge of the bathtub? If she did, do you recall the case cited here by Dr. Collins of the man who, after indulging in some alcoholic beverage, stepped into the bathroom and stumbled, and was not aware of the fact that he had struck against the edge of the bathtub, but probably did? And if he did, was that not a reasonable explanation of how his bladder might have ruptured? If Miss Rappe fell to the floor,

as she probably did, could she not have struck against the edge of the toilet seat? And if she did either of those things, was the defendant responsible for the rupture of her bladder, if it resulted from that force?

When the defendant entered the bathroom of 1219 he observed Miss Rappe lying upon the floor; he noticed that she had been vomiting. All of the medical experts indicated to you that the act of vomiting involves a contraction of the abdominal muscles. How well developed were the abdominal muscles of Virginia Rappe! She had walked up hill and down dale with Mr. Rideaux, she had thrown the medicine ball for many months, she had taken Swedish health exercises for the purpose of developing those very muscles, and that they were exceedingly well developed is the testimony of Mr. Rideaux.

Now, a violent contraction of the abdominal muscles produced by an act of vomiting, the medical experts advise you, might cause a rupture of an over-distended bladder. And if Miss Rappe's bladder was ruptured while in an act of vomiting, would the rupture be the result of any act of the defendant in this case?

What were some of the later events? Mr. Arbuckle assisted Miss Rappe from the floor and placed her upon the toilet seat. Later he gave her some water. She expressed a desire to leave the bathroom and lie down for a moment. Mr. Ar-

buckle assisted her into room 1219, set her upon the smaller of the two beds, lifting her feet up, and she then reclined upon the bed. At that moment Mr. Arbuckle left the room and went into the bathroom. He came out into room 1219 within a few moments, and he failed to find Miss Rappe upon the smaller of the two beds; he found her upon the floor.

True, we do not know exactly how she got on the floor, but it is not unreasonable to suppose that, suffering from a spasm of the bladder while lying on the bed, writhing in pain, she fell off the bed onto the floor. And if she did, if she fell upon her abdomen — even Dr. Wakefield, whom I regard as the weakest of all the medical experts, admitted that a fall from the bed to the floor upon the abdomen might cause a rupture of an over-distended bladder. A fall upon other parts of her body, according to the testimony of Dr. Shiels, might produce sufficient force to rupture an over-distended bladder.

Mr. Arbuckle, finding her upon the floor, assists her to and places her upon the larger of the two beds. What does he then do? He immediately leaves room 1219, opens the door of room 1220, and Zey Prevost enters room 1219 from room 1220.

Mark this, ladies and gentlemen of the jury, that when Virginia Rappe entered the bathroom of room 1219, she was fully clothed; that when she was

found on the floor of the bathroom of room 1219, she was fully clothed; that when Mr. Arbuckle assisted her out of the bathroom into room 1219, she was fully clothed; that when he placed her upon the smaller of the two beds she was fully clothed; that when he returned and found her upon the floor, in the narrow space between the two beds, she was fully clothed; that when he picked her up and placed her upon the larger of the two beds she was fully clothed, and that when he opened the door and called for Zey Prevost, and she entered and was later followed by Mrs. Delmont, and afterwards followed by Mr. Fischback and Mr. Arbuckle, Miss Rappe was found upon the larger bed, fully clothed.

A circumstance that corroborates the testimony of the defendant is testimony coming from the lips of Miss Blake and Miss Prevost that Virginia Rappe wanted to go to the bathroom of room 1221. Is it not reasonable to suppose, then, that she was found in the bathroom of room 1219?

Another corroborating circumstance is that Professor Heinrich, the man who examined the door, the man who examined the room carefully, discovers certain hairs, which he positively identifies as Virginia Rappe's, not only upon the floor of the bathroom where Mr. Arbuckle says he found her, but as well in the space between the two beds where he also found her.

Ladies and gentlemen of the jury, when Miss

Prevost entered room 1219 Mrs. Delmont followed her immediately. Do we find here the picture of a person suffering from a *rupture* of a bladder, or only that of one suffering from a *spasm* of the bladder? Counsel has indicated to you that the picture is that of a person who had suffered a rupture of the bladder, but, so far as I have analyzed the testimony, it is not the picture of a person who had suffered, *as yet*, a rupture of the bladder.

If, however, from the evidence you should believe that before Mr. Arbuckle first opened the door of room 1219, Miss Rappe had already suffered a rupture of her bladder, then I have already outlined to you the many events that could have produced such rupture, entirely disassociated from any act of the defendant.

Miss Rappe was found upon the bed moaning and tearing her clothes, and giving evidences of a condition of hysteria. Does that indicate that she had suffered a rupture of the bladder? Have not all of the medical experts told you that, upon suffering a rupture of the bladder, a person goes into a state of shock, into a state of collapse, becoming unconscious? Were not hers the symptoms of a person suffering from merely a *spasm* of the bladder?

This is of paramount importance, ladies and gentlemen. If the bladder of Miss Rappe was not ruptured prior to the time that Mr. Arbuckle opened the door of room 1219, but was ruptured afterwards, then, of course, he could not possibly be guilty of

the offense with which he is charged, and the rupture must have been produced by natural circumstances, or by the acts of other persons.

It is unnecessary for me to repeat to you at this time the symptoms of an over-distended bladder. But given a bladder in a state of over-distention, the physicians have indicated to you that over-distention might be relieved in one of several ways, either by introducing a catheter, or by using a trocar, which is an instrument used for the purpose of puncturing the bladder and thereby relieving the over-distention, or, lastly, in this most unfortunate manner, by suffering the bladder to rupture. When the bladder ruptures, the pain that is caused by the resistance of the bladder wall to the fluid contents of the bladder is immediately relieved, and for a short interval of time, that might continue for thirty minutes, the person who has suffered a rupture of the bladder is quiet, perhaps unconscious, in a state of shock or collapse.

Permit me to read to you, very briefly, the testimony of Dr. Shiels in this regard:

Q. Doctor, would a rupture of the bladder give immediate relief from the pain that is caused by an over-distended bladder?

A. Yes.

Q. And for what period of time, if you can state, would that condition of relief continue?

A. I can make no definite statement as to the time.

Q. Well, can you state it, either as to minimum or maximum?

A. I should say half an hour, and onwards.

Q. Will you kindly explain that, Doctor?

A. Well, the organ is over-distended. It is—it conveys a sense of pain and discomfort and misery to the patient. Then all of a sudden the burst takes place and the tension is relieved. Then there is a period of relief—that indefinite period of relief; then afterwards the secondary results of that bursting will cause a new kind of pain and distress. There will be an immediate relief. The bladder—it is really Nature's way of relieving it in a way.

Was Miss Rappe found in a state of relief when the door of room 1219 was opened, and Miss Prevost and Mrs. Delmont and the other persons entered, or was she found in such deportment as unmistakably indicated a *spasm* of the bladder, and with symptoms of distress, discomfort and pain, that go with over-distention?

Miss Rappe was removed from the larger bed to the smaller bed by inexperienced persons; she was disrobed; she was given bicarbonate of soda; she was then suspended by Mr. Fischback, that tall, muscular gentleman, several times, in mid-air; she was then placed upon the smaller bed again; she was then carried by two or three persons over the edge of the bed into the bathroom. She might have been bumped against the edge of the bed; she might have been bumped against the edge of the door. She was taken into the bathroom, stood upon her feet, and then immersed in a tub filled with cold water. She might have been bumped

against the edge of the tub. Any of those bumps might have created a sufficient force to rupture an over-distended bladder, entirely without the agency of the defendant.

All of the medical experts have indicated to you that a person immersed in a tub filled with cold water suffers a contraction of the abdominal muscles that might produce a sufficient force to rupture an over-distended bladder.

Miss Rappe is then returned from the bathroom, in the same manner, into the bedroom. She is placed upon the bed; she is then rubbed dry by the persons who are attending upon her. How much pressure is applied upon her abdomen no one knows. She is then massaged by the hands of a strong man; true, he states, as gently as possible, but nevertheless massaged. Then, after the bath, after she is rubbed dry, after she is massaged, she suddenly goes into a state of collapse, into a state of shock. This phenomenon then, for the first time, indicated that Miss Rappe had just suffered from a rupture of the bladder. Up to that time only symptoms of *over-distention* and a *spasm* of the bladder; at that time, and not until then, symptoms of a *probable rupture*.

Remember that the report of the pathological commission states definitely that there was in the base of the bladder an inflammation of a definite chronic character, that had penetrated not only the mucous membrane, but as well the muscle tissues

and the tissues connecting the muscle fibres, and had become even more aggravated into the musculature surrounding the base of the bladder. Dr. Ervin unmistakably indicated that the inflammation had penetrated the sphincter muscle.

Dr. Ophuls, Dr. Ervin, Dr. Rigdon, Dr. Collins and Dr. Shiels all testified that alcohol, irritating an inflamed membrane, might cause a spasm of the sphincter muscle, which would bring about a retention of urine, which would predispose the bladder to a rupture. And the question as to whether or not this particular bladder was predisposed to a rupture in that manner was asked of Dr. Ophuls and Dr. Ervin, and they replied in the affirmative.

Dr. Ophuls testified as follows:

Q. Eliminating that focus, then, Doctor, and referring only to the focus of inflammation that was concededly found in the base of the bladder by all three of the pathologists, was it possible, by reason of that inflammatory focus, after the irritating influence of alcohol upon it, to create a spasm of the bladder at that time?

A. It might do that.

Q. Now, if a spasm of the bladder might have been created, Doctor, what would be the effect upon the functions of the bladder?

A. It might have prevented to some extent the proper emptying of the bladder.

Q. And if a spasm prevents the proper emptying of the bladder, is it not a fact that there is then what is termed retention of urine?

A. There would then be an undue accumulation of urine.

Q. And if there is an undue accumulation of urine, what happens to the bladder itself?

A. It becomes distended.

Q. Is it not a fact, Doctor — I believe you have already testified that a distended bladder is one of the primary predisposing circumstances to a rupture of the bladder?

A. Yes, sir.

Q. And is it not, then, by these successive stages, Doctor, that an inflammatory condition in the base of the bladder is itself a predisposing circumstance to a rupture of the bladder?

A. If you want it that way, yes.

Quite reluctantly, but, nevertheless, "Yes."

Dr. Ervin testified:

Q. Well, has the inflammatory condition in the urethra in conjunction with the inflammatory condition in the trigone any relation to the sphincter muscle that immediately surrounds it?

A. If the inflammation penetrates into the sphincter muscle, or the sub-mucosa about the sphincter muscle, then it will act as an irritant to the sphincter muscle.

Q. You don't know whether or not there was any inflammation that had penetrated into the sphincter muscle, do you?

A. We do know there was an inflammation in the sub-mucosa at the opening into the urethra, where the sphincter muscle is.

Q. Then there was an inflammation in the sphincter muscle?

A. Yes.

Q. Then, if the inflammation was in the sphincter muscle, Doctor, is it not likely that there would be a spasm at the sphincter muscle?

A. Yes.

Q. If, then, there was a spasm at the sphincter muscle, wouldn't that tend to contract that muscle?

A. Yes.

Q. If, then, it would tend to contract that muscle, would it not follow that the fluid would be retained?

A. Yes, if the sphincter muscle alone was contracted.

Q. And if the fluid in the bladder were retained, what would be the result so far as the bladder itself was concerned?

A. The distention of the bladder.

Q. And if the bladder were distended, is it not a fact that a bladder in a state of distention is predisposed to a rupture?

And he answered, "Yes."

But Dr. Ervin accentuated those answers by testifying upon the same point, upon re-cross-examination, because counsel, after Dr. Ervin had testified in that manner, again took hold of him, and again had him testify that, in his opinion, the bladder was not predisposed to a rupture, and the following questions and answers appear in the record:

Q. If there is a particularly aggravated focus of inflammation in the base of the bladder extending into the urethra and penetrating into the sphincter muscle surrounding the urethra, would that, in your opinion, be a predisposing cause to a rupture of the bladder?

Dr. Ervin answered, "No." Then a colloquy followed and then Dr. Ervin made this response:

The answer I gave was "No," that it did not make a predisposing cause towards rupture in regard to the strength of the bladder, but in regard to whether or not a bladder may be distended from such a cause, you may say that it is a predisposing cause.

Q. I see. Then you desire to qualify that answer, Doctor?

A. Why, I must, necessarily.

Q. And I think you said, Doctor, that distention of the bladder is a predisposing cause to a rupture of the bladder?

A. I stated that a while ago.

Q. Then, Doctor, is it possible for a cystitis in the base of the bladder penetrating into the urethra and into the sphincter muscle, co-ordinating with a state of distention, to predispose the bladder to a rupture of the organ?

A. It would make towards distention.

Q. Yes, and by distention predispose it to a rupture?

He answered, "Yes."

Dr. Collins and Dr. Shiels testified unequivocally upon the same point in the same manner.

Since, therefore, the inflammatory condition in the base of the bladder was indeed a predisposing circumstance towards first, retention, and, second, distention, then obviously it must have been a predisposing circumstance to a rupture of the bladder.

Permit me to say a word about bruises. Counsel would have you believe that the bruises that were observed upon the body of Miss Rappe at the time of the post-mortem were caused wholly by the acts of Mr. Arbuckle. Can you picture in your mind,

from the testimony of the witnesses, what happened in room 1219 after the door of that room was opened? Miss Prevost and Mrs. Delmont enter the room, they pick up Miss Rappe, they carry her from one bed to another; Miss Prevost and Mrs. Delmont then undress Miss Rappe; after they undress her Miss Blake comes into the room and Miss Blake gives her some bicarbonate of soda. Then Mr. Fischback comes into the room and he suspends her in mid-air. Then she is grasped by Mr. Fischback on the one side and by the two girls on the other side, and carried from the smaller of the two beds into the bathroom. She is immersed in a bathtub; she is taken out by the same three persons from the bathtub. She is taken back into the room and is laid on the bed. She is then given a massage by different persons. She is then carried by Mr. Arbuckle from room 1219 to room 1227, part of the way, and then transferred by him to Mr. Boyle.

During the interval of time between Monday, September 5th, and Friday, September 9th, a number of people attend upon Miss Rappe. They include nurses, doctors, friends, and Maude Bambino Delmont.

When Dr. Kaarboe saw Miss Rappe at 4:30 in the afternoon of September 5th, did he see any marks of any kind on her body or limbs? No. When Dr. Beardslee called upon Miss Rappe at seven o'clock in the evening, did he see any marks? He saw a superficial mark on the left arm and no

marks on the right arm at all. When Dr. Rumwell called on Tuesday, did he see any marks upon her body or arms? No. Did he see any marks on either side? No. The first time he saw any marks of any kind was after death. Yet counsel would have you believe that only Mr. Arbuckle could have caused those bruises!

Ladies and gentlemen of the jury, no jury should convict unless the evidence shows guilt to a moral and reasonable certainty and beyond a reasonable doubt. No jury should convict upon suspicion or imagination. Does the mere accidental circumstance of a man being in a room with a woman for a few minutes, with the door closed, subject the parties present to the suspicion of misconduct? Have we become so intolerant, so morbid and mentally so salacious as to be unable to conceive of a man acting decently and properly under such circumstances?

Ladies and gentlemen, before you were accepted as jurors in this case you promised that you would be impartial and would consider only the evidence; I know that you will keep that promise. I recognize that the human mind is often swayed by different influences — influences of the public, influences of the press, influences of family, influences of organization. Perhaps long before this defendant was called before the bar of justice your minds may have been diverted from a sense of impartial fairness to him, but now — now, of course, you must

exercise your judgment and your conscience in accordance with your duties as jurors.

You will exercise them without the influence of the press, without the influence of the public, without any influence from any organization, without any influence of family ties, and without any admonition, caution or stricture on the part of the District Attorney; with only that influence which is proper, the influence of testimony produced upon the witness stand under oath.

The life or the liberty of a man is no trifling matter. Liberty, like time, once lost, can never, never be regained. To find this defendant guilty is to condemn him upon speculations, surmises and conjectures. To acquit him is to base your judgment upon facts.

Even an acquittal, ladies and gentlemen, even an acquittal, will not completely right the tremendous wrong that has been done Roscoe Arbuckle.

In fairness to the defendant, in the interest of truth and justice, I appeal to you, as exponents of the golden rule, for, and I will expect at your hands, a verdict of *not guilty*.

Speech of Mr. McNab

MAY IT PLEASE YOUR HONOR, AND LADIES AND GENTLEMEN OF THE JURY:

TWO obvious features of this case should determine your verdict. One, the complete absence of testimony directly or inferentially con-

necting this defendant with this unfortunate girl's death; the other, the effort of the prosecution to create testimony where none had existence in fact.

The District Attorney has said to you that this is a million-dollar defense. That is without evidence, and not true or fair.

I might say that this is a billion-dollar prosecution, because the Government of San Francisco, as represented — or misrepresented — by the District Attorney, has behind it the entire financial resources of the city. It has, besides, the organized forces of the sheriff and the police.

This emphasizes the necessity that trials shall be honest and fair, because the wrongs, committed by the agents of authority, are often beyond prosecution: when Government fabricates testimony, the source of justice is poisoned.

The commandment, "Thou shalt not bear false witness against thy neighbor," which Moses received from God on Sinai, has been the axiom of jurisprudence in all civilized lands. It was quickened and made vivid from the time that Mary cradled Jesus in the manger, and has been the headstone and cornerstone of law and justice from then until now. Without that basic principle, juries cannot determine, and courts are helpless.

His Honor, presiding in this case, with tempestuous attorneys contending before this jury, has been impartial. His conduct has been a credit to himself and an honor to the State, and gives promise for

him of a great career on the bench. But what can a judge do with testimony that is fabricated for the trial and without foundation in fact?

Speaking of fabricated testimony: When the District Attorney produces two witnesses who had been, by him, without process of law or any authority whatever, forcibly imprisoned for three months in the home of the mother of one of his deputies, at all times under his personal control, his conduct is not susceptible of any honest explanation.

It is a rule of law that, when a person is found with burglars' tools upon his person, he is presumed guilty. He is not permitted to excuse himself by saying that he carried these implements to open church doors so that people might enter and pray!

What honest reason can be given for taking two helpless young girls, who were not charged with any breach of law, and confining them in the home of one of his employees for three months before they were brought to court? Remember, they were not under process of law or any order of court, nor were they imprisoned in any public institution.

Perhaps the District Attorney will tell you, "We did not trust these witnesses; we thought they might be tampered with." If a witness can be tampered with, confessedly that witness is untruthful, and on the testimony of that witness no just verdict can be founded. It is improper for the District Attorney to ask you to convict anybody on

the evidence of any persons who, he admits by his conduct, can be tampered with.

There is another way of looking at this. The principle of justice rests on fair play. Each side in a trial is supposed to have an even chance. As Roosevelt expressed it, there must be a square deal. Under these rules, why should the District Attorney be permitted to do all the tampering, having the witnesses in his own hands until the trial, and the defense excluded?

If the old-fashioned rules for the protection of innocence, for which the founders of the Republic fought when they established a free nation, are to be abandoned, there should, at least, be substituted some order of trial that will provide for fair play even in contests between the unscrupulous, something that would resemble the often repeated honor among thieves. In other words, if it is to be conceded that this case is to be decided by corrupt testimony, why should the defense be excluded from the game? Is there one law for the prosecution and another for the defense?

Roscoe Arbuckle is entitled to be tried as any other American; that is, by truthful, clean and wholesome evidence.

When I learned of the removal of these unfortunate girls from their homes and their placing in a private prison, where their testimony could be controlled by the prosecution until wanted, there

flashed on me the thought what my feelings would have been if my sister, whose memory has adorned my life with beautiful and happy sentiments, had been taken away ruthlessly and placed in strangers' control. What would I, her brother, have done to anybody who, in violation of law, thus constituted himself the bully of the town and took possession of my sister? I hardly like to think! But, yes; I do think that there would have been a vacancy in the office of town bully and the Coroner would have functioned on his remains.

Since history was lost in the twilight of fable, the human race has been fighting oppression. The old practice of putting a thumbscrew on a witness, or putting him on the rack until he gave the testimony desired, only differs in degree from locking up two girls in a house belonging to the prosecution, for three months, before trial. Such has never before happened in San Francisco, and, may it please God, will never happen again!

I wish to touch upon another phase of this case, the saddest of any. It was the instructions of the defendant that reflections on the life of the unfortunate girl, Virginia Rappe, should not be allowed to creep into the record. The shadow on her career did not come forth on any question of the defense. This, we sought to prevent. It was prodded out of a harassed and feeble witness under the vicious attacks of the prosecution.

It was not unknown to the prosecution what the

result of these questions would be, because the deposition of this witness had been taken before the trial, and all that she told upon the witness stand had been read by all the attorneys.

It was never our purpose to acquit Roscoe Arbuckle through the sorrows of others. Whatever misfortunes came into this young girl's life were, perhaps, the result of environment. For womanhood in misfortune, any man who lacks sympathy is not a man at all.

Since Christ stood in Jerusalem, when the woman taken in sin was brought before Him, there has been no finer message running down the ages than those words of the Saviour: "Woman, where are those, thine accusers? hath no man condemned thee?" She said, "No man, Lord." Then Jesus said, "Neither do I condemn thee: go, and sin no more."

To me, Virginia Rappe, burdened with misfortune and sorrow, is more human and elevating than many women I have seen about this hall; those who have organized themselves as societies of various forms and names, and seek to influence the procedure of our courts. They gloat over misfortune, distress and unhappiness. They share the District Attorney's ambition and, sometimes, almost fiendish desire, to transfer people to the penitentiary regardless of guilt or innocence. These women do not belong to the motherhood, the wifeness, the daughterhood or the sisterhood of our race. They are a separate kind. They haunt the courts like

the fabled daughter of the horseleech, crying:
"Blood, more blood!"

How unlike the example to womanhood, given by the great builder of our language, in the words of Portia, the first woman who ever appeared in court, who sweetened justice with sympathy and tenderness, and whose immortal words have ever been quoted in the church, on the stage, and in the school:

"The quality of mercy is not strained,
It droppeth as the gentle rain from heaven
Upon the place beneath; it is twice bless'd;
It blesseth him that gives and him that takes;
'Tis mightiest in the mightiest; it becomes
The throned monarch better than his crown;
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptred sway,
It is enthroned in the hearts of kings,
It is an attribute to God himself,
And earthly power doth then show likest God's
When mercy seasons justice."

What a command from the womanly woman to those women with stone faces who gaze upon misfortune without womanly sympathy.

When I have seen these about this court, there has come to me that passage from Ruskin:

"Wherever a true woman comes, this home is always round her; the stars only may be over her head; the glow-worm in the night cold grass may be the only fire at her feet; but home is yet wherever she is, and

for a noble woman, it stretches far round her, better than ceiled with cedar or painted with vermilion, shedding its quiet light far for those who else were homeless."

Returning to the evidence: Let me call attention to the three remarkable witnesses, Mrs. Fox, Mrs. Burkholder and Mrs. Hardebach.

It is not my inclination to attack witnesses. A witness should be protected from assault on the witness stand, because, if witnesses are not free to come and go, preserving their self-respect, they will not come, and juries will be denied the testimony they should receive. I merely wish to illustrate the hopeless inconsistencies and striking peculiarities of the statements of these witnesses.

Mrs. Fox and Mrs. Burkholder claimed a close intimacy with Virginia Rappe during practically all her girl life in Chicago, but did not know each other. They occupied the same space at the same time but did not come in contact. This is contrary to the laws of physics. Try it, ladies and gentlemen, when you retire to the jury room. See if you can physically put two things into the same space at the same time.

Mrs. Fox, Mrs. Burkholder and Mrs. Hardebach, the "Three Musketeers," testifying all for one and one for all, were strong on dates but weak on events. They attacked Mrs. Whitehurst. They did not — because they could not — challenge the things she said happened, but they sought to confuse her dates.

How did they attempt to prove them incorrect? Mrs. Burkholder aimed to disprove the October social gathering Mrs. Whitehurst had, on or near her birthday, in Chicago, when Miss Rappe and other friends were present. I call your attention to how Mrs. Whitehurst always gave the names of those about the table so that those were in evidence, as well as time and place. Mrs. Burkholder said she believed—she was not sure—that Miss Rappe was in New York during August, September and October, but she would not swear positively to any time other than a Thanksgiving dinner in late November.

The prosecution then, with curious inconsistency, introduced a photograph of Miss Rappe, taken in San Francisco on the 25th of September—they themselves thereby cutting off two months from the guesswork testimony of their witness, Mrs. Burkholder.

As for Mrs. Fox, her evidence is that Miss Rappe moved about so much, she could not be sure where she was at any particular date; and, as for Mrs. Hardebach, all she would say was that Miss Rappe, at or about the time of one of the questioned dates, visited a place not far from Chicago.

Against the indefinite and evasive testimony of these witnesses the direct testimony of Mrs. Whitehurst must stand.

I must say a word here about our pathetic witness, the nurse, Virginia Warren. Her direct testi-

mony was to the specific event, the nursing of Virginia Rappe in Mrs. Rafferty's house in Chicago. Mrs. Rafferty testifies to the same event, and witness Harry Barker tells of visiting her there. Three people swear to this circumstance.

I am not excusing the testimony of Virginia Warren when she was pressed for an account of her early life. That she wished to throw around it a mantle of obscurity is beyond doubt. Whatever the skeleton in her career, she was not willing to expose it in court. On that collateral matter, she was not frank; she was not telling all she could have told. This jury has, therefore, the right to weigh her testimony accordingly, but, in doing so, remember that she was not contradicted or impeached on any fact material to this case.

In the progress of this trial, unkind insinuations were made against defense witness, Harry Barker, which were without excuse or justification. He comes clean in all his relations to the evidence. You can read between his words and recognize his relations with Virginia Rappe, the sentiment of an honest youth for a girl who shared his hopes and ambitions. I thought beautiful, though pathetic, the story of the money he gathered from his boyish savings to buy an automobile that he might take his sweetheart about for pleasure in an open, cleanly, upright way. And then, the girl's mother died in poverty, and he gave the money for her burial.

Where, oh, where were Mrs. Fox and Mrs. Burkholder then? They could cross this continent, moved by what posthumous impulse or post-mortem purpose no one can tell, to give revengeful testimony in this case, but did not attend the funeral of the mother of the girl for whom they swear lifelong intimacy, held in the city where they lived. It was left to Harry Barker to bury the dead.

Now, about the People's witness, Mrs. Josephine Keza, the chambermaid of the St. Francis Hotel, who testified to exclamations of distress coming from room 1219, the room where the tragic incidents occurred. This witness states positively that she took the time from a clock at 2 P.M., and, as she left the hall at 2:30, anything that she heard must have happened within that time. That puts her evidence out of the case, because Miss Blake, one of the witnesses imprisoned by the prosecution for three months' preparation and rehearsal, positively states that she was in the assembly room, 1220, at 2:30 P.M.; that all the party, including Miss Rappe and Mr. Arbuckle, were in the room; that it was twenty minutes before any person left that room. There was a clock on the mantelpiece. Miss Prevost, the other imprisoned witness, corroborates this witness. These were the prosecution's witnesses who had been, during their tuition, secluded from approach by the defense.

Mrs. Keza, therefore, could not have heard anything unusual at that time, and, if she heard sounds

of distress at a later time, coming from room 1219, it is of no consequence as, admittedly, shortly after three o'clock, they found the young girl in that room in distress, and all were ministering to her suffering. Mrs. Keza goes out of the picture.

The prosecution introduced an alleged finger print expert, witness Heinrich. To impress you, he had the door of room 1219 of the St. Francis Hotel solemnly shrouded in white, dramatically removed the shroud, and told you that eleven days after the events of this case, he visited the St. Francis and saw there spooky figures on the door. Eleven days!

He came there with a young lady assistant and introduced himself and lady to the hotel management in frivolous and ribald remark as "Sherlock Holmes and Dr. Watson." I think that this was appropriate, because their whole appearance in this case is a work of fiction. He danced and conjured before the door as though it were a ouija board.

Heinrich was not a practical finger print man. He is not connected with any police establishment in California or elsewhere. He never before testified in our courts on the subject, and yet he discovered these remarkable things on the door.

Adolph Juel, of honest face and manner, who, for thirteen years, has been in charge of the finger print division of the police department of San Francisco, said that he could find no resemblance between either Arbuckle's or Miss Rappe's finger prints and those on the door.

Thus ended the door, except as illustrating the method in which this case has been prepared.

The thing that stands out as unfair and dishonest is that, without the presence of any person representing the defendant, without any person representing the regular police force and detective bureau, Mr. Heinrich claimed to have discovered finger markings on that door, and he and an assistant District Attorney then disfigured and concealed the markings with aluminum powder, completely destroying their original appearance.

Counsel for the State made objection when we asked Miss Blake, their witness, to tell what conversation occurred with Miss Rappe on the evening of September 5th, the day she is alleged to have received her injury.

The court sustained the objection and, I believe, under the rules of evidence, the ruling was correct. But the District Attorney, if he wanted the truth, need not have made the objection.

It was my duty to bow to the court's decision and refrain from offering more of that class of testimony. So, when officer Glennon, who called at the room of the stricken girl and inquired the cause of her misfortune, was on the witness stand, we did not press this question as against the District Attorney's objection. Counsel for the State, however, offered to stipulate that, if we would allow all remarks that had been made at any time to anybody to be introduced, he would withdraw objection. We

replied that if he would produce these witnesses so that we might look at them we would then answer.

After the experience with Miss Blake and Miss Prevost, three months in Mrs. Duffy's private prison, we would not have been justified, without careful scrutiny, in allowing any statements whatever from witnesses the State's Attorney might gather from anywhere or everywhere.

But none of this is longer germane because, ladies and gentlemen of the jury, there are two solemn pieces of testimony that cannot be challenged or shaken, as they come from times and circumstances when this trial could not have been anticipated.

Dr. Barnes treated Miss Rappe for three months in Chicago for a disease which tended to produce the organic condition that produced her death. His prescription book was brought before you. The prescriptions are in the book, just where they were placed at the time — where they cannot be changed — where they have remained throughout the years. These documents come here, not influenced by the mind of any man, nor by any person's passions or prejudices, and they are corroborated by unimpeachable testimony.

The other is when Dr. Rumwell, the man who was with this girl in her life's most solemn occasion — when she was struggling to recover her health — after her collapse at the St. Francis Hotel, and when she was under the impulse to tell him all she

knew — wrote down the words from Miss Rappe's lips. She said she could not tell what happened because she was intoxicated, and did not know. At no time did the girl ever change that statement to Dr. Rumwell in her solemn discussions with her physicians from day to day, or with her three nurses that administered to her and smoothed down her pillow.

If the girl could not tell him what happened because she had been intoxicated, had no memory or knowledge, these facts could not have been changed by anything that happened subsequently. Nothing could ever recall that which she never knew, no matter how much the State's Attorney labored to prepare Virginia Breig.

And let me say this: After the evidence of Dr. Rumwell, to present the testimony of Virginia Breig to this jury, with the suspicious circumstances surrounding it, was not only an insult to your intelligence, it was scandalous.

Three nurses were ministering to this poor girl as she lay in the Wakefield Hospital. With all the skill and tenderness that comes from training and experience, they eased her sufferings. To none of these did she make any statement. But the District Attorney would have you believe that Virginia Breig appeared just before she passed away, selecting a moment when the nurse was momentarily absent and no person was present to contradict. She came

to dun this girl, just on the brink of eternity, for the hospital bill. The sick girl was about to go to that bourne from whose shores no traveler returns, and Virginia Breig was going to collect the cash before she went; and Virginia Rappe makes, not of her physician, nor of her nurses, but of this bill collector, her most intimate confidant! Think of it!

The girl who did not discuss with any of the three physicians, Kaarboe, Beardslee or Rumwell, who were with her several times, the girl who did not give this information to the conference of physicians — Doctors Rumwell, Reid and Rixford, bent on her salvation — and who never whispered it to any of those angels of mercy, the nurses who hovered constantly about her bed, preferred to discuss her dying condition with a stranger who had slipped in to dun her for her bill! The thing challenges credulity. It affronts the ordinary knowledge of human affairs, of life and death.

She expressed no desire to send immediately for her physician, she made no suggestion that a minister of the gospel should kneel beside her bed and pray, or that she might look in the faces of the nurses whose sympathy and attention had softened her pain. No! There was only the sordid bill collector, seeking to extract money from her afflicted and dying moments, to whom — as the prosecution would have you believe — she made a statement

different from that made by her in her calmer and clearer hours to her physician when she said she did not know what had happened.

A curious thing about Virginia Breig is, that she finds, in order to comply with the technical legal situation that will enable the declaration to get in evidence, that the girl was dying, but she charges in the bill one week's service in advance. So, Virginia Rappe was to die for the purpose of the District Attorney, but she was to live a week for the profit of Wakefield Hospital!

Virginia Breig had known of this prosecution for seven months, for this is the third trial. She had known the publicity, the excitement, the evidence. The head of her institution — her employer, whose confidential secretary she is — had three times testified in the case, and had been, as you ladies and gentlemen of the jury had opportunity to observe, venomously partisan for the prosecution. His chief nurse had three times been a witness and had also been bitter against the accused. And this woman, according to her telling of it, during all this time, had not only known of this dying statement, but had told it a hundred times to the nurses, including the head nurse who had been three times a witness in the case. And yet, she had never been called to testify at either of the previous trials or at any of the preliminary hearings! Nobody has heard of her. Nobody!

She did not want notoriety — this shrinking

violet — she, who would cast a shadow over the deathbed of a girl in her last agony, trying to collect from her one week in advance at the moment she thought she was passing away! Tender, sentimental thing! She did not wish to testify!

I am leaving open the question of how she came to testify at all. I am leaving it to her own statement. She admits that she called up Mr. Arbuckle within recent days, asking him to pay Miss Rappe's hospital bill — the bill she failed to collect at the girl's deathbed; that he referred her to me; that she called me on the telephone; that I said that it was her duty, if she had any testimony, to go to the District Attorney, but she denies that she offered me to bargain her silence for the payment of the bill.

Now, why did she call on me for the payment of the bill and be, by me, instructed it was her duty to take her evidence to the District Attorney, if she did not offer me her silence in exchange for the bill? How could I possibly have known the alleged facts except from her? What had the bill, presented to Mr. Arbuckle, to do with her testimony unless she coupled the two? The two were coupled. This creature, representing an institution — a hospital supposedly operating on lines of mercy and humanity — selected a moment when a nurse was absent, and attempted, with soulless greed, to collect in advance from a perishing and agonized patient. Death having defeated her ghoulish purpose, she

sought to traffic with the living for her silence — the price being the thirty dollars accumulated and the thirty dollars in advance.

It is natural for a man to have pride in his profession and I wish to indulge myself a little; in the language of the street, to pass myself a bouquet, in the fact that I did not pay her the bill and purchase her silence — the testimony that, for the price of sixty dollars, she is willing to give in an effort to send a fellow being to the penitentiary! But, where testimony was offered for sale, it was my duty, whether she was friend or foe, to send her to the best market. I told her where to go. She went.

Returning to the events that occurred in the rooms at the St. Francis Hotel: There were five people in room 1220 — the parlor — prior to three o'clock — three women and two men. All have been accounted for except Mrs. Delmont, who came with Miss Rappe from Los Angeles, and who was with her to the end. She has not been produced by the prosecution. She was hostile to the defendant as she was the complaining witness for the State in the preliminary proceedings in the police court. As the center of events, she was apparently the Prosecuting Attorney's chief witness. Indeed, without intending disrespect for the District Attorney, for some time after this tragic event one might have supposed from her activities that she was the District Attorney. It was the duty of the

prosecution to present whatever information she possessed to this jury.

Take one illustration, the incident of the ice: Mr. Arbuckle says that he and Mrs. Delmont applied ice to Miss Rappe to revive her. If this statement is not true, Mrs. Delmont was the one to contradict. Instead of calling her, the District Attorney brought Semnacher, who did not witness the ice incident, all the way from Los Angeles, to attempt, by indirection, to put a false construction on the act. As I listened to the trivial ice incident, which the District Attorney labored so long, by indirect methods, to get before you with a slur, I was reminded of that famous saying of Lord Chesterfield:

"A little mind is like a microscope; it magnifies little things but cannot conceive large ones."

As I have said, in the beginning of these proceedings Mrs. Delmont was the complaining witness. She has not complained audibly to this jury. Was the District Attorney afraid or ashamed to bring her here? She was one of the conspicuous and solemn facts in the case up to the death of Miss Rappe.

The District Attorney will, perhaps, ask the court to instruct you that he is not compelled to produce any particular witness. That is true. He is not compelled to call *any* witness. He can let the case go. But it is

also a rule of law that, when a person is present at an event and necessarily knows the fact, and the side on which rests the burden of proving that fact does not call that witness, but seeks, by indirection and inference, to reach the point some other way, it is presumed that the witness whom he could have produced, who had full knowledge of the facts, would have testified contrary to his contention.

You, the jury, have heard the testimony of Roscoe Arbuckle, not impaired by cross-examination, not impeached, not contradicted. You have listened to the evidence of all except one who were in the rooms, and including the two girls who were privately imprisoned for three months to create and preserve testimony for the prosecution. I ask you: Was anything said or done in those rooms that could make the gathering unclean or disreputable, anything differing from the ordinary fun that goes on in homes and hotels everywhere? There was one exception — the coarseness and boisterous roughness of Mrs. Delmont. And it is in evidence that Arbuckle ordered her from the rooms on account of her behavior.

A fact of great importance is that when the witnesses entered the room where Virginia Rappe was lying on the bed, she was fully clad: her clothing was not disturbed or in the slightest disorder. The prosecution had Mrs. Delmont, who was there, present in court. Was one word said to indicate

that the clothing was not in perfect condition? The evidence is that it was. If there had been a tear or a scratch on the clothing, if one thread of her garments had been disordered, would not the District Attorney have proved it by Mrs. Delmont? And, even after the process of three months in prison, his witnesses, Miss Prevost and Miss Blake, testified to the contrary.

Remember, it is in evidence that Mrs. Delmont and Miss Prevost disrobed Miss Rappe. The fact therefore stands undisputed before this jury that Miss Rappe's clothing was in perfect condition.

Could anybody assault any person without in some way disturbing the clothing? It is not in the domain of possibility. Furthermore, the two beds were in perfect order, except for the moisture that was on one of the beds through Miss Rappe's having vomited.

Shortly after the people entered room 1219, Miss Rappe did tear her clothes, precisely as, according to the witnesses from Chicago and Los Angeles, she did on many occasions when in hysteria or frenzy. All the disturbance of her clothing, occurring in this manner, happened when all witnesses were present.

There is a point on which I ask your attention. It is not directly in evidence. It appears only by innuendo through the hypothetical medical questions. The theory of the prosecution seems to be that the instant Mr. Arbuckle entered room 1219,

something happened to Miss Rappe and, in some mysterious manner, she went into a shock and thereafter could make no outcry. But, when they proceeded to fix this case, through sophisticating the testimony of Miss Blake and Miss Prevost, the private prison witnesses, they caused them to testify that Miss Rappe said: "He killed me"; then, afterwards, "He hurt me." I shall deal with this subject hereafter, but, for the present, permit me to illustrate. The prosecution had to take her out of the shock that prevented her from calling for help. So, the poor girl had a shock that made her dumb for one purpose, but was free to make exclamations for other purposes of the evidence. This resembles the testimony from the Wakefield Hospital, where the girl had to be *dying* to get her alleged declaration in evidence in this case, but had to be *living* in order to pay the hospital one week in advance.

After the people in the rooms had removed Miss Rappe's clothing, they administered ice by rubbing it on her body, admittedly for a kindly, honest, well-meaning purpose — maybe not with wisdom — perhaps not with scientific knowledge — but still, all of them, in their crude way, were trying to help her. It is this simple, kindly-intentioned act that the District Attorney tried, maliciously, to distort by indirect — yes, by innuendo — evidence into an action discreditable to the defendant; but he failed completely.

There are several incidents of the rooms that I am sure must have struck the jury with great force. One was the efforts of Fischback, the giant — you observed him — a wonderful athlete — to restore Miss Rappe by taking her by the ankles and holding her in the air.

You also remember that, on the examination by the prosecution of their private prison witnesses, Miss Blake and Miss Prevost, as to what happened in the rooms, they carefully avoided asking any questions that could possibly suggest so extraordinary a performance as lifting a young woman by the ankles and standing her on her head. That was an act of violence, an act that might have destroyed the organs of any person. I had to pull the incident out of their witnesses on cross-examination by legal dentistry. Was not that a substantive fact, that should have been shown you when the case was presented?

This should make clear to you the evils and dangers of such processing as was administered to certain witnesses. It means not only the *commission of perjury*, but the *omission of evidence*.

After the act I have recited, they carried Miss Rappe to the bath, firmly holding her, the gigantic Fischback holding one side, the two women holding the other. They gave her a cold bath. After drying her, the same process was administered by reversing her person and carrying her back to the bed. And, after that, Mr. Fischback massaged her.

Time is an important element in this case. By indirection and inference the prosecution seeks to impress the thought that Roscoe Arbuckle and Miss Rappe were in room 1219 for a considerable time. The direct evidence is that their presence there was transient — almost momentary.

The testimony, practically undisputed, is that Arbuckle entered the room about three o'clock. The testimony of Mr. Boyle, the manager of the St. Francis Hotel, is that he was summoned to the room to render assistance to the sick girl shortly before half-past three. This is not disputed.

Now, the things that were done for the sick girl by Miss Blake, Miss Prevost, Mrs. Delmont and Mr. Fischback, after they were summoned by Mr. Arbuckle to render assistance, were not programmed or written out. All present were laboring under excitement in applying the various remedies; so, necessarily, they did not dovetail, and consumed much time. You, the jury, have heard from the witnesses the things that were done. Can you figure how any people could do all these things in less than half an hour? Measurement by events is stronger and more definite than any guess at time.

As you know, it is established — yes, accepted — that Mr. Arbuckle entered the room approximately at three o'clock. It is established — yes, accepted — that Mr. Boyle was called shortly before three-thirty. With the clock in your minds, can you arrange the physical events that you know

occurred in that room, so that they could possibly have happened in less than half an hour? This, necessarily, limits the time between Mr. Arbuckle's entrance and his summoning help to an almost trifling period.

There is another vital feature. The door leading from room 1219 to the main hotel hallway was unlocked. Mr. Arbuckle and Mr. Fischback testify that it was used during the day as their exit and ingress and that the keys were on the mantel of room 1220. Mr. Boyle, when Mr. Arbuckle lifted the girl from the bed, to carry her to the room in another part of the hotel, opened the hall door of room 1219 from the inside, without use of a key and by merely turning the door-knob. Also, the testimony of all witnesses is that the windows of room 1219 were open and the curtains were up, exposing the room to those living in other parts of the hotel.

Is it thinkable that anybody, in a room with windows open and curtains up, and with a door leading into a public corridor unlocked, would have attempted violence on anybody?

Especially is it not supposable on a person physically well developed and capable of making an outcry that could be heard through several rooms. It is in evidence that, aside from the local trouble that afflicted her, Miss Rappe was very strong. You heard the prosecution's witness, Rideaux, say that he could hear Miss Rappe in an ordinary tone

of voice at fifty feet. At fifty feet! Well, how much further could he have heard her in an extraordinary tone of voice?

I am not particularly stressing the testimony of witness Rideaux. He struck me as a comic valentine on the witness stand; but one thing he did develop was that Miss Rappe was an athlete.

The alleged violence in this case is supposed to have happened in room 1219, while people were sitting in 1220. Miss Prevost swears that she heard nothing. Mrs. Lancashire, in room 1218, just on the other side, heard nothing. Mrs. DeLiere, opposite, across the hall, heard nothing. The windows up — the curtains raised — the door unlocked! Is it not beyond possibility of thought? Is it not beyond reason?

When Mr. Arbuckle entered room 1219, he tells you that the door between rooms 1219 and 1220 was open. He closed it because it was his purpose to dress for a drive. He was unaware the girl was in the bathroom and he went there. All the testimony is that, when the girl was last seen before her sickness, she was seeking a bathroom.

At this point, there is a feeble effort made by the prosecution to make it appear by Miss Blake that she saw Mr. Arbuckle enter the room. But you, the jury, remember that Miss Blake's written statement was taken by the police immediately following Miss Rappe's death. That was before she, or any other witness, had been tampered with —

before she was seized and placed in a corral like a beast.

I read you that statement, where she said that she and Miss Prevost went from 1220 into 1221, and when they returned she asked Mr. Sherman where Roscoe Arbuckle and Miss Rappe were. If, as the State's Attorney would have you infer, she knew that Roscoe Arbuckle and Miss Rappe were in room 1219, why did she state in writing to the police that she asked Mr. Sherman where they were?

Now I want to demonstrate to you the evils of processing witnesses. I will give you facts, illustrating the exact proceedings in the cases of the girls, Miss Blake and Miss Prevost. It is a sad story. It is the shame of San Francisco!

They wished to have it appear that Miss Rappe said, when the others entered the room, "He killed me," so they wrote a statement to suit themselves for Miss Prevost to sign. They then took her before the Grand Jury, and over and over again, the State's Attorney asked her, "Didn't you say that Miss Rappe said, 'He killed me'?" And always the girl answered, "No."

That rings throughout the whole proceedings before the Grand Jury. That is the testimony in the record. Every time, Miss Prevost said, "No; I never said it and Miss Rappe never said it; all Miss Rappe said was, 'I am dying; I am dying.'"

After Miss Prevost had been kept the whole

evening before the Grand Jury, they took her to the District Attorney's office, where there were assembled many people, to assist in coercing and intimidating this unprotected witness. The District Attorney ordered detective Leo Bruner to take her to the city prison and lock her up. As the detective took her by the arm, a friend of the District Attorney's, who knew the girl, entered vigorous protest, and the District Attorney said she might be taken home, provided she was brought back in the morning. So, they took her home — the last night she was at home for many months.

Remember, it was four o'clock in the morning when they tried to make this harassed and terrified girl swear that Miss Rappe said, "He killed me" — to make her give a statement into the record which had never been uttered, and which it is not now pretended was ever uttered.

The next morning Miss Prevost was brought into the District Attorney's office and they sought to have her agree to a written statement that had been prepared by an assistant District Attorney. She said, "No; that statement, 'He killed me,' was never said; she only said, 'I am dying; I am dying.'" The District Attorney finally said, "Well, Miss Blake says that Miss Rappe said, 'He hurt me,'" and Miss Prevost replied, "I never heard it, but if Miss Blake says that, let it go at that; you can put it in." So, that is the way that came into the record as far as Zey Prevost is concerned.

Miss Rappe was dead. She could not contradict; she was not saying these things. The District Attorney was putting these words into the dead girl's mouth after she was dead.

Miss Prevost testified that Miss Rappe never said, "He killed me," but they told her Miss Blake said that Miss Rappe said, "He hurt me." Miss Prevost said she never heard that, but was willing to compromise with her persecutors and place in the statement words that they all knew the dying girl had not used. Then they locked Miss Prevost up in Mrs. Duffy's private prison so that no person, other than themselves, might thereafter see her, hoping that this frozen testimony might remain in cold storage, so preserved that it would not melt under cross-examination.

Then we have the story from Miss Blake. Quite remarkable! Miss Blake was of higher intelligence, with a greater degree of reserve and resistance, therefore more dangerous. They dared not bully her so much. You know, even District Attorneys do not hold office forever. You know that San Francisco recovers her self-respect sometimes, purges herself of improprieties and cleans the Augean stables of the City Hall.

All intelligent men know that one of the great evils that arise from the use of corrupt and vicious practices in an attempt to send men to prison, against whom there is not proof of guilt, is that juries are afraid to send even guilty men to jail

and the community suffers. An officer who violates the law in the name of the People does vastly more harm than the unfortunate who, in hope of escaping prison, resorts to wicked methods.

So bold, so confident, so eager was the prosecution in this case, that when, by terrorism and coercion, they had Miss Prevost accept the falsehood of the word "hurt," in place of the lie "kill," they did not even re-write the statement, but drew a line through "kill" and wrote the word "hurt" above, leaving this barefaced official perjury to be presented to the jury!

With Miss Blake, they were more timid; there was a glint in her eye that even a District Attorney might fear.

Miss Blake was told, when taken into the District Attorney's office, that Miss Prevost had said that Miss Rappe had said, "He killed me." Miss Blake answered, "I never heard Miss Rappe say that," just as Miss Prevost had answered. Yes, I will read that from the transcript: there is nothing like the testimony itself. It is so much worse than anything that I can say about it.

Q. What was said at that time between you and the District Attorney about the words, "He hurt me"?

A. Well, I told my story, and they said I wasn't telling everything; that Miss Prevost had said that I was present when the girl said, "He killed me," and I said I never heard that. They said that Miss Prevost said that I was present and it was "He killed me." I said it was not so: that I never heard her say, "He

killed me." He said, "Maybe it was not those exact words, but it was something similar to that."

See, how very convenient. The girl was dead. Fix it up; fix it up. Arbuckle isn't here, and it is popular just at the moment. That is one of the things that come when the mob takes possession of the town and the District Attorney becomes its puppet.

Continuing from the record:

Q. Who said that?

A. Mr. Golden; I think it was Mr. Golden; I am pretty sure it was.

Q. Well, what then?

A. He said, "Was it, 'He hurt me,' or something like that?" I said, "Maybe it was 'He hurt me,' but it was never 'He killed me.'"

Q. And they said perhaps it was "He hurt me"?

A. I think that is what he said; I don't just recall how that came up, but I know they first said that Miss Prevost said that I was present when the words, "He killed me," were heard, and I said I did not hear it, which I did not.

Q. And then, what about "He hurt me"? What was said then?

A. Well, then he said it was "He hurt me."

Q. Who said "He hurt me"?

A. I don't remember who said it.

You must remember that Miss Blake had already given her statement before they seized her and processed her, and that was the signed statement to officer Kennedy. It has been read to you. In that

statement, Miss Blake said Miss Rappe only said, "I am dying; I am dying." That is all that was said. That is all anybody said anywhere, without any dispute whatever, or that was testified to by anybody, until the processing was begun.

We have all read of the time of the Bastille when, without process, they simply issued a letter and took people to prison. I remember reading in Professor Huxley, a statement that in all historical times the human mind is precisely the same, and the human habits. We have all read of the grand and heroic works of men trying to establish liberty. But people revert back, in a sort of mental and moral atavism, to the old methods whenever they get the opportunity. It shows how people, individually, must see that their liberties are protected, because it concerns not alone this defendant but, as well, all of us. These things might happen at any time to any one.

It is true that Miss Blake and Miss Prevost began to go to pieces on the various trials, under cross-examination, and the District Attorney seemed to be much displeased that they were disintegrating. The explanation for that is simple. If a person is telling the truth, he will always tell the same thing in substance; but, if he is fabricating, he forgets the rehearsal and soon begins to make contrary statements. That is a matter within the ordinary knowledge of human nature.

Now, I have covered the testimony concerning

the events in room 1219, except to show how little any of the persons present thought that this was other than the usual temporary sickness of Miss Rappe.

They all remained in the suite of rooms, and they all had dinner there that evening. We have Mr. Boyle coming to Mr. Arbuckle and saying that the doctor had seen the girl, and that there was nothing wrong. Nor did any of those doctors seem to think that there was anything serious with Miss Rappe that evening; anyway, none of them seemed to have any intimation from her or from the nurses that were with her, that anything was dangerous until Thursday night when that conference of three physicians was held.

The prosecution has said that Mr. Arbuckle, when he returned from Los Angeles to San Francisco, should have placed himself entirely in the hands of the authorities, furnishing them all the information in his power, and letting them do their best, or their worst. That would be true under ordinary circumstances, when the authorities were conducting themselves in a judicial manner; but no sane man would have been justified in such action under the circumstances he encountered.

Arbuckle drove all through the night in coming to tell his story in the city supposed to recognize fair play, the city where the Padres established hospitality and beautiful sentiments, and where the pioneers set an example of heroic manhood. He,

a stranger, coming here to present himself and his statement, is seized by a ferocious District Attorney, animated by the spirit of an Apache and not of an officer of the law, and thrown into jail without a hearing. Then he is expected to open his inner consciousness and tell everything to people who would have hanged him in their bloodthirsty intensity if they had had the power.

The District Attorney had abandoned his functions as District Attorney, and had turned the office over to a dissolute woman. He was leading a screaming, howling mob, and had forgotten the dignity of his position and profession as well as the honor and self-respect of San Francisco. Fair Play — Decency — Humanity — where were you?

As the facts have been developed here, I have thought of the words of Shakespeare, put into the mouth of the aged Lear:

Lear: Thou hast seen a farmer's dog bark at a beggar?

Gloster: Ay, sir.

Lear: And the creature run from the cur? There thou might'st behold the great image of authority; a dog's obeyed in office.

The District Attorney, indeed, has tremendous power—to use or abuse. In this case it was abused.

Ladies and gentlemen of the jury, the defendant is a man who has brought laughter to countless children. Since the time when Christ said, "Suffer little

children to come unto me," the instinct of childhood has been the most accurate determinative of character. This man never uttered a picture with an element of uncleanness about it. His last act in this drama was carrying the suffering Virginia Rappe in his arms, down the hallway of the hotel, that she might be placed in peace and comfort, and have every care and attention.

This trial concerns not alone this unjustly accused man: it concerns us all. Much as Roscoe Arbuckle has suffered, he will be repaid in full if such things as have happened to him never again occur to other innocent men. If, through the extraordinary attention that has been attracted to his case, the vile, hideous and barbarous practices that have prevailed in criminal processes in San Francisco, unknown to the public, are no longer possible, and unfortunates, that are being railroaded to the penitentiary without offense against the law, will have fair trials hereafter, then this persecution will have served a good purpose and Arbuckle will be repaid.

American law and American processes must reign here, so that people who wish to feel themselves Americans, entitled to the rights which were founded by Washington and preserved by Lincoln, shall not have to emigrate to America by leaving San Francisco.

If Roscoe Arbuckle's trial has done nothing else, it has exposed the methods that are resorted to in

this city. If he had not been a strong man, backed by strong men, he would have been treated as many other innocent men have been treated who have been immured within the walls of San Quentin Prison.

Good will come out of the evil of this case. Thank God, these things can never again happen. Justice shall be restored in San Francisco.

Speech of Mr. Friedman

MAY IT PLEASE THE COURT, AND LADIES AND GENTLEMEN OF THE JURY:

BEFORE proceeding to a discussion of the facts testified to by the witnesses in this case, I shall attempt to convey to you, if I can, just how the prosecution feels about this entire matter.

Yesterday when Mr. U'Ren took the floor to present the opening argument for the People, Mr. U'Ren, District Attorney Brady and I felt confident that we had proved the guilt of Roscoe Arbuckle beyond all question of doubt. After having listened to the arguments of Mr. Schmulowitz and Mr. McNab, we feel even more positive of the truth of our contention.

When this trial opened, there walked into this court room the District Attorney and his assistants on one side of the counsel table, and on the other side of the table this innocent, philanthropic defendant, this much abused man, surrounded by five

of the leading counsel of the State, clamoring to tell you of his innocence, clamoring that his name be whitewashed of the stain we had placed upon it. Four and one-half weeks later, instead of demanding that justice be done, and this man released because he was and is innocent, we have the shrill voice of Mr. Schmulowitz begging you to find a *reasonable doubt* upon which to return a verdict of not guilty.

In Mr. McNab's argument I ask you, ladies and gentlemen of the jury, to place your finger on one thing that dealt with the guilt or innocence of Roscoe Arbuckle. Mr. McNab, not being able to speak upon the facts which are against his client, attacked everything and everybody that came within the range of his caustic remarks, for the purpose of befogging and beclouding the issue here, and taking your minds away from the main fact to be decided by you. For two hours this morning we listened not to the argument of the defense in the case of the People *versus* Arbuckle, but to the closing argument in the case of Gavin McNab *versus* the office of the District Attorney.

One word more upon that subject and I am not going to wander away from the facts of this case again. Judge Brady has been accused by Mr. McNab of resorting to tactics in this case which were unbecoming a public officer, which were dishonest and criminal, and his entire office is accused with him.

What have we to gain by convicting Roscoe Arbuckle, if he be innocent? Money? Oh, I ask you, who is going to pour the golden dollars into our laps to punish the man that killed Virginia Rappe? Where in this entire world has Virginia Rappe one friend that will come forward and contribute as much as one silver dollar to see Roscoe Arbuckle punished for the offense that he has committed? What then? Political advancement? Where could Judge Brady have procured greater and quicker political advancement than by bending to the wishes of Gavin McNab, the man who has pulled the political strings of this city for many, many years?

In the answer to that query you find the answer to the remarks made by Mr. McNab. Not being able to bend the District Attorney's office to his will, not being able to stop the prosecution of a man that can employ the array of counsel you see him surrounded by to-day, not being able to have the People's representatives twist and distort the facts in this case, so that Roscoe Arbuckle could leave this court and be received with open arms by these "strong" men that Mr. McNab says are behind him, and held forth to the world as a martyr and a greater drawing card for the products of his own endeavor, then, and only then, did he discover that the District Attorney's office was vile.

I ask you where in this entire record is there one bit of testimony that the District Attorney or any one acting with his aid, or by his advice, or upon

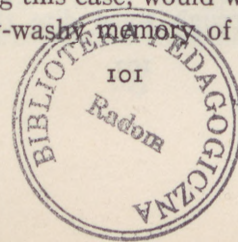
his suggestion or order, or otherwise or at all, as much as changed an "i" in the testimony produced by the witnesses upon this stand?

Mr. McNab has said to you something about "Thou shalt not bear false witness." He has also delivered a eulogy here upon truth, and he has delivered a castigation upon those who dare to deviate from the paths of truth. It sounded well coming from the mouth of one who placed a Warren and a Barker on the witness stand. It sounded well coming from the mouth of one who has said to you, "True, our witness lied, true, she did not say what was the truth; true, she never had anything to do with this hospital; true, she never was a graduate nurse; true, she tried to conceal her business, but you should not let a little thing like that stand between friends."

Mr. McNab, who is so quick to invoke the Scriptures, who so gladly calls down the Ten Commandments to his aid, forgets that there is one which reads, "Thou shalt not kill."

He also beautifully eulogizes womanhood, then blasts and damns every woman appearing in this case, including his own witnesses.

If we were framing this case, when Mr. Arbuckle was called into the office of the Captain of Detectives, his lawyers left outside, would not we have had a written statement confessing his guilt? If we were framing this case, would we have to depend upon the wishy-washy memory of Zey Prevost and



Alice Blake, friends of this defendant, not of the District Attorney's office?

You may be sure we would not have had witnesses testifying, "I don't know who locked the door between rooms 1219 and 1220," and who so often said, "I don't remember." "Do you recollect your testimony at the first trial?" "Yes, but it doesn't refresh my recollection." "Do you recall your testimony at the second trial?" "Yes, but it does not refresh my recollection." "Do you recall your testimony before the Grand Jury?" "Yes, but it does not refresh my recollection."

Do you think we would have had witnesses with memories so poor and weak that they could not recall to mind that Roscoe Arbuckle closed that door? There would have been no chance for a defense, and no opportunity for defendant's counsel to quibble over the facts, if the case had been framed.

Let me call your attention, while on this subject, to the testimony of Alice Blake and Zey Prevost, and let us see what they have to say about the terrible things we did to them. Let us assume that we locked them up and processed them and tried to make them testify a certain way, though the testimony in this case is that Zey Prevost and Alice Blake were free to come and go as they pleased, Alice Blake before the first trial of Roscoe Arbuckle, and Zey Prevost immediately upon testifying at the first trial. It is claimed these witnesses testified here in fear, through some dire threats we held

over their heads, or some treatment we gave them, though when they walked into this court room, under the protection of the judge upon the bench, and in the face of a court room full of the citizens of this city and county, one word from their lips would have placed them beyond the power of the District Attorney, if he has any such power, forever.

But what did they say? Alice Blake, on pages 1191 and 1192 of the record, testified as follows when we gave her an opportunity, if indeed there was any reason for it, of showing just what had happened:

Q. Now, from the time that you first came to the District Attorney's office, at the time that you have testified to, until the present time, Miss Blake, has the District Attorney ever asked you to testify in a certain manner or not to testify in a certain manner?

A. No, they never told me what manner to testify in.

Q. Has the District Attorney, or any of his assistants, or anyone connected with his office, so far as you know, ever asked you to testify under oath to anything but the truth?

A. No, sir.

Q. Have you ever testified in any of these cases to anything but what was the truth?

A. No, sir, as far as I could remember.

Q. And everything that you have testified to was the truth as you remembered; is that correct?

A. Yes, sir.

Where is this awful miscarriage of justice? Where is this terrible distorting of facts in the case

of Alice Blake? Even if our intention has been to persuade her to testify to something that was not the truth, she failed to heed the power and the pressure that we are supposed to have placed upon her. And even when it came down to the question of the words, "He hurt me," even when it came down to the question of whether Alice Blake heard those words or not, and when Mr. McNab had so ably and aptly suggested to the witness that possibly Judge Golden was the one that had used such words, what did Alice Blake say? On page 1186 of the record she testified:

Q. Now, you say Mr. Golden suggested that, or did you say it?

A. I think it was Mr. Golden.

Q. Now, isn't it a fact that you were the one that said, "No, I didn't hear her say, 'He killed me'; she said, 'He hurt me'?"

A. I might have said that; I don't know; I don't remember.

With this testimony of Alice Blake there goes half of the defense of Roscoe Arbuckle. Now, for the case of Zey Prevost, whom they claim we threatened with jail, and locked up and browbeat and tortured, and visited with every horror of the inquisition; Zey Prevost, who was so reluctant to testify at the second trial, and whose memory was so weak, and whose reluctance was so marked from and after that trial that we couldn't even find her to bring her here to testify before you at this trial,

and whose testimony we could only read to you. What did Zey Prevost say? On page 1277 of the record she testified:

Q. You are telling the truth now?

A. Yes.

Strange, strange that this girl did not take that opportunity, while under the protection of the court and the majesty and the dignity of the law, to arise and speak one word, one word, in favor of her friend, the defendant, or against the system used by the District Attorney.

She did not remember that the words, "He hurt me," had ever been used, but after constant and repeated refreshing of her memory, after showing to her page after page of testimony previously given by her, any part of which she could have said was false, if it had been false, she gave the following answer to a question: "Well, after they tried to revive her and gave her a cold bath, she said something about — after Mr. Fischback carried her back into the bed from the cold bath — she said something about being hurt, but I don't know the exact words she used."

Does that conform to the theory of Mr. McNab that the word "hurt" was a creature of the imagination of the District Attorney, and that Zey Prevost never heard Virginia Rappe speak that word? No; and there goes the other half of Mr. McNab's argument. Because, what was the purpose — what

was the purpose of this terrible tirade that we listened to this morning? Was it to demonstrate to you the innocence of Roscoe Arbuckle? Not one word was said about the innocence of Roscoe Arbuckle. Not one word has been said since the case for the People in chief was closed in this court room about the innocence of Roscoe Arbuckle. We have nothing left but the destructive argument of Gavin McNab, pulling and tearing down everything, a Bolshevik effort to throw a monkey wrench into the case of the People, in the hope that the real question to be decided by this jury might be covered by the débris, that the jury might go out and pass upon a fictitious and foreign issue, losing sight of the all-important question, the only question for this jury to answer: Did Virginia Rappe die at the hand of Roscoe Arbuckle?

We have heard much here as to the term, "predisposing." The doctors, one after another, have testified here that cystitis, in and of itself, does not produce a rupture of the bladder, but that it is a predisposing cause. Now, what does this phrase mean? Simply this: If the cystitis had progressed to a sufficient stage it would cause the bladder to become more quickly distended, and the bladder once being distended, a rupture could, under certain circumstances, result.

In other words, without a distended bladder you can have no rupture. What difference does it make whether that distention was caused by cystitis, or

by indulgence in gin and orange juice, or by indulgence in any other diuretic, or by any other act of nature unaided by any spasm of the sphincter muscle or otherwise? Given a distended bladder, you have a subject in such condition that the bladder may then and there be ruptured.

So far as the examination in this particular case went, it proves beyond doubt that the cystitis in the bladder of Virginia Rappe had nothing to do with the rupture. True, if her bladder was distended, the distention had something to do with the rupture, but the cystitis did not.

Now, in order that the defense might ask you to find a reasonable doubt in this case, it became necessary for them to put something in which you might construe as reasonable upon which to base a doubt. What did they put in? They put in the medical testimony and they put in the past history of Virginia Rappe. They have seen fit to open up what they claim to be the private life of this dead girl, for the purpose of showing the innocence of Roscoe Arbuckle.

If all that occurred in room 1219 was what the defendant says occurred in there, what difference does it make whether Virginia Rappe had cystitis upon cystitis, and distention of the bladder upon distention of the bladder? If all that this defendant found in the room was Virginia Rappe lying upon the floor, sick and nauseated, as he has testified to, and that he picked her up and placed her

upon the bed, and that he walked out for a minute, and he came back, and she had fallen between the beds, and he picked her up and placed her on the other bed, and that he never laid violent hand upon her body, would not that have been a complete defense? Does not everything else pale into insignificance beside that story? Whichever way you look at it, the prior life of Virginia Rappe had nothing to do with it.

Counsel have attempted throughout this trial to heap upon the heads of the prosecution the odium that attaches to baring such facts as were brought to this jury through the mouth of Virginia Warren and the deposition of Rafferty-Roth. Counsel say — and they shrink back and away from the subject — “We had nothing to do with it; the prosecution brought that out through their own vicious cross-examination.”

Mrs. Warren, defense witness, first brings this matter to the attention of the jury upon Mr. U'Ren's asking the question, “What was Mrs. Roth's connection with the case?” Whereupon Mrs. Warren — not waiting for the objection of Mr. Schmulowitz, which he started to interpose — could not give forth quick enough this testimony that she had ready at the tip of her tongue. Mrs. Warren testified that in the early spring, I believe, or February of 1908, she was called to Mrs. Rafferty's to take care of Virginia Rappe; that at that time she found she was suffering from an inflammation that necessi-

tated the use of a catheter; that there was certain inflammation in part of her genitals, and that she had to catheterize her every three hours. That is where the defense left Mrs. Warren. Suppose we had not asked the one further question, the answer to which proved that Virginia Rappe was not then suffering from cystitis. It would undoubtedly have been argued to this jury that then and there Virginia Rappe was suffering from this particular disease of cystitis, and no doubt counsel would have included these facts in the hypothetical questions asked of their so-willing medical experts upon the stand.

Fair and honest? They kept back from this jury vital facts, if facts they were. They kept out of the hypothetical questions to be propounded to their own doctors, facts which might have changed the answers given.

Who put in evidence the deposition of Mrs. Rafferty-Roth? Did you see us rush forward to place it before the jury? No; we believed it had nothing to do with the case. And where could you find a more vicious document than this deposition, taken by Mr. Albert Sabath, commissioner, and, as well, associate counsel for the defense and personal friend of Mr. Barker?

Mrs. Roth testifies that between 1908 and 1913, under certain peculiar conditions, she had occasion to attend Virginia Rappe. In 1908 Miss Rappe was between 13 and 14 years of age. The defense,

cherishing the memory of Virginia Rappe and not wishing to sully the name that she has left behind, has placed in evidence here this deposition, to the effect that Mrs. Roth, on five separate occasions during that period of time, had treated this child for miscarriages.

Do you believe that a child could be placed in that position as testified to by that witness on so many occasions, and at so young an age? No, not in the face of the medical testimony in this case, including that of Dr. Rumwell, a witness produced by the defense, whose testimony is found on page 1919 of this record here, and which is to the effect that from examination and observation of the genitals of this girl made at the autopsy at the Wakefield Sanitarium, the doctors came to the conclusion that she had never borne children.

What was the purpose of the testimony of Mrs. Roth in this case, if not in some measure to turn you against this dead girl, and to soften the feeling that you would have against this defendant after hearing all the facts presented by the People? I say to you, out goes Mrs. Roth, because the facts brand her testimony as false.

Mr. Presbrey, upon the second trial of this case, testified that upon one occasion he gave Virginia Rappe a half pint of cracked ice because she was hysterical. But what did he testify upon this trial? Did he say he gave her cracked ice because he found that these two glasses of French liqueur had re-

sulted in a hysterical condition? Oh, no; his testimony at the second trial would not meet the theory of the defense; you could not base a reasonable doubt upon that. So upon this trial of the case he feeds her cracked ice because she has an inflammation of the membranes. Mr. Presbrey, dramatic author and doctor! Fairness? Honesty? Why wasn't it a hysteria that he was treating on the third trial, just the same as on the second trial? What influence caused him to change his testimony?

Who, I ask you, is most interested in producing testimony before this jury that will result in an acquittal of the defendant? Who but the defendant and his counsel and the "strong men" behind him?

We try cases every day. Men are convicted and men are turned loose. It was all right, when we had across the hall certain men who committed terrible outrages; it was all right, if in those cases, commonly called "The Gangster Cases," where the men did not take a human life, the witnesses were processed and subpœnaed and locked up and protected. Why was it all right? Those men were poor; they had no friends and followers; they had no one whose future depended upon their unsullied reputation.

But once put your hands upon those that walk in power and bathe in gold, once you so much as dare raise your finger against one who is clothed with influence, then you are violating the oath of

your office, and distorting and twisting the criminal laws of the State. There is no difference between this trial here and the trials that were had across the hall, except that in this case the girl is dead. That is all.

Let us look for a moment at what happened in room 1219, and let us, in passing, comment upon the story told by the defendant. First, if we prove to you conclusively that Roscoe Arbuckle spoke falsely to you from the witness stand here, are we asking too much when we ask you to draw the deduction that when he did so it was because the truth would damn him before you ladies and gentlemen?

Mr. McNab has said, "Where is Maude Bambino Delmont, the complaining witness in this case, the chief witness for the People?" Oh, how greatly in error Mr. McNab was when he branded Maude Bambino Delmont as the complaining witness. The complaining witness is dead, dead at the hand of this defendant. We cannot bring her here to tell you what this man tried to do to her on the 5th day of September; her voice is stilled. But we can show you what this girl looked like after this man was through with her; we can ask you to look at the picture of her lying in death as the result of pain and suffering that changed her from the beautiful, handsome girl she was, to this (showing photograph).

We can show you the marks upon this door (in-

dicating). It is an exhibit in this case and you have a right to look at it. Find one latch on that door that can be turned; find one way that door can be locked except by a key. There is no catch on it; there is no catch on the side of it, either, that so often appears on doors that you can push the bolt on and off with.

Are you going to believe the story told by the defendant, that for the four or five days he remained in these rooms he never took the trouble to lock the doors? That people coming and going, sneak thieves and others, could come in and help themselves to the different things he had? Do you mean to tell me that while he was entertaining his guests in his rooms he did not see that the public were excluded? Are you going to believe that door was never locked? No, of course you are not; and you are not going to believe it in the face of the story told by Mr. Fischback, because Mr. Fischback has told you the door was locked, because he said he had to turn the catch to go out on Friday morning, and there is no catch on the door.

Mr. McNab said to you this morning that it is impossible to put two substances in the same place at the same time. I say, maybe it is, and then I ask you to remember the testimony of Mr. Fischback, given in order that he could, martyr that he was, friend and bosom companion of the defendant as he is, take the blame for the death of Virginia Rappe. Who put the bruises on her arms? Fred Fischback. Who

ruptured her bladder? Fred Fischback. We should be prosecuting Fred Fischback and not the defendant in this case, if you believe the defense. And what did he say? He carried her from the bed; you saw him demonstrate how he picked up her body; he used this rail, and grabbed her like that, and he demonstrated with the other hand how he grabbed the leg, and this big, powerful, strapping giant that Mr. McNab has told you of, had to have the assistance of two other girls to carry little Virginia Rappe the short distance from the bed to the bathroom.

He had to have such assistance so he could get in this awkward, cramped, uncomfortable position, and put these marks upon her arm and upon her leg. He put not two substances in the same place at the same time, but he put four, because he said that Miss Prevost, Miss Blake and Miss Rappe, whom they were carrying, and he himself all crowded through that little door to the bathroom in the position which they were in, and all at the same time. I ask you to bear these things in mind when we come to look at the testimony of what occurred in room 1219.

But, first, a word about the last act in this case, the last act that Mr. McNab has pictured to you, that of the big, kind-hearted Roscoe Arbuckle, philanthropist, good Samaritan, the man who would not go out to keep his appointment for fear he would insult the strange people that he did not know and

had no interest in at all, who came to the apartment to visit him, came to have a party that was just like any other party that was ever held in any other hotel in San Francisco, just like Mr. McNab tells you are going on all the time, where the host parades in purple bath robe and pajamas, and his first lieutenant in B. V. D.'s and slippers.

What do you think about this phase of the defense of a man, whose heart, it is claimed, went out to this poor girl suffering upon the bed, who so tenderly raised her in his arms, who carried this dead weight two-thirds of 158 feet before Mr. Boyle took her away from him, this man who did this out of the kindness of his heart, and to alleviate her pain and suffering, and who then went back and continued his party, and never asked how she was, and put on his dinner clothes, and went out and danced all that night?

Mr. McNab told you in his opening statement that they were going to produce Mr. Glennon and others here upon the stand who would prove that Miss Rappe had made statements after she was injured that exonerated the defendant. He has also attempted to explain why he has not done so, and why he would not accept the stipulation of the People allowing him to introduce this hearsay testimony. Let me read to you what the People offered the defendant in this action, and when I ask you to listen to this stipulation, I say to you, in all fairness, that if Mr. McNab had had one scintilla of the

evidence that he claimed he had, he would have swallowed the stipulation, hook, line and sinker.

On page 1170 of the record the following proceedings were had, Miss Blake upon the stand, and referring to a conversation with Miss Rappe after she was injured:

Q. Did you have a conversation with her?

A. Yes, sir.

Q. What was that conversation?

Mr. Friedman: Just a moment. Objected to on the ground it calls for hearsay testimony. At this time counsel knows that there is going to be an objection interposed to this, as to any other hearsay testimony that has occurred in the case. Now, we have no objection to letting down the bars, and letting in any and all the hearsay testimony that is in the entire case; we have no objection to allowing any witness to take the stand that the defense wants to bring here to take the stand and testify as to what anybody else told him, provided counsel here and now will enter into a stipulation with the People—a binding stipulation—that all statements made by Miss Rappe from the time she was stricken in room 1219 until the day of her death be admitted in evidence. I will allow the doctors and the nurses and the friends and the guests that were there to testify to anything they care to upon this stand.

Mr. McNab: We will ask—

Mr. Friedman: Otherwise we will object to any hearsay going in, unless it all goes in.

Mr. McNab: We will ask the questions as we go along, if the court pleases.

He did not like the stipulation, did not want even to be bothered with it; he did not want to have

to answer the question, "Yes" or "No," before this jury, because it took away all his thunder, and he no longer could claim what he could have proved if we had not objected. I will continue reading:

Mr. Friedman: I am propounding and offering a stipulation to the defense. Will they accept it or refuse it?

Mr. McNab: Including Delmont, I suppose.

Oh, Mr. McNab was looking for an out; he was looking for a way to dodge a refusal of that stipulation.

Mr. U'Ren: Maybe.

Mr. McNab: No, we won't.

The Court: Mr. Reporter, read the question.

Mr. Friedman: Well, we will leave out Mrs. Delmont, and still offer the stipulation.

Unfair, wasn't it, of the People? We were unfair, suppressing evidence, not allowing this jury to hear everything that transpired.

Mr. McNab: Semnacher?

Mr. Friedman: Mr. Semnacher has testified.

Mr. McNab: I won't allow Semnacher to testify.

Mr. Friedman: We will leave out Mr. Semnacher.

Mr. McNab: We will ask the questions as we go along.

The Court: Let us proceed; evidently there is no stipulation.

Mr. Friedman: I understand the stipulation in all its forms is refused.

Mr. Schmulowitz: If you will indicate who the witnesses are we may enter into that stipulation.

Mr. Friedman: We are not asking who your witnesses are.

Mr. Schmulowitz: We are willing to give you our witnesses.

Mr. Friedman: We don't care to know them.

The Court: If both sides are not willing to stipulate, let us proceed with the case.

Mr. Friedman: Then the record shows the stipulation is refused?

Mr. Schmulowitz: Yes, definitely refused.

Where did the defense have any testimony from the lips of Miss Rappe exonerating this defendant? Nowhere. Under the rules of law, as correctly pronounced and acted upon by the court here, those alleged statements were not admissible in evidence, and in the absence of a stipulation on the part of the People could never have been placed before this jury. When we offered to them sure and safe means of exonerating this defendant, why did they refuse it? Because there was no such testimony. The only statements that had fallen from the lips of Virginia Rappe did not exonerate Roscoe Arbuckle, but charged him with guilt.

Is there any direct evidence that this man committed the crime he is charged with here? Yes, you have the accusation of Virginia Rappe herself, brought to you by Virginia Breig, a woman who says it was told to her when Virginia Rappe believed she was dying.

Where is the fell purpose, the base motive existing in this woman's mind, to cause her to take this

stand and give testimony that she may have reasonably believed was going to result in the sending of Roscoe Arbuckle to the penitentiary? She did not know the defendant, nor his counsel. Virginia Rappe's hospital bill was not owed to her. People do not go upon the stand and swear away the liberty of another person to collect \$34.00 for some one else. She told you that if we had not subpoenaed her she would not have been here to testify. She did not want to testify, and if the conversation was had with Mr. McNab that Mr. McNab insinuated was had between himself and Mrs. Breig over the telephone, why did not Mr. McNab tell you what the conversation was? You did not see him raise his right hand to be sworn as a witness in this regard. What does it mean? It means that in this record there stands uncontradicted and unimpeached the testimony that places the finger of accusation upon Roscoe Arbuckle.

If there were nothing in this case but the testimony of Roscoe Arbuckle himself, and the testimony of Mr. Hyde and Mr. Woolard, of Los Angeles, and the testimony of the nurse who heard the dying charge of Virginia Rappe, that would be enough to send this man to meet the punishment that he deserves. The testimony of Virginia Breig is one thing they have not accused the District Attorney's office of concocting. No, that was concocted in the Wakefield Sanitarium to collect this \$34.00. Why did this nurse call up Mr. McNab? Because Miss

Rappe told her that Arbuckle should pay the bill, and she called up Arbuckle, and Arbuckle sent her to Mr. McNab. When the last word is said in the jury room, let there ring in your ears the dying words of Virginia Rappe.

What happened in room 1219? We will tell you how the People construe these facts, leaving out the accusation of Virginia Rappe for the moment. Virginia Rappe was seated in room 1220 with, if you please, a distended bladder; not a spasm of the bladder, because the defendant himself has told you that up to that time she did not appear to be ill, gave no evidence of pain, and was in the best of health and spirits. She did not have a spasm of the bladder, or a spasm of the sphincter muscle, because those are attended with pain. She is sitting in room 1220, with a distended bladder, nothing aggravating that condition. She enters room 1221 to relieve this condition. Can there be any question of that? Mr. Schmulowitz admitted that in his argument yesterday — to relieve this condition.

What then occurs? The bathroom of 1221 is occupied, and Miss Rappe comes back through 1220 and enters room 1219. There can be no argument that the time that elapsed from Virginia Rappe's entering room 1219 until the defendant entered it was less than a minute.

It stands in the record, a fact proven in this case, that Virginia Rappe was not ill when she left 1220 and went into 1221, and carried on the con-

versation with Mrs. Delmont through the bathroom door; she came back into room 1219 to use the bathroom there and relieve this distended condition of her bladder by voiding her urine. Did she do so? No. Because every doctor in this case has testified that if she had done so the rupture would not have occurred.

Mr. McNab spoke of the time element in this case. The time element is out of it. It makes no difference whether it was a minute or an hour, and if this defendant had time enough to do the things he said he did in room 1219, he had time enough to do the things that I now tell you he did in room 1219.

The defendant followed Virginia Rappe into room 1219 and he closed and locked the door. There was no one else in that room. Miss Rappe did not get an opportunity to go to the bathroom. Evidently he said something or touched her in some way. Recall, that to follow out my theory of what the facts in this case prove, Miss Rappe would be standing near the bathroom; the defendant would be between Miss Rappe and the door leading into room 1220. So, Miss Rappe, to avoid whatever the defendant said he was going to do, or had attempted to do, at that time, ran to the door leading into the hall. There is the door (indicating). Upon it are the marks of a man's and a woman's hand. He followed her to the door, he pulled her away from the door, he threw her upon the bed. Counsel

says at no time was her clothing disturbed, at no time was she undressed. Of course not. At that precise moment when the defendant forced her toward the bed Virginia Rappe was in the most perfect condition to have her bladder ruptured if any force was applied to her. All that was necessary was a distended bladder.

The defendant then threw his weight upon her, her bladder ruptured, and she passed into a state of shock, into a state of unconsciousness. All the doctors in this case have testified to that — all the doctors. But I will read, just so there can be no question about that, from the testimony given by one of the doctors of the defense. On page 2804 of the record, Dr. Shiels testifies as follows:

Q. Isn't it a fact that a shock would come, Doctor, almost immediately?

A. It would come pretty soon.

Q. Almost immediately?

A. It depends on which portion of the bladder the rupture — but I — yes, I think that shock would show itself very quickly.

So Miss Rappe lost consciousness, and of course the defendant knew that she had lost consciousness, and he attempted to revive her. He used the ice, and he succeeded in reviving her; and when he had revived her, and when the bed was wet, then and not until then did he open the door into room 1220. That is when the door was opened. That is why the bed was wet. That is why Roscoe Ar-

buckle and his counsel have Miss Rappe tumbling and rolling from one bed onto the floor, because there is no other possible way in the world without telling the truth, that they could have got Miss Rappe onto the larger of those two beds, as the natural thing would have been, if he had found her as he says he found her, in the bathroom, to place her on the small bed, that is, the bed nearest the bathroom door.

The fact that a hair of Miss Rappe's was found in the bathroom does not prove that the story told by the defendant was true, because the testimony is that Miss Rappe was given a bath in that very bathroom. The fact that there were hairs between the two beds does not corroborate the story of the defendant, because she was upon one of those beds; and the fact that she was never upon the smaller bed first and fell off the smaller and rolled upon the floor, is evidenced by the fact that the witnesses for the People in this case have testified that when they entered the room the small bed was in perfect condition.

Nowhere, at no time, was Virginia Rappe seen to vomit. Nowhere upon the bathroom floor or throughout room 1219 was there the slightest evidence that she had been ill. Strange — just as strange, as Mr. U'Ren has told you, as that her bladder should pick out this particular moment to rupture — just as strange is it that this woman, writhing, if you will believe the counsel for the de-

fense, in agonies produced from this spasm of the bladder, or by this rupture of the bladder, if that was what occurred at that time, should be so careful while in this pain and while so sick, to see that no evidence was left upon the floor or upon the bed.

Doesn't it seem strange, too, that nobody ever heard of her being found in the bathroom, ever heard of her falling between the beds, ever heard of her being sick to her stomach; ever heard of any of those things until the first case for the People had been presented to the jury? The defense then, with the facts before them, came in here and told to the first jury the story of the defendant, dovetailing it perfectly with the facts as testified to by the witnesses for the People, excepting those things which branded the defendant as guilty.

Here was this man, the famous comedian that he was, the favorite of millions, not thinking, as Mr. McNab said, that there was anything wrong, but who realized that night in Mr. Grauman's office that he was in a serious predicament, because he said to Mr. Woolard, "This is assuming serious proportions"; and Woolard replied, "Yes, it is."

Here was a man whose future, and the future, the financial future, of the "strong men" behind him, depended upon his reputation remaining unsullied. Here was this man who knew that the first breath of scandal that touched his name would take away from him the love of the children of this country, the respect of the mothers of this country,

and the patronage of the people of this country who went to see his antics upon the screen. He knew all this before he was arrested or charged with this offense.

Why, oh, why, if all that occurred in room 1219 was as he told you here upon the stand, why did he stake silence against his reputation then? Why didn't he say, "Yes, I know something about it; she was ill in my apartments; I found her sick upon the bathroom floor, and she was quite ill, and she lost consciousness, and I had her moved to another room, and had a doctor for her"? Why, if the defendant knew that those were the facts then, oh, why didn't he say so? Why allow this accusation to go unquestioned for so many weeks? Why allow his reputation to be dragged through the mud and the mire of every gutter in the United States?

They have contradicted or attempted to explain certain statements made by this defendant to Mr. Woolard, but they have failed to deny the statements of Mr. Hyde. Nowhere in this record is it denied that Roscoe Arbuckle told the reporter of the Chronicle over the telephone that night that there were no closed or locked doors, and that Virginia Rappe threw her fit in the presence of every one, and that it was after she had thrown her fit she was taken into the other room and disrobed.

If this story be as simple as the defense would have you believe, why, oh, why did he not speak the truth at that time? He must have remembered

—impossible that he could have forgotten it. It had disrupted his whole afternoon. He was going in to get dressed to go out riding in his automobile with Mrs. Taube; it changed the whole course of his proceedings that day, and yet he does not recall it, or did not recall it at that time. Of course, he did not recall it. He had in mind the “strong” body of men behind him; he had in mind his future as a moving picture star; he had in mind the laughs of the little children that he might lose and the fortune that might slip from his grasp. He had all those things in mind when he said, “No, there were no closed and locked doors.” It was the consciousness of guilt speaking through his lips. He did not dare admit he had been alone with that woman.

What did he do? He called upon Mr. Anger, and when he told Mr. Anger of the affair, they considered it serious enough then. They thought the future needed enough taking care of that they did not dare come to San Francisco without legal counsel. Do you believe, when he came to San Francisco, riding through the night as Mr. McNab tells you, dashing up here to see that no injustice would be done, that a mere glance at Mr. U'Ren's face sealed his lips, that a mere look at Captain of Detectives Matheson made him realize he had better keep still?

If all that happened was that he found her upon the floor sick, why should he fear any or all the District Attorneys, or all the Captains of Detectives

in this bright, glorious country? Why should he refuse to answer? And they questioned him how? They told him of the charge that had been made against him. No, I am wrong; there was no charge made against him. They told him of what had occurred, at that time, and they asked him if he could add anything to it, if he could tell what he knew of the facts; and he said that, upon advice of his counsel, upon advice of counsel who he admits at that time did not know the facts as he told them to you, but who knew them as he told them to Mr. Woolard, he refused to answer.

This man who had come tearing up here in his high-powered car, with his powerful friends, to straighten out everything with just a word, fails to say the word. Innocent? Do you wonder that they cry aloud to you to find a *reasonable doubt* in this case? Do you wonder that they ask you to concoct out of the skies, out of the “mights” and the “possiblys” and the “perhapses,” some theory upon which you can refuse—not a theory upon which you can find him innocent of this offense—but some theory upon which you can base a verdict which refuses to find him guilty?

Who acts like this man acted? Who tells a story like he tells? The guilty. The one who dares not tell the truth and is not prepared with a substitute for the truth.

The ice episode; did it occur? Of course it occurred; and nothing in this case except his own

conduct in the bathroom on that day shows the character of this man any clearer. While this girl was writhing in what was ultimately her death agonies, tortured with pain, lying nude and stark before these people, this man played pranks upon her body. Zey Prevost, who is not here now, says so. Alice Blake, reluctant as she was, says so. The defendant tries to explain it. Whom do you believe; this innocent, persecuted man, surrounded by the bulwark of counsel that he appears here with, or these hostile witnesses, these witnesses who were the friends of this man, accepting of his hospitality, seeking to shield him, one of whom can no longer be produced before this jury, this witness whose testimony is supposed to have been distorted and twisted, but who, under the protection of the law and under the protecting hand of the court, says, "I am telling you now the truth"? Whom will you believe, these witnesses who state facts that condemn this man, gaining nothing themselves, where one word in his favor might mean future prosperity for them, or this man whose liberty, whose future and whose friends' futures are involved?

Mr. Schmulowitz claims that the injury to the dead girl might have occurred by the bathtub, and it might have occurred by the toilet seat, and it might have occurred by the end of the bed, and it might have occurred by falling out of the window, and it might have occurred by falling down the stairs, and it might have occurred in a thousand

different ways. Not one word of testimony anywhere in this case indicates it occurred in any of such ways, and the very witnesses produced by the defense state that those things, while theoretically possible, are highly improbable.

Mr. Fischback, the martyr, the strong man, the hero, the athlete, who stands up here and testifies unblushingly as to acts he says he performed upon the girl's body, the man who the defense would have you believe put the bruises upon her and ruptured her bladder, says that they handled her most gently.

Are you going to take the uncontroverted facts in the record in weighing this case or will you accept these fanciful conjectures, these "might-have-beens" and these "probably-would-haves" of Mr. Schmulowitz?

Mr. Juel, placed upon the stand to refute Mr. Heinrich as to these finger prints upon the door, stated without any hesitation that one was the hand of a woman and one was the hand of a man; that he could not identify them, but that he would not say that the smaller was not the hand of Virginia Rappe, and he would not say that the larger was not the hand of Roscoe Arbuckle. Oh, with the ouija boards, and the weird manifestations, and with all the powers of the black magic, Mr. McNab cannot wipe those marks off that door.

If you believe that Arbuckle has falsified, and that Virginia Rappe accused him; if you believe

that they were locked in that room together; if you believe those marks indicate a struggle, even if you don't believe they can be identified; if you believe there were no marks anywhere in that room showing Virginia Rappe had been ill; if you believe that the smaller bed had not been disturbed, and that Arbuckle tried to deceive the people of Los Angeles as to the facts, I ask you how can these things be reconciled with innocence?

Take the case of the People as it starts. Take the evidence of the doctors who testified that this girl's organs were in perfect condition, so far as an ordinary examination of the eye could disclose, that the only thing they found wrong was a cyst, which amounted to nothing, and a rupture of the bladder, which caused her death.

I call your attention here to the opposing theories of the defense as to the physical condition of Miss Rappe. Are you going to believe the witnesses from Chicago and from the cider mills down in Los Angeles, who say that she was a woman who had gone through life holding her abdomen, doubled up with pain, suffering spasm after spasm of the sphincter muscle and spasm after spasm of the bladder; or are you going to accept the theory that, under the instructions of Joseph Rideaux, this woman had developed into a perfect, hale, hearty athlete?

For the purpose of having her bladder ruptured spontaneously the defense have Virginia Rappe

afflicted for years with a chronic and painful disease, but for the purpose of showing she could have resisted any attack made upon her by this defendant, they say to you she was in the pink of womanhood, stronger than the ordinary woman, and able to resist even the strength of a man like Rideaux.

Is it asking you too much to believe that Mrs. Hardebach, Mrs. Fox and Mrs. Burkholder would have nothing to gain by their testimony in this case, to whom the defendant means nothing, to whom Virginia Rappe meant much? Is it asking you too much to believe that they did see her throughout the greater portion of her life, at different times and on different occasions, and that between the three of them they saw her practically all of her life? Is it asking you too much to believe that these women are telling you the truth as they know it, and that Virginia Rappe was not sick, and was not in Mrs. Rafferty's? Barker asked you to believe otherwise, the Barker who cannot produce a living witness who was ever present when these things occurred, Mr. Barker who testified as only a Barker can in a case of this kind?

Is it asking you too much to believe that the testimony of a Warren should not be considered by you, nor the deposition of a Rafferty-Roth, a Rafferty-Roth who, according to her own testimony, and the testimony of Mrs. Warren, was conducting nothing but a house of abortion — a deposition prepared under Albert Sabath's guiding hand?

Is it asking you too much to believe that when Virginia Rappe entered room 1220 on the morning of September 5th, she was well, and that the defendant was there entertaining his guests? Is it asking you too much to believe that Mr. Arbuckle knew that Miss Rappe was coming, and that he knew Mrs. Delmont and Miss Prevost and Miss Blake were coming? Mr. Fischback tells you Arbuckle was there when these people were sent for.

Is it asking you too much to believe that liquor was served in those rooms? And is it asking you too much to believe that Virginia Rappe went into room 1219 and that the defendant followed her, and that something occurred in that room that the defendant did not want the public to know?

And if you believe just those few things, is it too much to ask you to believe that Roscoe Arbuckle is guilty?

Mr. Arbuckle's sole thought on that day was to get this girl out of his room. He never thought about a doctor until she was gone. He went away and never thought about inquiring how she was until she was dead. He rushes up here to tell a story that he never tells, but makes no inquiry as to the whereabouts of the body of Virginia Rappe, and no move to see that maybe this piece of clay was laid to rest. Mr. McNab spoke of the funeral of the mother of Virginia Rappe and referred kindly to those who attended it, but he said never a word about the funeral of this dead girl.

Ladies and gentlemen of the jury, this case is about to be given into your hands. We have performed our duty. We have presented to you what we believe to be the truth surrounding the death of Virginia Rappe and concerning the guilt of Roscoe Arbuckle. The court will instruct you upon the law and you will then consider what shall be the verdict. That you will do so fairly and impartially we believe; otherwise we would not have selected you as jurors. It is, in and of itself, a matter of indifference to the District Attorney's office whether Arbuckle be found guilty or innocent. If he is innocent, he should be acquitted. If he is guilty, the verdict should be, guilty as charged.

We ask you in conclusion, as you consider this case, to remember that innocent men do not have to dodge the truth. We ask you to remember that when a man finds a woman in sore distress, he does what he can to alleviate her pain and suffering, and that he does not open wide the door and say, "There lies a sick thing; do with it as you will; but get it out of my room."

No, he did not want her in the room. He was through. He had attacked her and she had suffered a serious injury. We do not claim — with all this talk about disarranging clothes — we do not claim that he consummated his purpose. We claim that he attempted to accomplish a purpose, to fulfill a desire, and that his attempt resulted in the death of this girl.

We ask you to remember that witnesses who have testified so reluctantly on behalf of the People — that their testimony, instead of being belittled, should be magnified, and we ask you to remember and to believe that when a Blake and a Prevost and a Semnacher testify to things against their host, under the conditions of this case, every iota of such testimony should be equal to a pound.

We ask you to remember that we have had to pull with forceps the facts out of the witnesses for both sides in this case; that only those things were told freely and voluntarily that did not affect the defendant's guilt; and that when we approached anything that showed him in a compromising light, so far as this charge was concerned, we were met with a blankness of memory. We ask you to remember that women's bladders do not burst by themselves; that such an occurrence is a rarity in the history of medicine.

We ask you to remember that some force must have been applied to rupture the bladder of Virginia Rappe, and that the only evidence of force in this case is force exerted by the defendant. To believe under the evidence here that her bladder ruptured, in and of itself, you would have to stretch your imagination to its utmost length and use your conscience as Mr. Schmulowitz's rubber band.

And we ask you to remember, just when you are about to cast your last ballot, or your first ballot, as the case may be, upon the guilt or innocence of

Roscoe Arbuckle — we ask you to remember that Virginia Rappe has sent out from the hereafter to the here her statement that her death was due directly and solely to the attack of Roscoe Arbuckle. She said that he grabbed her, threw her upon the bed, and threw his weight upon her. And then, in conformity to all the theories of all the medical doctors in the case, she said she lost consciousness.

And we ask you to remember, when Mr. McNab says to you that she did not tell this to the doctors, we ask you to remember that this fabricated story of the defendant was never told to the doctors at any time.

Lastly, we ask, if you find that Virginia Rappe died as the result of an act of this defendant, that you uphold the laws and see that justice is done to both the living and the dead, so far as in your power it lies, by finding Roscoe Arbuckle guilty.

The San Francisco Examiner, in its issue of April 13, 1922, contained the following account of the result of the trial:

Roscoe "Fatty" Arbuckle is not guilty.

In just three minutes — time enough to elect a foreman and to take a ballot, the jury that has tried him for manslaughter of Virginia Rappe returned a verdict yesterday afternoon that made the comedian a free man.

To this verdict they later added a signed statement, printed elsewhere in these columns, declaring that there was not a scintilla of evidence to show that Arbuckle

in any way had been responsible for the injuries that caused the death of the motion picture actress.

An ovation, such as seldom is witnessed in a court of justice, was given the defendant as court adjourned. When the jury had entered, and before the verdict was read, Judge Louderback had sternly warned the spectators against any expression of sentiment while he was on the bench. It was with the greatest effort that the men and women who jammed the court room restrained themselves as the verdict, handed to the clerk of the court by Foreman Edward M. Brown, was read. And as Judge Louderback stepped from his dais and hurried to his chambers, there was a mighty cheer.

The crowd stood on the chairs, on the rails, and on any eminence they could reach, to catch a glimpse of Arbuckle. "Fatty," beaming, hurried to the jury box to thank the jurors and shake hands with them. They crowded about him, men and women alike, patted him on the back, and vied with one another to be the first to tell him that they never had believed him guilty.

Close behind Arbuckle came his wife, Minta Durfee, sobbing with joy, and with her was her aged mother, restraining her tears with the greatest of difficulty. There was moisture in the eyes of many of the jurors.

Gavin McNab, towering above the crowd, stood with a smile of quiet triumph upon his lips; his associates, Milton Cohen, Nat Schmulowitz and Joseph McInerney, shared his placid satisfaction. Charley Brennan, remaining member of the Arbuckle forces, figuratively stood on his head.

And battling their way through the serried ranks of the spectators, eager to grasp them by the hand, Arbuckle, his lawyers and the jury retired to the jury room, where there was another levee. Mrs. Arbuckle and her mother joined the party. And there, accom-

panied by the booming of cameras, was issued the statement of the fourteen men and women who for nearly five weeks had been hearing the evidence for and against the comedian. One by one they filed up to the long table and signed it.

Outside the crowds waited in the corridors, and when at last Arbuckle appeared on his way to his hotel, he and his relatives and friends, and the jurors as well, again were cheered and congratulated.

The only ones conspicuous by their absence from the festivities were District Attorney Brady and his assistants, Milton U'Ren and Leo Friedman, who had at once retired to their offices upstairs. But with the game smile of the loser on his lips, and with the utmost sincerity of word and manner, Brady later made the following statement:

"I am an American citizen, and I take off my hat to the verdict of an American jury. The District Attorney's office has done what it deemed to be its duty in this case—nothing more nor less. And I intend always to do my duty as I see it."

U'Ren and Friedman both expressed similar sentiments. They declared that the case had been tried fairly and squarely before an impartial jury, and that the rapidity with which a verdict had been reached needed no further comment on their part.

The acquittal of Roscoe Arbuckle had been confidently expected by those who daily had followed the long trial, but that the verdict would come almost immediately after the jury had retired was not anticipated. Even the most sanguine of the spectators expressed astonishment as the rap came from the jury room door.

The court had finished the charge at 8 minutes past 5 in the afternoon. At 10 minutes past 5 the jury had left the court room. At 15 minutes past 5 came the

announcement that a verdict had been reached. Five minutes of actual absence — three of deliberation.

Arbuckle for the moment reserved his statement. Later he said:

"This is the most solemn moment of my life. My innocence of the hideous charges preferred against me has been proved by a jury of the best men and women of San Francisco — fourteen in all — rendering a verdict immediately after the trial. For this vindication I am truly grateful to God and my fellow men and women. My life has been devoted to the production of clean pictures for the happiness of children. I shall try to enlarge my field of usefulness so that my art shall have a wider service. It is the duty of all men to use the lessons that have been given them by experience and misfortune for the benefit of all — to make themselves more useful to humanity. This I shall do. I can only repay the trust, confidence and loyalty bestowed upon me during my trouble by millions of men and women throughout the world by rendering service in justification of their faith."

When court convened yesterday morning, Gavin McNab entered at once upon the conclusion of his argument to the jury. He made a careful review of all the evidence, again excoriated the District Attorney's office for its incarceration and "processing" of witnesses, denounced what he termed the fabricated testimony of Virginia Breig, who had sworn that Virginia Rappe had accused Arbuckle, and tore to shreds the evidence which had been given by Mrs. Katherine Fox, Mrs. Kate Hardebach and Mrs. Winifred Burkholder.

In the afternoon Assistant District Attorney Leo Friedman spent over two hours in a closing address, carefully prepared, excellently rendered, but futile in the light of subsequent events. The jury simply believed

the story told by Roscoe Arbuckle, and discarded as unworthy of credence the Fox-Breig-Hardebach testimony that sought to send him to jail.

The following statement was issued by the jury that acquitted Roscoe Arbuckle, immediately after the verdict had been rendered. It was signed by all, including the alternate jurors:

Acquittal is not enough for Roscoe Arbuckle. We feel that a great injustice has been done him. We feel also that it was only our plain duty to give him this exoneration, under the evidence, for there was not the slightest proof adduced to connect him in any way with the commission of a crime. He was manly throughout the case, and told a straightforward story on the witness stand, which we all believed. The happening at the hotel was an unfortunate affair for which Arbuckle, so the evidence shows, was in no way responsible. We wish him success, and hope that the American people will take the judgment of fourteen men and women who have sat listening for 31 days to the evidence, that Roscoe Arbuckle is entirely innocent and free from all blame.

(Signed)

Edward W. Brown, Foreman.

A. Calhoun.

Irene Wilde.

William A. Upp Jr.

Veronica M. Smith.

W. S. Van Cott.

Cora Ahpel.

M. D. Bailey.

May C. Sharon.

George F. Gilcrest.

John Brandt.

H. S. Boone.

Mrs. Maren Madsen.

C. L. Wold.

The Trial of Clarence Darrow

ON May 15, 1912, Clarence S. Darrow, noted lawyer and author, was placed on trial at Los Angeles, California, in the Superior Court of Los Angeles County, accused of bribery in the case of "The People *vs.* J. B. McNamara," where he had appeared as one of the counsel for the defense.

J. B. McNamara and J. J. McNamara, brothers, together with a number of others involved as alleged accessories, had been indicted for having dynamited the Times Building, at Los Angeles, an act resulting in the loss of twenty lives. Both McNamaras eventually pleaded guilty, J. B. receiving a life sentence, and J. J. a sentence of ten years.

Mr. Darrow was charged with having furnished money to George N. Lockwood—who had been drawn for jury service—on Nov. 28, 1911, with intent to corruptly influence his decision should he be accepted as a juror in the McNamara case then pending.

The State charged also that Mr. Darrow was connected with efforts which it was claimed were made to bribe other prospective jurors, and evidence relating thereto was held to be admissible here,

although the present indictment made reference only to the alleged Lockwood transaction.

The Darrow trial lasted three months, the cross-examination of the defendant alone occupying several days.

For the People appeared District Attorney J. D. Fredericks and his assistants, W. J. Ford and Arthur Keetch. The defendant was represented by Earl Rogers, H. H. Appel, W. H. Dehm, H. L. Giesler and Cyrus F. McNutt, the last named dying a few days after the trial began. Hon. George H. Hutton presided.

Following is Mr. Darrow's address to the jury, delivered in his own behalf August 15, 1912, an address which touched and held its hundreds of hearers with its persuasive eloquence.

Speech of Mr. Darrow

GENTLEMEN OF THE JURY:

AN experience like this never came to me before, and of course I cannot say how I will get along with it, but I have felt, gentlemen, after the patience you have given this case for all these weeks, that you would be willing to listen to me, even though I might not argue it as well as I would some other case. I felt that at least I ought to say something to you twelve men besides what I have already said upon the witness stand.

In the first place, I am a defendant charged with

a serious crime. I have been looking into the penitentiary for six or seven months, and now I am waiting for you twelve men to say whether I shall go there or not. In the next place, I am a stranger in a strange land, 2,000 miles away from home and friends — although I am proud to say that here, so far away, there have gathered around me as good and loyal and faithful friends as any man could have upon earth. Still, I am unknown to you.

What am I on trial for, gentlemen of the jury? You have been listening here for three months. What is it all about? If you don't know, then you are not as intelligent as I believe. I am not on trial for having sought to bribe a man named Lockwood. There may be and doubtless are many people who think I did seek to bribe him, but I am not on trial for that, and I will prove it to you. No man is being tried on that charge. I am on trial because I have been a friend of the oppressed, because I have stood by Labor for all these years, and have brought down upon my head the wrath of certain interests in this country.

If the District Attorney of this county thought a crime had been committed, well and good, let him go ahead and prosecute, but has he done this? Has he prosecuted any of the bribe takers and givers?

And who are these people back of him and back of the organizations of this country, who have been hot on my trail and whose bark I can remember from long ago? Will you tell me, gentlemen of the

jury, why the Erectors' Association and the Steel Trust are interested in this case away out here in Los Angeles? Are these people interested in bribery? Why, almost every dollar of their ill-gotten gains has come from bribery.

When did the Steel Trust, the S-t-e-a-l Trust, which owns the Erectors' Association and is the Erectors' Association — when did it become interested in prosecuting bribery? Was it when they unloaded a billion of dollars of watered stock upon the American people — stock that draws its life and interest from the brawn, the brain and the blood of the American workingman? Are they interested in coming all the way out to this State and to Los Angeles to prosecute a man merely for bribery? They can begin at home if they would, these men who have made bribery a profession and a fine art.

Gentlemen of the jury, it is not that any of these men care about bribery, but it is that there never before was a chance since the world began to claim that bribery had been committed for the poor. Heretofore bribery, like everything else, had been monopolized by the rich. Suppose I am guilty of bribery. Is that why, by the most infamous methods known to the law and outside the law, these men, the real enemies of society, are trying to get me inside the penitentiary?

No, that isn't it, and you twelve men know it. Your faces are unfamiliar to me. There may not be a man on this jury who believes as I believe

upon these great questions between Capital and Labor. You may all be on the other side, but I have faced the other side over and over again, and I am going to tell the truth this afternoon. It may be the last chance that I shall ever get to speak to a jury.

These men have concocted all sorts of schemes for the sake of getting me out of the way. Do you suppose they care what laws I might have broken? I have committed one crime, one crime which is like that against the Holy Ghost, which cannot be forgiven. I have stood for the men who toil. And therefore I have stood against them, and now is their chance. All right, gentlemen, I am in your hands, not in theirs, just yet.

In examining you before you were accepted as jurors, Mr. Fredericks asked you whether, if I should address you, you would be likely to be carried away by sympathy. You won't be if you wait for me to ask for sympathy. He has cautioned you against my argument. You will find I am a plain-speaking man, who will try to talk to you as one man to another. I never have asked sympathy of anybody, and I am not going to ask it of you twelve. I would rather go to the penitentiary than ask for sympathy.

I want you to take the facts of this case as they are, consider the evidence as it is, and then if you can find on your conscience and under your oath any reason to take away my liberty, well and good;

the responsibility will be on you. I would rather be in my position than in yours in the years to come.

These interests would stop my voice with the penitentiary, my voice which, from the time I was a prattling babe, my father and mother taught me to raise for justice and freedom.

Oh, you wild, insane members of the Steel Trust and Erectors' Association! Oh, you mad hounds of detectives who are willing to do your master's will! Oh, you District Attorneys! You know not what you do. Let me say to you, that if you send me to prison, within the gray, dim walls of San Quentin there will brood a silence more ominous and eloquent than any words that my poor lips could ever frame. Don't you know that upon my persecution and destruction would arise ten thousand men abler than I have been, more devoted than I have been, and ready to give more than I have given in a righteous cause? I am pretty nearly done anyhow. If they had taken me twenty years ago, it might have been worth their while.

Gentlemen, I say this is not a case of bribery at all. You know the men who have been after me, and the interests that have been after me, and the means that have been used. What have they done? They say a bribery was seriously intended down here on Main Street, which I will speak about later, but have they tried to get a bribe giver or a bribe taker? No, not one.

Let us see what they have done. They have taken Bert Franklin and given him his liberty, without costing him a cent. They have taken White and let him go scot-free. They have taken Mr. Bain and Mrs. Bain and have not even filed an information against them. They have taken Harrington and Behm and brought them here and given them immunity. They have taken Cooney and Fitzpatrick and Mayer and let them go unwhipped of justice.

More than that, gentlemen, they have said boldly to Franklin, if he told the truth, and the circumstances would show that he did — in this instance — they have said boldly to him, "If you know anything against anybody in Los Angeles, keep your mouth closed, but help us put Darrow inside the penitentiary."

Gentlemen, if the State of California can afford to stand it, I can. If the fair city of Los Angeles can lend itself to a crime like this, the victim will be ready when the time comes. But let me tell you, if under such testimony as you have heard here, and under the sort of conspiracy you have seen laid bare here, you should send me to prison, it would leave a stain upon the fair fame of your city and your State that would last while these hills endure, and so long as the Pacific waves should wash your sandy coast.

If within this courthouse men could be bought and bribed with immunity, could be threatened and

coached and browbeaten, and if the gold of the Erectors' Association could be used to destroy human life — if that could succeed, it would be better that these walls should crumble into dust.

I do not know you twelve men. I never saw you before, but you have heard my story on the stand; you have seen me here from day to day. You have seen the class of people who have come here to condemn me and befoul my name. You know the class of people who have come here to tell you what my reputation has been. You have seen the witnesses who have come forward to testify in this case, and you are not insane; and I tell you, gentlemen, I do not want you to think I am worried about it now; but I have spent troubled days and sleepless nights over the misery that they have already caused me and those near and dear to me. But now I have no doubt about any jury under these circumstances, no more doubt than I had as a child when I laid my head on my mother's breast. Men cannot lose all their heart except by a surgical operation, and there are not here in Los Angeles twelve men without some heart. If there had been they would have been in the employ of the District Attorney long ago.

Now, gentlemen, let's see what they have made by their conspiracy. These are strong-arm men. They have the Grand Jury, two of them; with one they can reach across the continent and get whom they want; and when they get him, they take him

before the other body, and what do they say to him? They don't say, "Your money or your life," but they say, "Your liberty or your manhood; take your choice." And the kind of men they choose give up their manhood. How much credit can you give to the word of a man who finds his liberty held before him as a bait for his testimony?

Let me say, gentlemen, there are other things in the world besides bribery; there are other crimes that are worse. It is a fouler crime to bear false witness against your fellow man, whether you do it in a cowardly way in an address to a jury, or from a witness stand — infinitely fouler.

Now, let me put it to you as men who value your own liberty — because you all value your own liberty, and I trust you value mine, and I have no doubt you do — suppose any infamous scoundrel taken in criminal conduct could know that he could turn on you to save himself, would your liberty be safe? Suppose your hired man could be taken in some act of crime, and the District Attorney could say to him, "All right, here is the penitentiary, but I will let you out if you will fasten the crime on your employer." Gentlemen, would you be safe?

Suppose you thought that I was guilty, would you dare as honest men, protecting society, would you dare to say by your verdict that scoundrels like this should be saved from their own sins, by charging those sins to some one else? If so, gentlemen, when

you go back to your homes, you had better kiss your wives a fond good-bye, and take your little children more tenderly in your arms than ever before, because though today it is my turn, tomorrow it may be yours.

Now, gentlemen, I am going to be honest with you in this matter. The McNamara case was a hard fight. I will tell you the truth about it; then, if you want to send me to prison, go ahead. Here was the District Attorney with his sleuths. Here was Burns with his hounds. Here was the Erectors' Association with its gold. A man could not stir out of his home or out of his office without being attacked by these men ready to commit all sorts of deeds. Besides, they had the Grand Jury; we didn't. They had the Police Force; we didn't. They had Organized Government; we didn't. We had to work fast and hard, and I would like to compare notes with them. I wish, gentlemen of the jury, that some power had been given to us to call before this jury all the telegrams sent by the District Attorney's office, and sent by Mr. Burns. I wish some Grand Jury could be impanelled to inquire into their misdeeds. But no, we cannot. They sent out their subpoenas and they got two or three hundred telegrams, public and private, that had been sent from our office.

By the wonderful knowledge of Mr. Ford and by his marvelous genius, they found the key to our code. He forgot his bile and bitterness for one night

and worked out a key — and then what? A telegram to Rappaport on the 29th, saying that we would give him a thousand dollars, and then a telegram on the first of December — “Better not spend the thousand.”

They had detectives in our office. They had us surrounded by gumshoe and keyhole men at every step, and what did they secure? Nothing. I am surprised, gentlemen, that we were so peaceful in fighting the District Attorney and Burns. I scarcely know why we had a code, except that it looked better, and men in business generally use codes, and I knew they had one, for here and there a stray telegraph operator would send me their dispatches the same as the managers would give my dispatches to Burns. The poor would help me and the rich would help them, but the help of the rich was always of greater avail because they were the stronger.

But what did they get? Why, it is shown here that before I left the city of Chicago in May, a Burns sleuth set a trap to catch me, and he was here and testified — Biddinger. Who is Biddinger? You saw him, you heard him testify. If there is any man on this jury who could see Biddinger and would not take my word against his, then put me away, put me away.

What did he say? I will analyze his story for a minute — his story which anybody with any brains would know was a fabrication, except what

he told on cross-examination, when he very nearly admitted the whole truth. Under the guise of proving to this jury that he was an important witness, Mr. Ford got him to tell of an alleged conversation with J. B. McNamara, which was probably never held; and then, when Ford came to argue his case, he willfully and maliciously distorted the evidence from the purpose for which it was introduced, to show that J. B. McNamara mentioned me before I ever saw him. Therefore I must have been one of the people who inspired his deed!

Biddinger testified that he had a conversation with McNamara. He said he came to my office and told me about it, and told me about some trinkets that he had, that another detective came with him, one whom I had employed in other matters, and that part was true. He admitted on cross-examination that he did tell me that Burns had traitors in our camp with whom he was consulting, and that he offered to tell me about them. He told me that some of the members of the Executive Board of the organization I was defending were in the pay of Burns, and this, perhaps, was true. They had traitors of ours in their employ. These traitors infest every labor union in this country. The money of the employer is used to hire men to betray their comrades into the commission of crime.

Well, Biddinger comes out here, and he telephones me to meet him at the Alexandria Hotel, and I go, and I write on an envelope the number of my tel-

ephone. Wonderful discovery! Sherlock Holmes! Burns! Here is an envelope that has various figures on it, "Home 6745-10" — whatever you call it. Crime in August, heard of for the first time a year later! Crime! He met me at the hotel, he told me he was ready to give me information about spies; that he was going to San Francisco in a few days and could put me in touch with somebody who had betrayed us up there. I was not sure of him. Nobody is sure of a double-crosser. Sometimes he is your fellow, and sometimes the other man's. You are taking your chances. I had others besides Biddinger — some who kept their money and rendered me service, and gave me back reports of their detectives in my office.

Biddinger sent me a telegram, as I testified, and here comes Ford and says, "Did you send this mysterious telegram to Biddinger, saying that you would be in San Francisco?" I said, "Yes, I sent a telegram; I don't remember the wording." "Is it in your handwriting?" "No." "Whose is it?" "I don't know." "Is it your wife's?"

Gentlemen, what would you take if you had a mind like Ford's? I will tell you. You would take arsenic. What difference who wrote the dispatch, if I said I sent it?

He picks out a little piece of paper on which is written "6097," which he says was the number of the room I occupied in the Palace Hotel, and asks

me who wrote those numbers. Ford asks me! I cannot help it. I am here. I may die. To every man on this earth death cometh. I do not mind death. It is rather galling though to be eaten alive by ants. That is all that worries me over this transaction. He asked me whether I wrote that. I did not think so; probably Biddinger wrote it; I might have. I don't care, and I said so. Then he asked me to write those figures. Then what did he do? Why, he tells this jury I disguised my hand when I wrote those figures. Did I? Do you know whether I did or not? Did he offer any evidence as to whether it was my natural handwriting or not? Did he show the figures to the jury? Why, no. But he told this jury that I tried to disguise my hand in writing a set of figures, which I testified might have been the number of my room.

And I went to San Francisco and saw Biddinger, and he told me he would take me where I could see a meeting between Burns and one member of our Executive Board, and I gave him \$200 after giving him \$500 for the same purpose, and of course Biddinger did not keep his faith.

And here comes in another bit of perjury to help strengthen their case, a miserable little bit of perjury that is as plain as sunrise. No man, gentlemen, honestly believes that I had anything to do with bribing or attempting to bribe Lockwood down at the corner of Third and Los Angeles Streets. Of

course there may be men who think I would do it. I guess Ford thinks so. He would think anything to send a man to the penitentiary.

If you twelve men think that I, with 35 years of experience with all kinds of clients and important cases — if you think that I would pick out a place half a block from my office and send a man with money in his hand in broad daylight to go down on the street corner to pass \$4,000, and then skip over to another street corner and pass \$500 — two of the most prominent streets in the city of Los Angeles — if you think I did that, gentlemen, why find me guilty. I certainly belong in some State institution.

I say, nobody could believe that story, and Ford knew it, and he bolsters it up by Biddinger, who says that I passed \$500 in the elevator, and that Biddinger then told me that it was a careless way to do business. I know who told him to say that. I know who inspired that perjury.

Of course, I did not pass \$500 in the elevator, but if I had, I would only have been doing exactly what they were doing, what Burns admitted he was doing, what was done in all their cases, what Sam Browne says they did, when he testified that they filled our office with detectives.

And here comes Ford, so honest, so pure, so high, so mighty, Ford, who says that the State has a right to do that, who says that the State has a right to put spies in the camp of the "criminal,"

but the "criminal" hasn't the right to put spies in their camp. Isn't that wonderful, gentlemen? Here is a contest between two parties in litigation; the prosecution has a right to load us with spies and detectives and informers, and we cannot put anyone in their office. What do you think of that?

One of the cheapest things Ford said to this jury was when he discussed the testimony of ex-Senator William E. Mason, of Chicago, who testified to my reputation. Ford says, "You mean Mason, the seatmate of Lorimer?" Mason left the Senate ten years before Lorimer ever entered it — and they were always bitter enemies. And yet, because Lorimer had been expelled from the Senate, Ford thought if he made that malicious statement, you twelve men would be more apt to send me to the penitentiary.

Why, gentlemen, if I have to do one or the other, if I must choose, I will go down on Main Street and bribe jurors rather than bear false witness like Ford. Is there any comparison? There is some boldness, some courage, or at least some recklessness to one; there is nothing but cowardice and infamy in the other.

Let me clear up more of this driftwood that has been thrown around the case for the purpose of poisoning the minds of this jury against me — with a lifetime spent — not all good — I wish it were, I wish it were. I have been human. I have done both good and evil, but I hope when the last reck-

oning is made the good will overbalance the evil. I hope it will so overbalance it here, that you jurors will believe it is not to the interest of the State to have me spend the rest of my life in prison — though I could find some useful work even there.

Mr. Ford stood before this court and this jury, and said that I bribed the witness Behm to commit perjury. The next day his chief said it was not true, but in his argument he has stated it again. Bribe Behm! The evidence in this case shows that every dollar he ever got from me was for his expenses, pay for his time and for the man on his farm — \$412 altogether.

They begin their testimony back in Chicago where they say I got Behm to come out here for an illegal purpose. Did I? You heard his testimony. Mr. Ford says that I had no right to send a man into jail to interview his wonderful witness McManigal, and he says I committed a crime in bringing Mrs. McManigal here. What is the evidence on that? Mrs. McManigal has not become a traitor. It is a wonder that Ford does not indict her so that she can be a traitor. Ford likes traitors and informers. Everybody is a liar in this case but Franklin. Everybody is a crook but the white-winged Harrington. Davis is a liar; Job Harriman is a liar; Wolfe is a liar; Older is a liar. These newspapermen are liars; all are liars, and the only man who stands here as a credit to the beauty of your Los Angeles climate, and the glory of your

Los Angeles mountains, is Franklin. Gentlemen, you ought to advertise him for the tourists.

Of course Behm says that I told him to lie. First, I began in Chicago, where I asked him to come out here with Mrs. McManigal. Who else asked her to come? Why, Burns. He offered her money to come. His men met her at the train when she did come. They wanted her, and she had as much right to come at my solicitation as at that of Burns. The evidence is that she came to me. She said she didn't believe that her husband had made these confessions, and she wanted to come, and I gave her money out of the defense fund to come and see her husband.

And suppose she did come to get an interview with Ortie McManigal? Why do you suppose his name was put on the back of the indictment? Names of the witnesses are put on the back of indictments for the very purpose of permitting them to be interviewed by the defendant and his counsel. Now, there was no chance for me to go and see Ortie McManigal, but his wife might see him, and his uncle, Behm, might see him. In that way, I might prepare my case. I had as much right to do that, gentlemen, as you would have to consult a lawyer or a doctor. Just the same right, and they know it; and for doing what every lawyer does I am put down as a criminal in Southern California, the land of free men and free women.

Well, Behm went before the Grand Jury and gave

his testimony, and he says that he swore falsely, and that Davis and I drilled him. I know he did swear falsely in some respects, for he swore that I did not give him any money, and I did. I paid it to him by check on a Los Angeles bank where, of course, the detectives would know of it the next day. Davis and I both testified that he came to us and that we told him, after the first conference, to answer all questions excepting such as we thought were incompetent, irrelevant and immaterial.

Let us next look at Dickelman. Here is more of the wonderful fairness of this wonderful District Attorney that holds your life and your destiny in the hollow of his hand. What about Dickelman? Dickelman was with a Burns detective in Albuquerque. We had as much right to take him to Chicago as they had to take him to Albuquerque, and Dickelman himself swears that he was given \$100 to return to Los Angeles when he should be wanted. Talk about fairness! They talk about Hammerstrom because he is Mrs. Darrow's brother. It is not malice against Mrs. Darrow, it is not malice against Hammerstrom, it is malice against me. They would take that boy and indict and prosecute him, and let Franklin, Harrington, Behm, Bain, White, Krueger, everybody else go, because he is one near to me.

But what is the evidence about Dickelman? Maybe my word is not good any more. It used to be; even my note was good once; my neighbors

and my friends and lawyers used to take my word — they used to take it in place of a stipulation in court. They used to take any statement I made in court or out. Maybe their confidence will be withdrawn after Ford's onslaughts.

Davis testifies that he came into my office when a man was present who said he was a detective, and who told us that Burns's men had Dickelman in Albuquerque, hiding out, and that he (Davis) and I together asked this young man and his companion to go and see him, and if they thought we could make use of him, to take him away from the Burns detective. Was there anything illegal or wrong about that? Does anybody deny that testimony? And yet I am denounced as a crook, a man fit for the penitentiary. And they undertake to prove by their precious man Franklin that Davis advised him to commit perjury, and told him to make up his story and take it to Ford, but there is no prosecution for that; "Darrow is the man we are after; if you know anything about anybody else, keep your mouth shut, but help us get Darrow."

Gentlemen, aren't you ashamed of your people, your officials and your State? If I am guilty, and I have told you in every way, under oath and not under oath, that I am not, is there one man in this jury box, who loves justice and fair play, who will say that I should be singled out from among this mess, and every crook and thief and spy and informer and traitor in this case get immunity?

Who are they that are here given the infinite power of forgiving sin — given the power of life and death, and the power of punishment? They say to every thug and crook that comes across their path, "Come to Los Angeles; come to the judgment seat of Fredericks, and though your sins be as scarlet, we will wash them white as snow."

Now, let's get to the rest of the case. There are a few little things to clear up, sort of specks on the moon. They say that Franklin went to — how many fellows? Smith, Young, Krueger, Yonkin, Underwood? I am not going to spend much time on this, because I want to get where I can discuss this Lockwood case before I go to the penitentiary.

Did I have anything to do with soliciting Yonkin, Smith and Underwood? I sometimes think I did. I'll tell you why — because Franklin says I did not. Franklin says I did not know anything about these solicitations, that he never even told me. Now, that means something; of course he didn't tell me. I never heard of it, any more than any one of you twelve men. Franklin says I didn't. As long as Franklin says I didn't, I suppose even Ford would believe it. But how comes it that this man was going around offering bribes to jurors that I didn't know of? Suppose I had given him omnibus authority, and he had gone to four men who had turned him down, don't you suppose he would have told me? Do you suppose I wouldn't have known it? Think of it; here is a man who goes to four

men without any solicitation from anybody, least of all from me; he never tells me a single word about it. If he went to these four without my knowledge or direction, what about the others?

Somebody knew of these attempts, somebody besides me, and I think I can hear Mr. Fredericks saying tomorrow, after my last words have been spoken, "How could all of these things have gone on without the defendant's knowing of them?" How? Of all the people connected with this case, I would have been the last person to know. I was a total stranger here. Every other lawyer connected with this case was known throughout the length and breadth of this county. If somebody had been approached at the instigation of any one, any of the other counsel would have known about it a hundred times more readily than I.

Ford speaks of me as though I were a cheap jury briber, ready to give a bribe to anybody who happened along. It is a wonder that I didn't try to bribe Ford. You do not know me. Counsel would not let you read my books. If you turn me loose, I hope sometime you will have a chance to read them, so you will see whether you have made a mistake. Now, I am as fitted for jury bribing as a Methodist preacher for tending bar. By all my training, inclination and habit, I am about the last person in all this world who could possibly have undertaken such a thing. I do not intimate for a moment that anybody else would,

but in all this situation, mine was the position which needed to be guarded the most carefully, as these events have shown.

This is the most wonderful case in criminology that I have ever encountered in my profession. You will notice that Franklin had a great penchant for bribing people we couldn't possibly have used as jurors. The more honest the man, the quicker he would offer him something, try to "slip him a little money."

There was George Lockwood, a man of "the strictest integrity." Guy Yonkin was an honest man, and John Underwood was honest, and Smith was honest; every one of them honest men, and Franklin goes and visits with their wives, and asks them whether they will take a bribe in the McNamara case.

Now, gentlemen, if I am going to the penitentiary, it will be a great solace to me in the long days of my confinement, to think you used a little common sense in this case. Does it look like a case of jury bribing? Or does it look like something that was framed up? Out of all these men whose names Franklin mentioned, he swears he believes that Yonkin, Smith, Underwood, and the man Lockwood, captain of the chaingang, were honest and incorruptible—and he goes forth to bribe them. But Krueger was not honest—something else was the matter with him. Krueger had been in trouble with the District Attorney and Franklin says he

knew the District Attorney would not take him, and he testified that he told me so. Yet he tried to force money onto Krueger!

Gentlemen, don't ever think that your own life or liberty is safe; that your own family is secure; don't ever think that any human being is safe, when under evidence like this and circumstances like these, I am brought here and placed in the shadow of the penitentiary for six long months. Am I dreaming? And will I awaken and find it all a horrible nightmare, and that no such thing has happened?

Now, what about Bain? I think you gentlemen must know that every word said about these other four shows that I had no connection with this Bain matter. Franklin himself said that I knew nothing whatever about three. He said that two men were sent after Krueger, and that I was informed he could not possibly qualify. These tales are brought up here against me, and yet if I was not connected with these cases, is it not pretty safe to say that I was not connected with the other two? The same brain and the same hand were back of it all, and I take it there is not a sane person who could think for a moment that I had any knowledge of or connection with these four bribery charges.

I am still under indictment for having offered a bribe to Robert Bain. The Bain matter was saved by the prosecution as a delectable morsel for the end of this trial, because Mrs. Bain was a woman

somewhat advanced in years, and Robert Bain was a veteran of the Civil War. I do not know what that had to do with it, but Mr. Ford evidently thought it had something to do with it, and so it was brought in here at the last, this Bain case.

Now, let me just give you a brief recital of some of the evidence in the Bain case, and if I misquote the evidence, any of the jurors or the lawyers are at liberty to correct me. I may sometimes misquote because I cannot carry it in my mind — and I cannot have much of a mind anyway or I could not have sent down to the corner of Third and Main Streets to bribe Lockwood and then have gone down to see the job done. If I am sentenced I hope it will be to the right place.

But to come back to Bain. These people connected with the District Attorney's office discovered that Franklin made a deposit of \$1,000 on October 6th and, of course, thinking that Franklin could not carry around \$1,000 in his pocket very long, they concluded that I had given him a check on October 6th. Fine logic. And on this theory Franklin swore to it, that he came to my office and got a check and hustled off to the bank on October 6th — which was the first day, he said, that I ever spoke to him about Robert Bain, and the day that he saw Bain's wife. Remember, the first time I spoke to him about jury bribing was October 5th, and that on the 6th I gave him a check for \$1,000

— I, a stranger in Los Angeles, gave a check on a Los Angeles bank to bribe a juror!

And at the same time, according to the only other truthful man in this case, besides Franklin, Harrington states that I had \$10,000 in my pocket — at least I had it there the week before, and had been carrying it for a month. Why, I would not want to trust myself even with this jury with that \$10,000 in my pocket; not in Los Angeles, unless I had the District Attorney with me, which I didn't have. Ten thousand dollars in my pocket!

Suppose one of you gentlemen had gone to Chicago where you didn't know anybody, and had embarked in jury bribing, and you had ten thousand dollars in your pocket to give to two jurors, would you have drawn a check for one thousand dollars? And yet this miserable perjury is brought up here to this jury to take away the liberty of a man!

And what more? Lo and behold, when the check turns up, it was not given on October 6th, but on October 4th! Now what does Ford say? Ford could not possibly think anything was innocent to save his life. He says I probably misdated that check purposely. Where is the evidence? Does it come out of thin air, conjured by the malice of his brain? Where is the evidence? Misdated it purposely! Why should I have given any check at all? If I had taken thought to misdate it I would have given him cash, wouldn't I? Ah, he says, I

may have misdated it by accident. Yes, I may. A great many things may be in this world. Ford might tell the truth by accident. He might. But I wouldn't convict him of it on evidence so uncertain.

What else does Franklin do? He goes to the bank and he draws \$500. The bank cashier swore that he gave him fifty and hundred-dollar bills; and yet, Franklin gave only twenty-dollar bills to the Bains — every dollar he left there was in twenties. Now, gentlemen, this does not rest on the bank cashier's testimony alone. There comes out of their own mouths a bit of corroboration. Mr. Franklin puts \$500 in his pocket and rushes off to see — not Mrs. Bain — she was out — so he runs over to see one of the neighbors' wives, and leaves his card. Here is a detective, for your life! Why, he has got Sherlock Holmes faded. He has got Burns beaten forty ways. He is going to bribe a juror, and he goes over and sees this juror's neighbor's wife, and asks her to tell Bain to call him up at his office. No wonder he used Main Street for his field of operations.

And you, gentlemen, are expected to stand for it. No, all you do is to return the verdict; I stand for it. Ford tells you that you do not have to do anything but return a verdict. Now, what do you suppose he said that for? Did he want to take from the minds of this jury the responsibility involved in their verdict? Gentlemen, I don't ask for any mercy at your hands. I want a fair deal. I am

going to get it. But no man has a right to take from any jurors the responsibility that they bear to the case they are judging, and tell them that they are to hold a man's life in their keeping without thought. If you think I deserve conviction, then convict me, but do it with your own eyes open and your minds clear.

Now, here is a fellow that goes down to bribe Bain, and he doesn't talk with Mr. Bain, but goes to a neighbor. And later he goes back to the house and does not find Bob at home; so he talks with Bob's wife. If Bob's wife had not been at home, he would have talked with the dog. If the dog had not been there, he would have talked with the cat. He was out after jurors; it is a wonder he didn't send a letter.

So he goes back to Mrs. Bain. Mrs. Bain asked him to subscribe for the Examiner so she could get a premium and Franklin subscribed. He wrote his name, and Mrs. Bain said, "Is that all?" Franklin said, "No, you want the money, don't you?" And then he asked her whether she could change a fifty, or whether she could change a hundred — one or the other. That is what Mrs. Bain said, and it is no doubt true. He had come right straight from the bank where the teller swears he gave him five hundred dollars in fifties and one hundreds.

So if the bank teller needs any corroboration, here it comes from the mouth of Mrs. Bain, that

he did get fifties and hundreds. If he had gotten one twenty-dollar bill in the bunch, wouldn't he have asked her to change a twenty? He finally pulled out his wallet and managed to find some small change, Mrs. Bain says. And he went back that night and saw Robert Bain and gave him \$400, every penny in twenty-dollar bills.

Now, gentlemen, there it is. A man is presumed to be honest and not a criminal, and a jury presumed to be sensible and fair, and to understand the responsibility involved in passing on the liberty of a fellow man. Now, tell me, did he get these twenties from me or through any check of mine? The bank teller says no, and Mrs. Bain says no.

Where did he get these twenties? I cannot tell. That money did not come from the bank on my check, and there is no way on earth to figure that it did, and if I didn't furnish the money, where did it come from? Whose hand working out here in the darkness, unknown to me and unknown to the other attorneys — whose hand was it that stretched out in the night and was working my ruin? I don't know.

Gentlemen, I will tell you why Bain was taken on the jury. Bain told us he had belonged to the first Labor Union organized in Los Angeles. His hair was white, and somehow, as we get along in years, we think more of the few years that are left than do the young. So, especially in a murder case, when I find a man with white hair, I know he will

be as tender and kind and careful of his brother's life as he is of his own. We know as we grow in age and experience — we understand more and more what great influence circumstances have upon our lives, and how near alike are all men after all is said and done; and we grow kindlier in our judgments, more charitable to our fellow man than we were when filled with hot blood and the intemperate passions of youth. So Bain was taken on the jury. Franklin said he was a good man for the jury.

Franklin was consulted in the case of every juror, as Davis and I testified, and as naturally would be the case. And what did Bain tell Franklin? You remember the story. He says that when Franklin gave him the money, he told Franklin that if he found the evidence against McNamara convincing, he would render a verdict of guilty, didn't he? He said he would not have voted guilty anyhow unless the evidence was convincing. Now, here is the man himself to whom they have given immunity, and who is here in some mysterious way to testify against me, and he says that he told Franklin then that if the evidence was convincing he would find my client guilty, and yet Franklin thrust \$400 onto him.

Gentlemen, it is insanity to talk about the Bain case. First, the check was given before the bribery was ever spoken of. Second, Franklin got no money from that check to give to Bain. Third, Franklin went to the neighbor's wife, and to Bain's

wife, and they called at his office. Fourth, Bain was not bribed at all, and fifth, Bain says himself that he would have found my client guilty after he got in the jury room. And yet, after all this, I am guilty of bribing Bain!

I have told you of all these matters as simply and as plainly as I could from the witness stand. Ford said that I lied, that I quibbled, that I hesitated. Now, I do not blame anybody for making any argument that is fair and useful to his end. I will just touch on the matter for a moment, and you do the rest. Ford went on the stand. Who quibbled the most, he or I? Why, he was so shiftily that he could not admit to this jury that he knew Oscar Lawler was the prosecutor specially retained by the United States Government. He quibbled and hedged upon the simplest questions.

Ford has a right to argue that I spoke falsely because I contradicted Franklin, and I would not question his right to argue that for a minute, but did I quibble or hesitate? He asked me questions for four long days. Did they bother me? I took pains of course to understand his questions. I was not going to let him trick me into the penitentiary by not understanding the devious workings of his devious head. I was going to say "mind" but I changed it for "head." I threw myself open to him and there was not a question that I did not answer the best I could. Perhaps every answer I

made was not correct, but I thought it was. I leave it to you whether my answers were frank, honest, fair and prompt, or whether they were not.

Now, gentlemen, let us see what there is in the Lockwood case. Lockwood! I am to go to the penitentiary because Franklin gave White \$4,000 at the corner of Main and Third Streets to be held for Lockwood. White transferred it on the corner of Los Angeles and Third about nine o'clock in the morning of the 28th day of November. These other things we have considered were thrown in here to prove it, so as to help out in some way the two witnesses whom Mr. Rogers has so well pointed out as the only witnesses against me. They thought that by giving you quantity you might forget the quality of their testimony.

Now, they have marshalled here to condemn me nine detectives and nine informers. These men, clothed with the powers of the law, with the opportunity to reach out their processes through the length and the breadth of the land, have said to John Harrington, "Unless you bear testimony against Darrow you must go to the penitentiary yourself." These men hold Franklin by the throat and tell him that he will go to the penitentiary unless he testifies. He needn't testify against any Los Angeles man; it is only Darrow they want. These men reach out to Cooney, to Fitzpatrick, to Behm, to Bain, to Mrs. Bain, to anybody whom

they can intimidate and frighten, to whom the doors of the penitentiary look grimmer and harder than they do to me.

Why, gentlemen, I don't want to go, but when Harrington told me, as he admits he did, that all would be forgiven if I told him where Schmidt or Caplan was — do you suppose I would purchase my life at the expense of the life of my fellow man, no matter if that fellow man was a criminal? I am not his judge. Only the Infinite God can judge the human heart, and I never tried to judge. I never would do it, and hope I never shall, and when Harrington suggested that I furnish evidence against Sam Gompers in their wild crusade to destroy the trades-unions, so that men and women might toil longer for less reward, do you suppose I thought or hesitated or waited to draw my breath for a single moment?

I had no information to give, but I had as much as Franklin or Harrington had. I could have told them any story that I saw fit. I could have purchased my liberty at the price of my honor, and then Ford would have said that I was a noble man, and that the fellow I was betraying was a Judas Iscariot.

Gentlemen, there is one thing I can say in favor of Franklin; by comparison, Harrington has made a gentleman out of him. Anybody is a gentleman compared with Harrington. Perhaps you think I am especially bitter against Harrington, but I don't

believe in bitterness — as some of you may have suspicioned this afternoon. I have always tried to curb it, all my life. I don't blame Harrington, and I don't blame Ford. Nobody is responsible for the shape of his brain; it conforms to the skull, which is made of bone, and no one can help the shape of his head. There is not a man on this jury that cannot go back through the years, and see how the smallest circumstances have affected the whole course of his life, circumstances entirely beyond him and outside of his control.

And a circumstance that might affect you might not affect me. Some have a large brain, some have a small one; some have a symmetrical brain, and some an unsymmetrical one. We are no more responsible for the shape of our brains than we are for the shape of our faces. I know this as a matter of philosophy. I know Harrington is not to blame for being a coward. I know God made him a coward, and he cannot help it, and I have spoken of him with this view in my mind all the way along. I would not harm him.

Talk to this jury about my moral responsibility for crime! I defy any living man to say where, either by speech or word of pen, I have advised anything cruel in my life.

I would have walked from Chicago across the Rocky Mountains and over the long, dreary desert to lay my hand upon the shoulder of J. B. McNamara and tell him not to place dynamite in the

Times Building. All my life I have counselled gentleness, kindness and forgiveness to every human being and, gentlemen, at the same time, even speaking for my own liberty, I do not retreat one inch or one iota from what I really believe as to this. You were told about the horrors of the Times explosion by Mr. Ford. Why? So that some of the horrors of that terrible accident might be reflected upon me to get me into the penitentiary.

Now, gentlemen, let me tell you honestly what I think about that. It hasn't anything to do with this case, excepting as they dragged it in here to prejudice the minds of this jury and to argue that this man should not have been defended by me. Do you suppose I am going to judge J. B. McNamara? Men who are called criminals are like you and like me, and like other men. They may do this thing wrong and they may do ten thousand things right. I never saw a case where a wife or a mother or a father or a brother or a sister or a husband or a friend didn't plead for the "criminal" that he or she knew, and point out to the Governor and those charged with mercy ten thousand good things in his life and in his character that would commend him to mercy, while his enemies were telling only the wrongs he had done. I know that the same feelings lurk in the brain and heart of every man. I am not responsible for J. B. McNamara's brain; I am not responsible for his devotion to a cause, even though it carries him too far.

Let me tell you something, gentlemen, which I know District Attorney Fredericks will use in his argument against me, and which I have no reason to feel will meet with favor in the minds of you twelve men, but it is what I believe. I will just take a chance.

Lincoln Steffens was right in saying that this was a social crime. That does not mean that it should have been committed, but it means this, that it grew out of a condition of society for which McNamara was in no wise responsible. There was a fierce conflict in this city, exciting the minds of thousands of people, some poor, some weak, some irresponsible, some doing wrong on the side of the powerful as well as upon the side of the poor. It inflamed their minds—and this thing happened.

Let me tell you, gentlemen, and I will tell you, the truth, you may hang these men to the highest tree, you may hang everybody suspected, you may send me to the penitentiary if you will, you may convict the fifty-four men indicted in Indianapolis; but until you go down to fundamental causes, these things will happen over and over again. They will come as the earthquake comes. They will come as the hurricane that uproots the trees. They will come as the lightning comes to destroy the poisonous miasma of the air. We as a people are responsible for these conditions, and we must look results squarely in the face.

And I want to say to you another thing in justice

to that young man who was my client, and whom I risked my life, my liberty and my reputation to save. He had nothing on earth to gain; his act was not inspired by love of money; he couldn't even get fame, for if he had succeeded he could never have told any human being as long as he lived. He believed in a cause, and he risked his life in that cause. I would not have done it. You would not have done it, but judged in the light of his motives, which is the only way that man can be judged — and for that reason only the Infinite God can judge a human being — judged in the light of his motives I cannot condemn the man, and I will not.

I want to say more; when you know the man, no matter whom — I have known men charged with crime in all walks of life — burglars, bankers, murderers — when you come to touch them and meet them and know them, you feel the kinship between them and you. You feel that they are human; they love their mothers, their wives, their children; they love their fellow man. Why they did this thing or that thing remains the dark mystery of a clouded mind, which all the sciences of the world have never yet been wise enough to solve.

Sixteen sticks of dynamite were placed under a corner of the Times Building to damage the building, but not to destroy life. The explosion itself scarcely stopped the printing presses. Unfortunately, there was an accumulation of gas and other inflammable substances in the building, which ig-

nited, and the fire resulting destroyed these human lives. The perpetrators of the deed were never morally guilty of murder.

Gentlemen, do you think my heart is less kind than Ford's? Do you think he would care more than I for the suffering of his fellow man? Do you think for a moment that I did not feel sorry at the destruction of those lives, and for the wives and the children and the friends that were left behind? Wouldn't I feel it as much as he? And yet, gentlemen, this Times matter is paraded before this jury in the hope that in some way it may awaken a prejudice in your hearts against me.

Gentlemen, there never was a man charged with crime that I was not sorry for; sorry for him and and sorry for his crime; and as Mr. Steffens told you from the witness stand, there will come a time when crime will disappear, but that time will never be hastened by the building of jails and penitentiaries and scaffolds. It will only come by changing the conditions of life under which men live and suffer and die.

Gentlemen of the jury, the question you are to decide here is this: Did I give Franklin four thousand dollars on the morning of the 28th of November to seek to bribe Lockwood?

Now, is Franklin's story true or false? If I am to be convicted it must be upon the story which Franklin tells and the evidence which he presents. It must be upon the story that on Monday morning,

the 28th, he met me in my office, that I called up Job Harriman, who came there and handed me the four thousand dollars, which I then gave to Franklin, and told him to go down on the streets and bribe a juror. That is all there is to it. Now, what is the evidence on that? Job Harriman comes on the witness stand and swears there is not a single word of truth in it. Are you going to say that he is a perjurer? Mr. Ford says that he believes it. But where in this record is there any evidence, or any indication, that Job Harriman committed perjury and was guilty of bribery?

Next, Frank Wolfe testifies that I came down with him on the street car that morning, that he went with me to my office, that we discussed the political campaign and other matters, until I was called up on the 'phone and said that I was going to Job Harriman's political headquarters, and that I went out with him. Who is Frank Wolfe? A man who was managing editor of the Herald for years. A man who has held important newspaper positions for twenty years, and who is now one of the editors of the Municipal paper in this city — a man upon whose countenance truth is stamped as plainly as upon any man who lives. Is he a perjurer? For what? He is not charged with bribery, and he is not interested in this case. Are you likely to throw away the evidence of Frank Wolfe, and replace it with that of Franklin?

Franklin, you remember, first tried to fasten his

crime upon Lockwood. Then, within a week, we find him telling Joe Musgrave that he would "slip it to some one else." He may not have thought then whom but he found out later — when Ford told him, "We want Darrow." Next, within another week, Franklin had a hearing before a Justice of the Peace, and he tells four newspaper men, White, Bernard, Willard and Jones, all of whom appeared here — he tells them not simply that Lockwood lied when he said my name was mentioned, but that I was an innocent man, and that he would not stand still and keep his lips sealed and see an innocent man accused. Ford says that Franklin admits these statements. He did not. Franklin said on the stand here he never made those statements. Why did Ford misquote the evidence? Lord, how short the memory of a bloodhound is when he scents human blood!

Let me call your attention to the testimony. There is my friend Willard who came to the witness stand. He represents the Associated Press. Mr. Ford asked him, "Did you write what Franklin told you in your story?" Willard answered, "I think I did." "Are you sure?" "I think so, but it was a long time ago." Then Ford said, "You go back and find your story, and I will recall you for cross-examination" — and he never recalled him; never.

And here was Harry Jones, who represents the Tribune. Ford asked him, "Did you publish that

statement in your paper?" "I think so, I think I wrote it, but it might have been cut out; I don't know whether it was published." "Bring your paper into court, and let's see," said Ford. And Jones came in with his report and read it to this jury, after Franklin had sworn that he had never said such a thing in the world. He told it to White, he told it to Bernard, both newspaper men. He told it to Nicholson, who sat here day after day writing for the Examiner.

What next? This is a talkative man, this man Franklin, especially when you get him around the Waldorf saloon. He met Frank Dominguez and George Drain along in the latter part of December or the first of January, and he told them unqualifiedly and without equivocation that I never gave him a dishonest dollar in my life; and then he came on the witness stand and denied it, saying that he had no such conversation.

Again, on the third day of February, two weeks after he had gone before the Grand Jury, and more than a week after he had made this statement to Oscar Lawler, he again met Frank Dominguez, and he reiterated the statement which he made after this confession that I had given him no money for bribery.

And he met his friend George Hood, the lodge member who asked him, "Why didn't you take that money and put it in your pocket?" and "Did Darrow give it to you?" He told Hood that Dar-

row did not give it to him, and that the reason he did not put it in his pocket was because the man who gave it to him was watching him when he passed it, and that man was a stranger to him, and did not live in this city. That is the reason he did not steal the four thousand dollars; that is the way he excused himself to his friend Hood for not being a thief. That is an excuse that men often make, that something is nailed down. That prevents a lot of stealing in this world.

Then, along about the 12th of January, Franklin went to Tom Johnston, an attorney he supposed was close to the District Attorney. What did Franklin tell Johnston? He told him that I had never given him a cent of money for bribery; never. He told him that the bribe money was given to him by some one else, and he told him that I never knew anything about it. Now, are you going to convict me on Franklin's word, when that is the statement which he made to his lawyer in confidence? It is unthinkable. Johnston may be a liar—but you don't believe it. And Johnston goes to Mr. Ford and he comes back to Franklin and reports: "That won't do, nothing will do but to make a statement against Darrow." And what does Franklin reply? He says to Johnston, "If I made a statement against Darrow I would be a blankety blank liar."

Franklin said in January that if he made a statement against me he would be a blankety blank liar.

In May he makes that statement. What is he? I will not characterize him; he has characterized himself.

Then Franklin meets Davis and me, Davis having called me to his office on the 14th, two days later, and according to the testimony of Davis and myself, Franklin told us then together that Johnston had come to him, reporting that he had been to the District Attorney's office and telling him if he would turn up evidence against me he need not say a word about anybody in Los Angeles, that I was the one they were after; and Franklin replied, "I could not do it, I have no evidence against you, I could not do it." Maybe Davis and I are liars. Ford says I have corrupted Davis. Maybe I have. Maybe I have corrupted everybody I have met, excepting Ford. But it takes some evidence to show that, doesn't it? Davis, a man of standing and high character in the city where he has lived and practiced law, is a liar, and Franklin is telling the truth! Do you believe it?

Suppose we took a change of venue and tried this case before twelve Bushmen in Africa, do you suppose they would stick me? Do you suppose that you could find a man who would take a club and knock me on the head if a jury did find me guilty on the evidence of Franklin?

Well, Franklin is still talking. A man named Warner came to him to get employment in August or September, and he patted his jury list which was

lying on his desk and said, "I am going to win this case right here; there is an angle to this case that the lawyers know nothing about." Is the witness Warner a liar? How do you know it? Franklin swears he is. He swears everybody lies excepting himself, and that he is a liar, too; not only a liar, but a blankety blank liar.

But he kept on talking, and he went down to the beach, to Venice, and saw a policeman, Peter Pirotte. He asks if Pirotte would like to go in business with him at Venice and open a detective office. Pirotte says, "You have been in trouble, and I don't think it would be a good idea." Franklin replies, "Oh, I will get out of that all right in a few days; they don't want me, they want Darrow." And Pirotte reports this conversation to my friend William Cavanaugh.

And Pirotte sees Franklin again after the plea of guilty. He sees him with Watt. The meeting is purely accidental, as both Watt and Pirotte testified, I having no knowledge of it. Watt, however, is my friend, and as honorable a man as any who has come before you in all the weary weeks you have sat listening to this case. You cannot look at Watt's face and doubt it, not for a moment—a man who for six years has been City Clerk for the town of Venice, and a man of character and standing. Franklin met them and took lunch with them. There was a political campaign at Venice. Franklin was talking freely because he wanted to get this

agency, down at the beach, and when Watt told him that he had heard of his trouble, Franklin said, "That is all right, it is over now. I pleaded guilty in the Bain case, and they are holding the Lockwood case over my head to make me come through against Darrow." To make him come through against me! And they talked more about it, and Franklin said I had never given him dishonest money.

Now, Ford asks, "How could Franklin say that after he pleaded guilty?" Why, he was saying only what he had said all the while. He might have said it from force of habit. He might have said it because he was drinking and didn't think to lie. He might have said it because the truth naturally comes to one's lips first, even Franklin's, and afterwards he caught himself up and said, "Oh, I must not talk about this case."

Then Watt came and told me of this interview as he testified here. And he sought another meeting with Franklin, this time in company with Steineman. Steineman owns the Decatur Hotel and was a director of a bank. He is a man of standing and character. How does he compare with Franklin? And Franklin told Watt and Steineman together that the money to bribe Lockwood came from some one else, from outside parties, and that I never knew a single thing about it. He added that I would not be tried anyway because I was pining away and would die pretty soon. Well, I will, and as this trial dragged along with its fool questions and im-

material issues, I thought at times I would perhaps die before we got through, but I am here still and hope to be here some little while after this jury pronounces its judgment on me.

Now, at this meeting, Franklin told Watt and Steineman that the reason they wanted to get me was because I knew something about Gompers, and that if I would say something against Gompers, they would let me go as they had let him go. Did he say it? Are Steineman and Watt liars? Are you satisfied that they are liars and that Franklin tells the truth — when he has admitted that he is a blankety blank liar himself?

Gentlemen, if you would not be satisfied by this, you would not be satisfied though one should rise from the dead. You would not be satisfied if an angel with a flaming sword should appear and testify that it so happened. I would be absolutely helpless in the hands of my enemies if an array of testimony like this could not satisfy twelve impartial men — you who I know are not yearning for my blood, you whom I know I have never harmed in this world — and I hope that I have harmed very few.

Now, think of the impudence, gentlemen, to ask you to believe a man as weak as he is, and impeached as he is, and upon such testimony to send a man to the penitentiary. But that is not all. Franklin swears that he came up to my office on the morning of the 28th of November and told me

that he was going down to Third and Main to bribe Lockwood. He says Job Harriman came up with an overcoat on his arm after I had telephoned to him, though Job swears he came direct from his house that morning, and I could not have telephoned him. But what is the use? Job is a liar. I would need Franklin to prove anything in this case, and I cannot get him because I do not happen right now to have the key to the penitentiary; if I did I could have him. The District Attorney's office has the key.

Franklin says Harriman came up there and I stepped into another room and got a roll of bills containing four thousand dollars from him, and then I handed the money to Franklin, and I said in effect, "Now, little boy, take this roll in your hand and trot down to the corner of Third and Main and buy a juror at 9 o'clock in the morning." It is as if one of you would give your boy a penny and would say, "Go down to the grocery and buy some candy." And he takes it in his hand.

Of course when he took that Bain five hundred in his hand there was a hundred got away between the bank and Bain. He says he doesn't know where it went. Maybe the Waldorf saloon could give some information. I don't know. But, anyway, he held this four thousand dollars in his hand so that none of it could get away, and he trotted down the hall, down the elevator, and down the street, holding it in his hand, to bribe a juror on

a Monday morning, on a busy street corner. And the cautious White says, "I don't know whether it is wise to pass this on the corner; shouldn't we go into the saloon?"

And they went into the saloon, and then probably White had lost his caution, and went over to Third and Los Angeles, and passed over five hundred dollars of the four thousand. He must have taken some bitters that robbed him of his caution. And Franklin goes down with him, not on one street, but two streets.

Franklin leaves me, he says, about twenty minutes before nine o'clock. He was trotting down, going rapidly, so quickly that he did not stop to put the money in his pocket. I stayed in my office for about twenty minutes, and I then appeared down at the corner of Main and Third Streets within half a block of my office. Now, Ford tells this jury that I went down to watch Franklin pass the money. I did not suppose this panel was served in a lunatic asylum. Did I go down to watch him pass the money? He said I waited twenty minutes and was not there until it was all over.

Why, the fact that I was there proves as conclusively as human reason could prove anything that I had absolutely no knowledge of the plot. Ford says I am smart, whatever that means. At least I have never been adjudged insane, and I have never yet been in a home for the feeble minded.

Why does Franklin say I was there? He tells

Watt and Steineman that I must have got word from Brown, their detective, and went there to help Franklin. He said that if I hadn't happened to appear at that inopportune moment, he would have had Lockwood arrested. He admitted that on the stand. He wasn't looking for me. He knew I wouldn't be there. His theory was that Sam Brown or some one in the District Attorney's office had given this thing away to me, and that I had gone down there to save him. What does he testify? Why, that I walked up towards him and said something to him. Ford asked him, "What?" He replied: "I am not sure what Darrow said; I think he said, 'They are onto you.'"

Is there any single syllable of evidence in this case that anybody ever gave me a warning, or that I knew anything about the matter? According to the theory of the State nobody knew anything about it but Fredericks and a few detectives. And God knows you can trust detectives — you have got to, because you must take away people's liberty on the evidence of detectives.

And then they called three wonderful witnesses here to impeach Hawley, the witness who testified that he telephoned to me on that morning to meet him at Job Harriman's headquarters. Look at this "impeachment" of Hawley. Even if he were a dishonest man he might call me on the telephone, I take it, because the telephone companies are not particular, and are willing to rent their service to

liars as well as to honest people — even Franklin used the telephone. But they sought to impeach Hawley, and they brought three witnesses, one of them a man who held a political office with him and who had trouble with him; another who wasn't satisfied because he didn't get his commission in a real estate trade and had sued and pursued him; a third who had another business transaction with him, and didn't get his money — and there you are.

Gentlemen, I have practiced law a good many years and this is the first time in my life that I have ever known of a lawyer seeking to impeach the integrity of a man by men who had had personal difficulties with him. Did any of you ever have any trouble with anybody? Can there be a man on this jury who has not had some difficulty with some other men who would be willing to speak ill of him and injure him if it came their way? If you haven't made three or four enemies, gentlemen, you have lived a very weak and useless life. You had better begin on me, so you will have something to your credit before you get through.

Mr. Ford figured on five minutes here and five minutes there, two minutes there and two minutes here, so that Hawley could not have telephoned to me. Does a man need to waste his breath on talk like that where human liberty is involved — whether he walked a block and a half in five minutes, or in three minutes, or four minutes? Does any man know? Does Ford know? And yet he would figure

it up and roll it under his tongue as if the destiny of the universe were hanging on a minute or a minute and a half. Whether Hawley waited fifteen minutes or five minutes is of no account. I have waited for a man three minutes when I was in a hurry and it seemed an hour. But I have lingered in some places an hour and it seemed a few minutes. There is nothing so deceptive as time; it depends on how you feel. I think I have lived a thousand years in the last year. It seems as if it is longer than all the rest of my lifetime put together, with the weight that has been on me.

No, you can't measure time that way; the measure of time depends upon something else; it depends on the conditions, whether they are pleasant or unpleasant, whether they are serious, whether you are in haste—upon a thousand things. It does not depend on the hands of the clock. It is childish to tell this jury that Hawley lies, and that I am a briber, on the turn of the second hand of the clock. Away with it!

And then I come up to the street and meet Sam Brown of the District Attorney's office, my mind full of the settlement in the McNamara case, with the weight of these men's lives on my shoulders, wondering what all the trouble down on Main Street was about. I asked Brown what it was about. Was it an honest question, and an honest exclamation, when I said, "It is horrible; I would

not have had it happen for anything in the world"? Did it sound like guilt or innocence? I will tell you. It depended on the ears that heard it. To a man looking for guilt, and with a pair of ears for that purpose, to a man not believing in his fellow man, it sounded like guilt; to a man not suspicious, it would sound like innocence—that is all.

I don't know the exact words that Brown said to me or that I said to Brown; neither does he. But Ford pretends to peddle to you the exact words. I was not there measuring words, nor was he. When we met at that time, I thought a great calamity had overtaken us by the arrest of Franklin. You don't know what you would have said in a case like that. I will venture to say, there are not two men on this jury who would have said the same thing, guilty or innocent.

And so, about Franklin's bail bond, this evidence that I had furnished ten thousand dollars at the request of LeCompte Davis. Davis came to me and told me that he thought Franklin was innocent, and he advised me to give him the money, and said he would make good if Franklin ran away. Would you have done it? Lord, I hope you would have done it. I would not want to be tried before twelve men who would not. Any man with any feeling in his heart would have done it, and I did it at Davis's request. I had not seen Franklin. In one breath Ford tells you it was suspicious because I

did not do more, in another it was suspicious because I did so much. Did I do too much or too little?

True, some of the time when I feared Franklin, I thought of myself, but that was later, not until after the McNamara case was settled. Before that I had no time to think of myself, and no inclination to do so. But when I wondered and thought what I ought to do, I did not know; I could not tell. Do you suppose that there ever was a time when I seriously thought of it, in my long experience, that I did not know what it would mean to have Franklin offered immunity at my expense? And yet I never asked for anything in the matter. I never gave him a dollar in that long time or asked him for a statement or for a word. I never raised my hand with him to save myself any more than I have with anybody else since this case began, or since my life began — and I did too much here, and too little there — away with it!

Can you sit here, you twelve men, to pass upon my guilt or innocence, and tell me the words I should have spoken or should not have spoken? If you can, you are endowed with the wisdom and omniscience of the Almighty, and I am willing to be judged by that now and hereafter.

Now, as to Franklin, it is not a question whether his testimony is corroborated, but is it worth anything? Is there a single one of you gentlemen who

would condemn your dog upon his word? Is there one of you who would condemn the meanest reptile that crawls, upon the word of Franklin as shown by the testimony in this case?

I have said about all I care to about Franklin. I have said enough, possibly too much. I have no feeling against him; he is the way God made him. He can't help it any more than you can help being you, or I can help being I. It was a hard choice he had to make; it is a hard choice for a weak man, to offer him honor or comparative honor on the one hand, and security at least from the penitentiary on the other. Some men will take one, some will take the other; it depends on the man; he is not responsible for his brain or skull. I don't want anybody to think that I would judge him with bitterness. I have never judged any human being with bitterness and I never shall. I am only asking you, gentlemen of the jury, to consider the reasonableness and the probabilities and the improbabilities and the absurdities of his story — nothing else.

Would I take a chance of that kind surrounded by detectives from the beginning to the end? Leave out the moral question. Leave out the tradition of a profession that I have followed for thirty-five years. Leave out everything except the bare chance. Would I take that chance with these gumshoe men everywhere, their eyes on every one

connected with this case — detectives — nine of them testifying here — detectives over the town as thick as lice in Egypt, detectives everywhere?

Detectives to the right of me,
Detectives to the left of me,
Detectives behind me,
Sleuthing and spying.
Theirs not to question why —
Theirs but to sleuth and lie —
Noble detectives!

Now let me talk a little about Harrington. Do I need to say much about him — a man who came here to work for me, a man who lived in my house, who ate with me and with my wife, who slept under my roof, and who stayed for ten days as our guest — and all the while he was going before Lawler and the Grand Jury and testifying against me? Against me! Great God! Do I need to impeach him? A man sleeping in your house, eating at your table with yourself and your wife, and betraying you! Is there any crime more heinous than that? Would you ever want to look upon Harrington's face again — the man who sat in this court room day after day and would not look me in the eye — afraid of being hypnotized? If I started out to hypnotize Harrington I would want a hunk of corned beef; you would have to get him through his stomach. Did he look at you? Did he look one juror in the eye? Will he ever look a human being in the

eye again before he goes down to his unhallowed grave?

And then, gentlemen, think of that man plotting in Chicago with the Erectors' Association — my friend, and asking me for money — meeting these men in a hotel in Chicago and putting up a scheme to trap me into a hotel room, where a dictagraph hidden behind a bureau could record my words. They knew perfectly well then, as they know to-day, that they could not pick out twelve human beings on the face of the earth that would throw away the liberty of a man upon the testimony of Harrington and Franklin, and so they thought to trap me where the hidden dictagraph might be made to distort my words.

Gentlemen, where is there a parallel for that in the annals of criminal trials? Let's think of it a moment. Wouldn't it be better that every rogue and rascal in the world should go unpunished than to say that detectives could put a dictagraph in your parlor, in your dining room, in your bedroom, and destroy that privacy which alone makes life worth living? What would you think of it, one of you men, if your hired man should conceal a dictagraph in your home or in your office, and seek to destroy you in that way? And do you want to tell me that the Erectors' Association that would be guilty of a shame like this, would not be guilty of plotting my ruin, and charging me with a bribery for which they themselves were responsible? I

want to say this, that if they deliberately put up a job to catch me on the streets of Los Angeles, that job was a sacrament compared with the hidden dictagraph used to trap a man into the penitentiary.

They used to have a steer down in the stock yards in Chicago, where Harrington came from, that had been educated; they had educated this steer to the business of climbing an incline to the shambles. There was a little door on the side so that the steer could dart down through this door and not get caught in the shambles, and his business was to go out in the pen, and lead the other steers up that incline to the shambles, and then just before they reached the place, he would dodge down through the door, and leave the rest to their destruction; that is Harrington.

If there is a man on earth who would give credit to Harrington in this matter, I would like to look in the face of that man, and I would find he was not a man — that is all. Better, I say again, that all the crimes that men could commit should go unpunished than that credit should be given to a scheme like that which was plotted in the Sherman House by Harrington, Lawler and the Erectors' Association.

But what did they get from their infamy? Nothing. I went to Harrington's room where the dictagraph was hidden behind the bureau and talked with him in a friendly way day after day; but evidently the stenographers in the next room who

recorded my language were too honest to distort it. And when I went on the witness stand, Ford asked me if I said this and that while the dictagraph was listening. And all the time they had in their wonderful tin box the full record of my conversation — in that tin box which contains more infamy than any other box in the world — more infamy and less evidence, infamy practiced by the District Attorney's office.

And they did not show this infamy to this jury. Then they had the effrontery to argue to you that they asked me all they wanted to prove — and my denial of practically every single thing they asked stands unimpeached. They asked directly if I did not admit to having received ten thousand dollars in bills from San Francisco. I said, "No." Where is the wonderful tin box? Where are the listening dictagraph operators? Would they have testified for me or for Harrington?

Of course they had to have somebody to help Franklin, and so they threatened Harrington. They placed a charge against him, and threatened him with the penitentiary unless he did something for them, and so Harrington comes to the stand. What did he say? There are some links that need filling. Nobody has discovered a single penny that I have spent unlawfully. They have had access to every check I drew. They even photographed the checks in the bank before the bank gave them to me. They have had access to everything I did, and

found what? Nothing. A check was given to Mr. Tveitmoe, for a perfectly lawful purpose — it was just as necessary to have money in San Francisco as it was to have money here — and they seized upon that check early in the game. And Harrington tells the story; look at it a minute. This man, this Harrington — out or respect for “men” I cut out that word — this Harrington; when there is anything to connect, Harrington does it. He found out that a check had been given to Tveitmoe. How did he find it out? Why, he found it out from a detective. He found it out from the Indianapolis Grand Jury. He found it out from Burns. He found it out in ten thousand ways. You cannot tell how. He found out that such a check had been given to Tveitmoe, and he comes on the witness stand and says that I showed him ten thousand dollars in bills on the front porch of my house.

He swears that sometime between the 20th and 30th of September I drew out of my pocket at my house, where he was eating — he never missed a chance to eat with me; I presume he would eat with me now, if I gave him the chance, and have a dagger concealed somewhere in his clothes, if there was room enough for it after he got through eating — he swears that I went out on the porch of a house standing upon a hill, the porch brilliantly lighted and houses all around, and with Mrs. Darrow and his daughter out in the yard in front, and that I pulled out from my trousers pocket ten thousand

dollars that I had been carrying for twenty or thirty days, and had showed it to him, and told him that I was going to get a couple of jurors with it. Now, is there any sense in that? Could anybody believe it if it stood alone and uncontradicted in this case — and if a man had sworn to it, instead of Harrington?

And on the morning of the 28th of November, when I came back from Harrington's room where he was alone, I called him into my room and said, “If Franklin speaks I am ruined.” And that was all. “If Franklin speaks I am ruined.” If I said that, just take a chance and send me to the penitentiary; take a chance. There you are. That is the wonderful corroboration of the most wonderful case that I believe has been tried since men obtained the right to jury trial.

Franklin says that he had never seen Harrington more than three times in his life, but Mrs. Hartenstein, the stenographer who occupied the room between us, swore that they met each other daily. The other stenographer across the hall, who went in often to take dictation, swore that she had seen them together at least two dozen times. Mr. Russel swears that he had seen Harrington and Franklin together fifteen or twenty times.

Gentlemen, show me, in all their watching and their spying — show me, with all the money they have spent, with all the efforts of the strong and the powerful to get me, show me in all these long,

weary months, where one honest man has raised his voice to testify against me. Just one. And are you ready, gentlemen, to take away the name and the liberty of a human being upon the testimony of informers, crooks, and immunity hunters? It cannot happen.

Gentlemen, I want to talk to you about one more phase of this case, and the clock's minute hand is moving along as fast as Joe Ford said it was while Hawley was going from his office to Job Harriman's — so I have no time to loiter.

Was there any reason in the world for my seeking to bribe a juror on the 28th day of November? There are two things in this case that are not even disputed. One is that the dictagraph contained nothing in the world to my detriment: here was the place they would have evidence if there was any honest evidence in the world: they needed it or they would not have taken the trouble to do such an infamous act.

There is another fact in this case that stands out clear, and that is that the McNamara case was disposed of, so far as I was concerned, prior to the 28th day of November. Fredericks has said before this jury that he was going to send out for some of these people who formed the committee that made the settlement. Did you see them? He brought Tom Gibbon before you for a few minutes one day, and after talking with him, he sent him off on his business, and we haven't seen Mr. Gibbon

since. Neither he, nor Harry Chandler, nor any member of that committee, has denied a single word of Steffens's testimony that the case was practically settled prior to the 28th.

Now, gentlemen, perhaps most of you don't believe in all the philosophy which Lincoln Steffens believes in. What of it? Suppose some evening, in your jury room, you get into an argument among yourselves about matters of philosophy, and the old question of free will and necessity crops up, I wonder if you will all agree; and if you don't, will you say that the man who disagrees with you is a liar, because he has a different philosophy? Not unless your own philosophy is very poor.

Suppose you start a little discussion on politics or religion, or who is the best baseball player in America, as you have before now, will you agree? Not at all; and there may not be one man on this jury who would believe as Lincoln Steffens believes as to what we call crime, and what is punishment, and what are social crimes, and what are not. But he is a big man with a broad vision, a man who sees further than most men.

Because you don't believe a thing today is no sign that it is not true. There are dreams, and the dreams of today become the facts of tomorrow. Every effort towards humanizing the world has been toward charity and mercy and better conditions, and has been in the direction of showing that all men are at least partly good, and all men are partly

bad, and that there isn't so much difference in men as we had been taught to believe. Every effort that will last beyond the day and the year must have a humane idea, must have for its purpose the uplifting of man, must have its basis in charity and pity and humanity, or else it cannot live. Lincoln Steffens believes that; you believe it, too.

It is aspiration that has raised man from the savage drinking the blood of his fellow from his skull, and has led him through trials and toil and tribulations by which he has arrived at the place where he can have mercy and charity and justice, and can look forward to an ideal time when there will be no crime and no punishment, no sin, no sorrow, and when man will visit no cruelty upon his fellow men.

Almost everything that you believe now was scouted at and hissed scarcely a hundred years ago. Most acts of humanity that we practice today would have been despised and denied two hundred years ago. The world is moving, and as it moves brutality is further off, and humanity is nearer at hand.

Was my practice humane in this case? Among the other heinous charges that Mr. Ford saw fit to bring against me was that I had betrayed my clients—I, who had almost given my life's blood in their service—I, who never had a client in my life that I didn't consider my friend—I, who under the traditions of the profession, and under the feelings of my heart, have put myself in the place of every

client that I ever served—I, who worked day and night to save those lives that fate had placed in my hands, and who had bared my breast to the hostility of the world to serve them! I betrayed them!

Gentlemen, I wish you knew; I wish I could make you understand. It was as if I were a boy walking upon the sand by the sea and the sky was clear above me, excepting here and there a fleeting cloud, as there always is in every clear sky; the waves were calm and peaceful, and in a moment the heavens fell and the ocean overwhelmed me. If it shall be written in the book of fate that I have not made sacrifice enough for them, well and good; let me drink the cup to the dregs.

Mr. Ford said I knew these people were guilty from the beginning. I did not. I have practiced law for many a year. I do not go to a client and say, "Are you guilty, are you innocent?" I would not say it to you. Every man on earth is both guilty and innocent. I find a man in trouble. In a way his troubles may have come by his own fault. In a way they did not. He did not give himself birth. He did not make his own brain. He is not responsible for his ideas. He is the product of all the generations that have gone before. And he is the product of all the people who touch him directly or indirectly through his life, and he is as he is, and the responsibility rests on the Infinite God that made him. I do what I can for him kindly, care-

fully, as fairly as I can, and do not call him a guilty wretch.

Just as the doctor finds that his patient must die, so it came to me that this client was in deadly peril of his life. Do you think that if I had thought there was a chance to save him I would not have taken that chance? You may say I should not; that if I believed he was guilty I should not have tried to save him. You may say so; I do not. If this man had suffered death it would have brought more hatred and violence, more wrong and crime than anything else; for, after all, gentlemen, the source of everything is the human heart. You can change man by changing his heart. You can change him by changing his point of view of life. You cannot change him by violence and cruelty. If you look on him as a doctor looks on his patient, and ascertain the cause of his conduct, then you may change him. These acts of violence will occur over and over again until the human race is wise enough to bring more justice and more equality to the affairs of life.

The men who stand for the workers strike out in their blindness. True, they strike out in the night and often wrongly. These men who built the civilization which we enjoy; these men who have built the railroad bed and laid the tracks, and who man the locomotives when you and I ride peacefully across the country in Pullman cars; these men who go ten, twenty and thirty stories in the air

to the top of the high buildings, taking their lives in their hands, and whose mangled remains are often found on the earth beneath — these are the men who have built our civilization. The progress of the world means the raising of these through organization, through treating them better, kindlier, more justly.

I knew that though terrible were the consequences of this blind act, consequences which nobody foresaw, still it was one of those inevitable acts, which are a part of a great industrial war. I believe that the loss of life in the Times disaster was an accident, and the position of the State in the settlement of the matter showed that nobody meant to take human life. I heard these men talk of their brothers, of their mothers, of the dead; I saw their human side. I wanted to save them, and I did what I could to save them, and I did it as honestly and devotedly and unselfishly as I ever did an act in my life, and I have nothing to regret, however hard it has been.

Gradually it came to me that a trial could not succeed. Gradually another thing came to me. It was expensive — the money of the Erectors' Association, of the State of California, the power of the Burns Agency, everything was against us. It needed money on our side, and a great deal of it. It needed money that must be taken from the wages of men who toil — men whose cause I have always served, and whether they are all faithful to me or not, the

cause that I will serve to the end. I could not say to them that my clients would be convicted. I could not say to the thousands who believed in them, and who believed in me, that the case was hopeless. The secrets that I had gained were locked in my breast, and I had to act — act with the men whom I had chosen to act with me. I had to take the responsibility, grave as it was, and I took it.

Was this case disposed of before Franklin was arrested? Why, gentlemen, there is no more question about that than there is that you twelve men are in front of me. Lincoln Steffens testified that on the 20th day of November, after he and I came from San Diego, he made the proposition for a settlement to me. The idea grew out of a conversation we had with Mr. Cripps, and I said I wished it could be done, but I said, "If anything is done it must come from you." On that very day he went to Meyer Lissner and Thomas Gibbon. At first I had little confidence in the possibility of a settlement, but soon Mr. Steffens brought back reports which gave me the confidence to wire my friend Mr. Older, and ask his advice.

All the leading men connected with the labor movement on this coast were then at a convention in Atlanta. I could not get to them. I had to take the responsibility, and the other lawyers had to take it with me. What else could we do? I could not consider politics. I could not consider my own

interests. I had to consider those accused men, nothing else, and there isn't one of you twelve men who would ever hire a lawyer who you didn't believe would consider your interests first of all — and if he did not he wouldn't be true to his profession, or true to his own manhood. Those things alone could I consider. I wired on Wednesday, the 22nd; I wired to Fremont Older and I wired to Gompers to send me a man at once, and I named certain men; and Mr. Older came down here on Wednesday morning.

Ford says I might have got up all this scheme, so as to cover up a case of jury bribing. Well, I might — I might. Sometime his bitter heart might be touched by feelings of kindness and charity; it might — if the days of miracles had not passed. And so I might have got up this elaborate scheme, because I foresaw that I was going to give Franklin four thousand dollars on the next Tuesday morning and start him off with the money to bribe a juror. Why, gentlemen, I might have done it — and therefore you will argue, says Ford, that I did. And this in a civilized country, at least presumed to be.

Older and Davis and Steffens and I met together. Was I betraying my clients? Davis spoke up and said to me, "Mr. Darrow, you can't afford to do it." Judge McNutt was there; he was as fine a man as ever lived in the world; as loyal to me as

any friend I have ever known; as true to his profession and as true to the higher ideals of manhood as any man I have ever met.

Davis said, "You will be misunderstood by Union Labor." I told him I had no right to consider myself. I had no right to consider the men who furnished the money. My duty was over there in the county jail with those two men, whose lives depended upon my courage and my fidelity and my judgment. Whatever befell me I must be true to them.

McNutt at once agreed with me. Davis went to the District Attorney — and this is uncontradicted. The first proposition that came from Lissner and Steffens was that J. B. McNamara should plead guilty and that all other prosecutions should stop. Davis then went over to the District Attorney, and brought back word that it would require a term of years at least for J. J. McNamara. That was discussed on Wednesday, November 22nd, between Older and Davis and Steffens and myself.

And Judge McNutt is dead, dead, says Mr. Ford. I couldn't help it. If the Angel of Death hovering around the court room had come and asked my advice, I would probably have told him, "Take Ford, and spare McNutt," but he didn't. I cannot help it because the Angel of Death made a mistake.

This matter was considered on Wednesday. Steffens said that he would see that the original proposition went through, and he went back to

Chandler, the manager of the Times. Chandler was meeting with Steffens, and then word came from the East — from the seat of money and power and wealth and monopoly; word came that it was not enough to take J. B., but J. J. must plead guilty to something; and we worked on that. We worked on it the rest of the week, and Steffens swears that he went and interviewed these defendants.

Each brother was willing to suffer himself, but J. J. didn't want his brother to be hanged, and J. B. didn't want J. J. to plead guilty to anything. J. B. agreed to plead guilty and take a life sentence, and J. J. said to us that after his brother's case was out of the way he would plead guilty and take a ten years' sentence.

Ford said that I should have told J. B. that J. J. was to plead guilty. Why? I was defending J. B., and it was my business to get the best terms I could for him. I was also defending J. J., and it was my business to get the best terms I could for him. I had no right to play either one against the other — no right, let alone what a man would naturally do.

On Sunday Steffens, McNutt and I spent most of the day at the jail, where, finally, each of the brothers separately agreed with our plan. On Sunday night McNutt called Davis to his house and told him that the McNamaras had agreed to our plan.

Now, gentlemen, what is there against all that? Anything but the breath of counsel? Nothing!

The testimony as to the settlement of the McNamara case stands here clear as sunlight. On Monday morning Mr. Davis went to Fredericks, and Fredericks agreed that he would accept the pleas of guilty — J. B. to take life and J. J. ten years.

Now, what about it, gentlemen? Is all this a lie? Is it another dream? Why, even Franklin doesn't testify against this. If they had got Franklin and Harrington to contradict it, then they might argue that I had some motive on the 28th of November for seeking to bribe a juror. But nobody testifies against it. Fredericks doesn't deny it, Chandler doesn't deny it, nor Lissner, nor Gibbon. There is no denial.

In the meantime I had received a telegram from Ed Nockles on Friday, and in reply I wired him to come immediately. Was that dispatch a fake? Was it sent to cover up a case of jury bribing at the beginning of the next week? On Monday every one of the parties interested had formally agreed to the plan of settlement. We had agreed to it on Sunday. We had agreed to it on Saturday, but we were still trying to do better if we could. Davis had told us that the settlement must be made at once.

With this condition of affairs, when I had no thought whatever that the McNamara case would be tried, is it likely that on Tuesday morning I would take four thousand dollars, not of my own money, but of money that was sorely needed, and

not only waste that money, but take a chance of the destruction of my life and a term of years in the penitentiary, by sending Franklin down on the corner of Third and Main streets to bribe a juror? If there is anybody whose prejudice is so deep that he can believe a thing like that, I would like to search him with an X-ray, look inside of his skull and see how the wheels go round.

The settlement of the McNamara case cost me many friends, friends that have been coming back slowly, very slowly, as more and more this matter is understood. I knew I was losing friends. Was I saving myself? Can any person point to a single place in this whole matter, where I ever sought to save myself? I was thinking only of my clients.

With the eyes of the world upon me, knowing that my actions would call down the doubt, and in many cases the condemnation of my friends, I never hesitated for the fraction of a second. Perhaps if I had hesitated my flesh would have been too weak to have taken the responsibility. But I took it, and here I am, gentlemen, and I am now trying to get rid of the responsibility. Was it wise or unwise? Was it right or wrong? You might have done differently; I don't know.

I have been a busy man. I have never had to look for clients; they have come to me. I have represented the strong and the weak — but never the strong against the weak. I have been called into a great many cases for labor unions. I have

been called into a great many arbitration cases. I believe if you went to my native town that the rich would tell you that they could trust not only my honor, but my judgment, and my sense of justice and fairness. More than once have they left their disputes with the laboring men with me to settle, and I have settled them as justly as I could, without giving the workingman as much as he ought to have. It will be many and many a long year before he will get all he ought to have. That must be reached step by step. But every step means more in the progress of the world.

This McNamara case came like a thunderclap upon the world. What was it? A building had been destroyed, and twenty lives had been lost. It shocked the world. There was a direct cleavage in society. Upon the one hand, those who hated unions; upon the other, those who loved them. The fight was growing fiercer and bitterer day by day. It was a class struggle, gentlemen of the jury, filled with all the venom and bitterness born of such a struggle. These two great contending armies were meeting in almost mortal combat. No one could see the end.

I have loved peace all my life. I believe that love does more than hatred. I believe that both sides have gone about the settlement of these difficulties in the wrong way. The acts of the one have caused the acts of the other, and I blame neither. Men are not perfect; they had an imper-

fect origin, and they are imperfect today, and the long struggle of the human race from darkness to comparative civilization has been filled with clash and discord and murder and war and violence and wrong; and it will be for years to come. But ever we are going onward and upward toward the sunshine, where the hatred and war and cruelty and violence of the world will disappear.

I know I could have tried the McNamara case, and that a large class of the working people of America would honestly have believed, if these men had been hanged, that they were not guilty. I could have done this and have saved myself. I could have made money had I done this — if I had wanted to get money in that way. I know if you had hanged these men and other men, you would have changed the opinion of scarcely a man in America, and you would have settled in the hearts of a great mass of men a hatred deep and profound.

And I took the responsibility, gentlemen, and the matter was disposed of and the question set at rest. Here and there I got praise for what was called an heroic act, although I did not deserve the praise, for I followed the law of my being — that was all. I acted according to the teachings of the parents who reared me, and according to the life I had lived. I did not deserve praise, but where I got one word of praise, I got a thousand words of blame. I have stood under that for nearly a year.

This trial has helped clear up the McNamara case. It will all finally be cleared up, if not in time for me to profit by it, in time for my descendants to know. Sometime we will know the truth. But I have gone on about my way as I always have, regardless of this, without explanation, without begging, without asking anything of anybody who lived, and I will go on that way to the end.

I know the mob. In one way I love it, in another way I despise it. I know the unreasoning, unthinking mass. I have lived with men and worked with them. I have been their idol and I have been cast down and trampled beneath their feet. I have stood on the pinnacle and I have heard the cheering mob sound my praises; and I have gone down to the depths of the valley, where I have heard them hiss my name — this same mob — but I have summoned such devotion and such courage as God has given me, and I have gone on — gone on my path unmoved by their hisses or their cheers.

I have tried to live my life and to live it as I see it, regarding neither praise nor blame, both of which are unjust. No man is judged rightly by his fellow men. Some look upon him as an idol, and forget that his feet are clay. Others look upon him as a devil and can see no good in him. Neither is true. I have known this, and I have tried to follow my conscience and my duty the best I could and to do it faithfully; and here I am today

in the hands of you twelve men who will one day say to your children, and they will say to their children, that you passed on my fate.

Gentlemen, there is not much more to say. You may not agree with all my views of philosophy. I believe we are all in the hands of destiny, and if it is written in the book of destiny that I shall go to the penitentiary, that you twelve men before me shall send me there, I will go. If it is written that I am now down to the depths and that you twelve men shall liberate me, then so it will be. We go here and there, and we think we control our destinies and our lives, but above us, and beyond us, and around us, are unseen hands and unseen forces that move us at their will.

I am here and I can look back to the forces that brought me here, and I can see that I had nothing whatever to do with it, and could not help it, any more than any of you twelve men had to do with or could help passing on my fate. There is not one of you that would have wished to judge me, unless you could do it in a way to help me in my sore distress — I know that. We have little to do with ourselves.

As one poet has expressed it:

Life is a game of whist. From unknown sources
The cards are shuffled and the hands are dealt.
Blind are our efforts to control the forces
That though unseen are no less strongly felt.
I do not like the way the cards are shuffled,
But still I like the game and want to play,

Classics of the Bar

And through the long, long night, I play unruffled
The cards I get until the break of day.

I have taken the cards as they came; I have played the best I could; I have tried to play them honestly, manfully, doing for myself and for my fellow man the best I could, and I will play the game to the end, whatever that end may be.

Gentlemen, I came to this city a stranger. Misfortune has beset me, but I never saw a place in my life with greater warmth and kindness and love than Los Angeles. Here to a stranger have come hands to help me, hearts to beat with mine, words of sympathy to encourage and cheer, and though a stranger to you twelve men and a stranger to this city, I am willing to leave my case with you.

My life has not been perfect; it has been human, too human. I have felt the heartbeats of every man who lived. I have tried to be the friend of every man. I have tried to help in the world. I have not had malice in my heart.

There are people who would destroy me. I have enemies powerful and strong. There are honest men who misunderstand me and doubt me; and still I have lived a long time on earth and I have friends — I have friends in my old home who have gathered around to tell you as best they could of the life I have lived.

If you should convict me, there will be people to applaud the act. But if in your judgment and

The Trial of Clarence Darrow

your wisdom and your humanity, you believe me innocent, and return a verdict of not guilty in this case, I know that from thousands of the weak and the poor and the helpless throughout the world will come thanks to this jury for saving my liberty and my name.

After the arguments were delivered Judge Hutton delivered the instructions to the jury and a verdict of acquittal was soon returned.

The Trial of Edward T. Johnson

ON September 23, 1884, near Greeneville, Tennessee, Captain Edward T. Johnson shot and killed Major Edwin Henry and in June following was placed on trial for murder in the Circuit Court of Greene County.

Henry was killed because of his invasion of the sanctity and purity of Johnson's home and the seduction of his wife, who, before this homicide occurred, and after dressing herself for burial, committed suicide.

The defendant was represented by Daniel W. Voorhees, Henry H. Ingersoll and A. M. Shoun. Opposing them were State's Attorney John Fain and James H. Robinson. Judge Newton Hacker presided at the trial.

The following argument was delivered by Mr. Voorhees — of brilliant and enduring fame — and was the closing argument for the defense.

Speech of Mr. Voorhees

MAY IT PLEASE THE COURT, AND YOU, GENTLEMEN
OF THE JURY:

THAT deep and painful sense of responsibility which has weighed so heavily upon me in this case is lighter this morning than heretofore. It

has been lightened by the remarkable speech to which we all listened with such intense interest and delight throughout yesterday while my eloquent and able associate, Judge Ingersoll, elucidated the law and unfolded the widespread details of this most sorrowful chapter in human experience. I know that I might with perfect safety leave his great work with you without a word of addition or supplement from me. This may not be, however, and I proceed to the discharge of my duty.

The reason for my presence here has been asked and answered in certain quarters. The Attorney General, in his opening argument, suggested to you that I would mislead you as to the law and the facts of this case. I have no power to do so, if I desired; and I have no desire, if I had the power. Why should I mislead you? Why should I mislead any of my countrymen as to the due administration of the law? My life has been passed in upholding law; in laboring to extend its equal and just protection to the American people, one and all. I love my countrymen and their institutions; I love the people of all sections alike, and I come to the State of Tennessee to do what I have tried to do elsewhere — bear aloft the law, see that it is enforced and obeyed, and to aid in its just administration.

We are not under the slightest necessity of asking one thing in behalf of this unfortunate defendant beyond the strict letter of the law as it

will be laid down by His Honor. We ask not the abatement of a single jot or tittle in the most rigorous administration of justice. His safety lies between the lids of the written and adjudicated laws of his country. On them he relies with absolute confidence for his life and liberty, and for that which is dearer to him than both — the vindication of his name and fame as an upright man and a law-abiding citizen.

When, if ever, did such a defendant appear before you for trial? In many of its leading features, and taken as a whole, this case is without a parallel. You are not trying a member of the criminal classes. You are not trying one steeped in crime or familiar with the ways of vice. His heart never went out to evil, nor have his purposes been prone to wickedness. His whole life is open before you. His forty-three years of existence is now an open book. In the searching sunlight of the voluminous evidence wherein do you find an ignoble thought, word, or act on his part? You hear the cries and groans, and witness the streaming tears and more than mortal anguish of a heartbroken man; but I challenge the most unsparing scrutiny to find a taint or a trace of dishonor in his whole checkered career. How are you called upon to deal with such a character? I will point out your duty from the pages of one of the greatest American law writers. I read from Bishop:

On the one hand, no man is to be punished unless he deserves punishment in pure retributive justice —

Retribution is for conscious crime; retribution is punishment for evil in heart, as well as in conduct; the act and the intent must combine to make a criminal. He must have the impure and evil heart accompanying the act in order to make him liable to punishment. He is then a fit subject for retributive justice, but not until then. If, however, the defendant's life has always been, and still is, pure and noble, without dishonorable flaw or blemish, a jury will pause long, and consider with the utmost care every fact and circumstance, every line and thread of proof submitted in explanation of his conduct, before they will find that without sufficient and legal cause he committed an act having even the appearance of a violation of law.

I read again:

On the one hand, no man is to be punished unless he deserves punishment in pure retributive justice, aside from all extraneous considerations; while, on the other hand, though a penalty is merited, it will not be inflicted by the governing powers, that do not assume the full creative functions of the Deity, unless a public good thereby be done.

Even when retributive justice is merited, yet it is not to be inflicted unless a public good thereby be done.

The Attorney General asked you to be the instrument of a verdict not called for on account of any public good, and suggested that in the event of a conviction the Governor might exercise the pardoning power. Mr. Bishop says this is not the proper administration of the law; that it is not the function of the court and jury to inflict a penalty for some one else to remit.

You have full control of this case; if it appeals to you for punishment, let the fatal blow fall; if, on the other hand, it appeals to you in tones of the deepest and most convincing proof for an acquittal, you will gladly make that joyful record. Will you condemn to death a man who the State has admitted ought not to die?

There is no manslaughter here; there is no penitentiary punishment in this case. It is murder in the first degree or it is nothing; it is the gallows tree or liberty. There is no imprisonment nor convict stripes for this defendant. Bear that in mind to the last moment and at every step of his trial. You have no compromises to make.

If sane, if responsible, if, having the power to control his actions as to the deceased, the defendant in cold blood committed the deed with which he is charged, then he is guilty of murder in the first degree, and you can not evade that verdict. If, on the other hand, his mind was goaded to frenzy by a ghastly and unbearable combination of horrors; if his mind was diseased by brooding

over wrongs and persecutions, then he is not guilty, and you will not require him to depend on the Governor for his life through executive clemency. I shrink with horror from the Attorney General's proposition that you should blight a man with a verdict of guilty whose conduct calls for no punishment, either as retributive justice or on account of the public welfare.

Mr. Robinson: He did not say that. He said the place for mercy —

Mr. Voorhees: I do not think the Attorney General knows now what he did say when his kind heart mounted the throne of reason and swayed his thoughts. I marked his words, and so did this jury. There were occasions when he gave his whole case away — when, moved with the feelings of a husband and father, he said, with fire and force, that Captain Johnson's feelings were most natural; that no man could have felt otherwise; that he himself sympathized with him in these feelings, and pitied him in his awful calamity. I watched his face, and saw then the man, the gentleman, the husband of a wife and the father of children, who would not touch a hair of this defendant's head save in kindness, if left to him. When he asked you to convict him and let the Governor wipe out your verdict with the gentle qualities of mercy, then I saw again the Commonwealth's Attorney.

I do not complain; far from it. One was the

natural man speaking; the other was a strained, artificial and distorted sense of official duty. Again and again the Attorney General spoke in the natural tones of the human heart, and each time he gave you the burning reasons why you should acquit, while each time asking for a technical conviction. He could not, he would not, he did not, and he dared not ask for a conviction that was to stand. The conviction he asked for was to be rendered null and void without delay.

Do you think this is dealing fairly with a jury? I am here to say no hard or unkind word. I have been treated with kindness by the people of Tennessee, and my reply to the Attorney General he must know has no personal harshness in it; but his position is not warranted by reason, law, sound morality, or public policy. The responsibility is yours, and you may not shift it to another. The issue of life or death is in your hands, and you can not push it from you. It is not an issue that stops short of life itself. This wan, pale-faced, sorely stricken man is in your hands to live or to die.

And now, who is Captain Edward T. Johnson; and why is he here environed by the terrors of the law? He was born on the 7th of June, 1842, at Lexington, Kentucky, and there is no better blood in that proud, historic State than flows in his veins. At an early age he came to Indiana. I have known him seventeen years. No keener, more vigorous or

industrious intellect, no purer, more upright or attractive young man has entered upon life's journey in Indiana in the last quarter of a century.

I speak in the hearing of the people of that State. I am here, knowing exactly what I am doing. I did not wish to go into this case. I knew its burdens and its labors. I would gladly have evaded it. I have done much hard work in the courts, and much of this kind. I knew beforehand what it meant; but when the question became one of duty I settled it at once, knowing as I did then, and as I do now from the evidence, that the record of his life is clean; that no stain or foul aspersion can remain upon it; that his enemies would be met and overthrown as they have been at every point.

But, I repeat, who is Edward T. Johnson? I have spoken of my own personal knowledge of him as a lawyer, as a political speaker and writer, always a gentleman, fighting his battles gallantly and well, never meanly or basely. Searching the whole record with a glance of my mind, from the hour when I first saw him, handsome and in health, buoyant and brilliant, I can discover not one speck or flaw in his uprightness, or his moral conduct, or his manliness.

But other and further answer than mine has been made; and who are they in these piles of proof who tell you who Edward T. Johnson is? We have placed him under a calcium light, uncovering and

revealing everything. Who can better stand such a test than he has? After all the storms have beaten upon him, his home in ruins, self-murder in its once happy chambers, darkness over the grave of the loved and the lost, torrents of calumny poured on his naked head, his hour of deepest woe and weakness seized by malignant enmity for his total destruction, every poisoned shaft which malice could invent hurled against him; yet I stand here holding the depositions of twenty-six of the foremost people of Indianapolis, and twenty-six hundred might have been obtained, telling you who Edward T. Johnson is, and what manner of life he has lived.

I know all these people. You may pray to the Great Father when you, six hundred miles from home, fall into trouble by the arts of a scoundrel, that such people as these may send after you such a volume of good words and healing comfort as we have here for this defendant. There are some things that can not be taken from him in his deep distress. You may take his life, but you can never take from him this towering testimony to a good life which follows him like a blessing from his old home, over the mountains and over the rivers, down into this valley of the mountains of East Tennessee.

Who are these witnesses? They comprise the leading men of both political parties. We have had hard political battles in Indiana, but we have manly

ones. We contest the field closely; but when the battle is over, and the bugle sounds truce as the night cloud lowers, we meet in peace, and the strife is ended. We fight like men and we have peace like brethren. Colonel John C. New—his name is here—who is he? The chairman of the State Central Committee of the Republican party of Indiana; the proprietor of the Indianapolis Journal, the leading Republican organ of the State; the Treasurer of the United States at Washington under General Grant; the Assistant Secretary of the Treasury under Arthur; for years the clerk of the Circuit Court of Marion County, in which Indianapolis is situated; the political friend of Albert G. Porter, Governor of the State.

What says John C. New within the last three months? He says, speaking of Captain Johnson: "He has ever borne in this community the character of a moral, upright, peaceable citizen, and has commanded and held the respect and confidence of this community as such."

I read that as a keynote to all the other depositions read in your hearing as to reputation, not intending to go over them again, nor long to dwell on them. They are all in harmony, and equally conclusive.

Byron K. Elliott of the Supreme Court of Indiana has known the defendant ever since he went to Indianapolis to live. Judge Elliott's voice from

that high tribunal follows this sad, broken man into this court and says to you that "His character in every respect has always been, and is, excellent."

Whose name do I see next? Joseph E. McDonald, a name known and honored in every State in this Union; fit and qualified by nature and by acquirements to fill with dignity and honor the loftiest position within the gift of the American people; a broad, commanding man, warm in heart and clear in head; for nearly thirty years one of the great leaders of the bar at Indianapolis and throughout the State. Would such a man prostitute his word in behalf of the unworthy and the dishonored? He endorses the estimate of Colonel New, and concurs with Judge Elliott as to the standing of Captain Johnson.

Who else are here? William R. Holloway, the brother-in-law of Oliver P. Morton, and proprietor of the Indianapolis Times; A. P. Stanton, a lawyer of distinction; William Sullivan, eighty-one years of age, whose signature we showed to His Honor upon the bench, to show how well a man who has lived in Indiana eighty-one years can write at that period of life; Mr. Haughey, for twenty years the president of the Indianapolis National Bank; Mr. A. D. Lynch, a bank examiner and receiver of years' standing; Mr. Malott, the manager of railroads and president of the Indiana National Bank; Colonel Holstein, United States District Attorney, representing the Federal

Government in Indiana as against criminals. He says this man on trial here for his life is the peer of anybody in character, purity of morals, and obedience to law. General R. S. Foster, United States marshal, not supposed to be in love with bad characters, gives the defendant the same introduction to you the others have; Colonel Wildman, the postmaster at Indianapolis; Hon. Stanton J. Peelle, ex-member of Congress; W. T. Brown, the prosecuting attorney of the county.

Where vile calumniators said he had murdered his wife, or driven her to suicide, we dared to call the prosecuting attorney as to his reputation, the officer whose duty it is to bring criminals to justice. Mr. Brown did not say that Captain Johnson ought to be convicted of murder and then take his chances of a pardon. On the contrary, he says he is a man of the loftiest character, never suspected of crime.

Judge Julian, himself on the bench; John M. Butler, the partner of Joseph E. McDonald, and a man of high position and ability; these and others I might dwell upon vouch for Edward T. Johnson; and I ask you in view of that introduction, whether he is a fit subject for retributive justice. Does he belong to those criminal classes that call for punishment in order to promote the public good?

But, gentlemen, allow me another thought in this connection. Captain Johnson came into your midst as a Government officer. Did Indiana, did the

Government at Washington send a scoundrel into your midst? Did we treat East Tennessee with discourtesy when we sent him here? No. We sent a splendid lawyer; a gentleman; a man of integrity; we sent one beloved and respected by all who knew him. Colonel Dudley, an Indiana man, who at that time presided over the pension bureau, knew he was sending one adapted to and qualified for the position. A soldier himself when a mere boy, honorably discharging his duty in the field, he knew how to sympathize with his fellow soldiers.

I have been utterly amazed since I came here at some statistical facts. How little is it known, except here in these mountains and valleys, that thirty thousand men in East Tennessee took up arms for the Union. With the return of peace came the duty of the Government to its wounded and broken-down soldiers and to the widows and children of the heroic dead, and it is a historical fact that when Captain Johnson came here in January, 1883, the soldiers of East Tennessee, their widows and orphans, entitled to pensions, were further behind in their rightful allowances than the pension claimants in any other part of the Union. It is also a historical fact that during the fifteen months he was here as a supervising examiner of pensions, he, with his assistants, caused more than \$1,500,000 of money to be paid out of the public treasury to the people of East Tennessee,

not only doing justice to claimants, but promoting the prosperity and happiness of all.

So we not only sent you a clean and honorable man, but he came here as a benefactor of this whole people. He was the first supervising examiner appointed in the United States. He organized the system, and was elected by Colonel Dudley for that purpose by reason of his high integrity and his organizing ability. He came here as a blessing; he came to help your people, not to hurt them; and now, in the hour of his wretchedness and despair, in the depths of his woe and anguish, he appeals to you twelve men, and to all the men and women throughout all the counties of East Tennessee and Western North Carolina, wherever his jurisdiction extended, to know whether he ever harmed you or yours, or brought anything but sunshine into your homes and lives. Tell me where he has wrought evil to anybody. Show me the law, human or divine, broken by him in his intercourse and dealings with your people. He was faithful, just, pure.

Another man came to East Tennessee. He was here long before Captain Johnson came. He was likewise from a distant State. This man now sleeps in a dishonored grave, far away from the soil of Tennessee, not allowed to be buried here where homes are held sacred. These two men, in some sense, are here before you. Judge ye between them! Can you recall the frightful and

far-reaching destruction of soul and body wrought by Major Henry without uttering maledictions on his name?

While Captain Johnson, eager, earnest with unsparing industry, toiled day and night in his office in behalf of the soldiers of East Tennessee, their wives, their children and their mothers; while he labored far beyond his physical strength to do the duty which the Government had too long neglected, bringing money, hope and comfort to thousands of homes, the other sojourner in your midst was a noxious reptile, baser far and more loathsome than the snake that, with undulating form and lifted and baleful crest, in the Garden of Eden, allured the trusting woman to the tree of knowledge and accomplished the first seduction.

Look upon the two pictures. Look upon the conscientious, faithful public official, burning the midnight oil to discharge his duties; then look at the other, a sweltering, venomous monster; an agent of pollution, tracking every step of the absent man's wife, and hounding her with persistent lust to her downfall and death.

These are the two pictures for Tennesseans to look upon. Pause a moment and dwell upon them. I ask the counsel for the prosecution, which is the brighter picture of the two? Whose presence will you encourage in your midst — the man who does his duty, works hard, accomplishes good, and blesses every one with whom he comes in contact,

or the slimy wretch, besotted with lust, the hoary lecher, the practiced seducer, the aged debauchee, the common enemy of social purity, the outlaw from Christian civilization?

Shall retributive justice be invoked in the name of the outlaw, reeking with infamy, against one whose life is blameless? I challenge again the contrast. I rejoice that I can stand before a court of high intelligence and high appreciation of moral purity, and before a jury of Christian gentlemen, and make the challenge I now make. There is the one, your benefactor and your friend; there is the other, a curse to the human race, so vile that language falters in painting him.

While this most unhappy defendant stood faithfully at his post of duty, Henry incessantly haunted his wife's presence and preyed upon her weakness. With what arts, or hellish wiles, or deep-laid craft in vice, her ruin was accomplished, the Infinite God only knows. The one inexplicable mystery to me is that Mrs. Johnson fell. I want to say this in the hearing of all, and in justice to her memory.

The evidence which makes her fall so great a mystery is here before me, and has been read. It establishes the fact, beyond the shadow of a question, that her reputation, her moral standing as a lady, and her social position were second to none. Her associations were with the purest and most refined; her life was absolutely modest and domes-

tic; she moved in none but the very best ranks of society; no social circle was above her — the loftiest were open to her, and sought her presence.

Her husband came here, according to the proof, in January, 1883; she joined him in April, and in four months she crouched away from here a ruined woman, a fallen angel. She was the angel of her household at home, of her husband's love, and of her son's idolatry. She went away from this town polluted and defiled. How it came the Omniscient Deity only knows.

Before His throne I honestly declare my belief that she did not fall in the ordinary way; she did not fall from an ordinary lust. Her temperament was not ardent; she had never betrayed special fondness for gentlemen's society. There was not a principle of her nature to invite the advance of even the most daring libertine. Cool, unimpassioned, she did not fall in that short time from an evil heart.

I believe, as occurred in another celebrated case, that the first breach in the citadel of her honor was made by wine or drug, by mesmerism, or some diabolical art. Her destroyer spoke, as the proof shows, of his mesmeric power, and she confesses to an influence exerted by him which was a mystery to her. On what followed in her frailty let the curtain fall. Once embarked on the maddening stream she was borne swift and far, a helpless

victim in the remorseless grasp of a deadly monster.

As I look upon her life and conduct while here in Tennessee, she appears so transformed, so far removed from her real self, as her family and friends had so long known and loved her, that nothing but a potent and unnatural spell which paralyzed her reason and chained her will for the time being, can account for the awful change. Yes, this must be so; for when the home she had left so recently, pure and radiant in the robes of domestic love and peace, once more opened its doors to receive her, she returned at once to her original convictions of truth and virtue. You may say that the letter from Knoxville, in which she suggested her stay for several days at Louisville, was an invitation to him to join her there. It may be so; perhaps it was.

Mr. Robinson: I do not know that I shall claim it.

Mr. Voorhees: Even if it was, it only shows that she was not yet far enough away from her destroyer to reassert herself, as she did when once more under the sacred influence of her beautiful home at Indianapolis. She was still at Knoxville; the horrid spell was yet upon her, and it may be she thought of meeting him again at Louisville; but when the demon of her downfall pursued her to Indianapolis he found that the sorcerer's satanic

enchantment had no longer its power over her soul. She spurned him, and refused to look upon his face. There had been no quarrel between them, but she had escaped; she was free, she was restored, in her right mind, and the tempter and pursuer slunk away.

There is some balm to the bruised hearts of the living in this fact. The darling wife and mother was once more placing her wayward feet on the Rock of Ages, and preparing for that peace and mercy which the penitent soul is promised in that high world beyond the stars.

But there was one other dreadful ordeal for this most unhappy victim in her struggle to retrace her steps, and to repair, as far as might be, the incurable wrongs inflicted on her faithful, trusting, devoted husband. I pause before this pile of penitential grief, her letters of confession. They have, alas! been read; I will read them no more. I could not if I tried. Their story is more pitiful and full of sorrow than the wail of the heartbroken over the dead. They seem vocal with sobs and wet with tears. No duress, threats, conditions or promises extorted them. Her stricken husband was not within five hundred miles of her when they were written. She was alone in her home; he was at Knoxville. She was in Indiana, he in Tennessee.

It is sometimes said, and it sometimes happens, doubtless, that an injured husband, in immediate contact with his penitent, humbled, crushed wife,

brings coercive influence to bear upon her, based upon conditions of the future, or even based upon terror. Nothing of that kind could have happened here. The husband wrote from Knoxville, and his letters were received at Indianapolis. The wife had her own time in which to answer; she was surrounded by her friends; her father was there; if any advantage was sought by her husband she could have consulted tried friends on every hand; she could have proclaimed her husband insane with jealousy; that he was seeking from her a confession of guilt which was not true. All this she had the opportunity to do from September to November, for more than sixty days, while he remained in Knoxville and she at Indianapolis.

Never were letters more free from every earthly consideration, except the desire on her part to relieve her tortured breast of its horrible secret, and to seek forgiveness by her repentance. Nor did one word ever fall from his lips or pen that he would cast her off, or that he would put her away by divorce; on the contrary, the proof is ample that he declared his purpose always to care and provide for her, and to support her aged father. As to a future domestic life, it could never be; but he did not terrify her even by making known that decision. The substance of his language to her was that the future could not be fathomed, but that for the present he would shelter and protect her from harm and exposure, and that the

world should never know her shame and degradation. She had no earthly inducement to make confession except the promptings of a naturally pure heart, overcome and burdened with a guilty secret which it could not retain, and which finally made confession still more absolute by suicide.

But to proceed. We will examine another link in this chain of circumstances, which has been to this defendant's brain and heart like a blazing chain of molten metal to the shrinking flesh. The first of these dreadful letters came to him in November, at Knoxville. His son—this boy here, with a face that Raphael would have loved to paint—simply saw by the writing that the letter was from his mother, and tells you so. Captain Johnson read it. The world grew dark. He sought to rise from his chair. He staggered and fell on his face as if a blow had crushed his brain.

While we pause a few moments over his prostrate form, still as if in death, you must remember that this is a sick man, weak in physical strength, without the powers of health to uphold him in sudden and appalling calamity. With consumption clutching at his throat and lungs, and aggravated chronic dyspepsia depressing the mind, darkening the spirit, and casting the soul into gloomy depths, he tottered, reeled and fell.

Let us put ourselves in his place, if we can, and then deal with him as we would ask to be dealt by. Broken in health, and wrecked by physical

disease, when he realized that the love of his life was blighted; that the peace and honor of home were forever gone; that his wife had fallen from his arms far worse than dead; when he realized all this, and, with a swift insight into the future, heard her cherished name bandied about, hawked from tongue to tongue as a byword of scorn, is it to be wondered, when he arose from the floor, and hours afterwards from his bed of pain and fever, where in agony and tears he had been laid, that henceforth his brain was seared by one perpetual and burning thought, and that the iron had entered his soul, never to be withdrawn?

I have heard the doctrine of "cooling time" invoked in this case. Cooling time! That scene at Knoxville occurred nearly a year before Henry paid the penalty of his crimes. I care not if it had occurred a hundred years before, could the parties have lived so long. You may become cool after an insult, or even a blow in passion; but when the form of the wife has once been seen by the mind's eye writhing in the arms of the seducer; when once the husband has pictured to himself, looking through walls and across rivers, beyond the deep valleys and over mountains, it may be, the fair, loved form that has rested on his loving breast in happy repose, surrendered to the desires of a besotted and lustful wretch, a cooling time will never come to him, and how well you know it! As well might you visit a lost soul who had lain

upon the burning marl of hell a thousand years and say: "You have been here long enough to become cool; there has been cooling time since you took up your abode in eternal torment." He would answer that it had been perpetual hell; that it had been burning time, and burning time alone.

Suppose years pass by, and the husband thinks at all of his wife lost in shame, will his thought be temperate and his blood cool? The whole horrible subject comes up again. He can never think of her, whether living or dead, after defilement, without involuntarily recalling those revolting particulars that have crazed the brain in all the ages of the past, and will continue to do so in all the ages to come. I wish no man for my friend whose heart can be temperate and calm with something so much worse than murder, so much worse than death in his home.

Cooling time! From the moment Edward T. Johnson fell forward on his face, with the fatal letter of confession in his hand, from that moment, instead of the fires of suffering, grief, bereavement, bitterness, hate, revenge, if you please, dying away by the lapse of time, they grew stronger, hotter, and fiercer.

What greater crime do you know than that which prostrated Edward T. Johnson at Knoxville? Had the villain cut his victim's throat, had he poisoned her to death, she would still have been

a precious memory, mourned by husband, son and loving friends "till pity's self be dead," while the sweet June roses would have bloomed over her honored grave with no taint of impurity in their perfume. Had he burned the defendant's home, it could have been built again. Had he robbed him and taken all his worldly possessions, he would still have had honor left.

The darkest crime, the one without pardon or mercy from God or man, is the invasion of a home and its destruction by lust and pollution. With the downfall of the wife and mother the home crumbles to ashes. The divinity which presided and filled it with light and joy is no more. This defendant is homeless. The walls are standing, but they are barren of rest or peace to him. He could not dwell in such a ruin, nor survive where his past joys and hopes all now lie withered and dead. The altar of home has been desecrated, the hearthstone has been defiled, and the name of him who did it is here invoked to sanction this prosecution. He who commits this destructive crime ought to die, and I have the highest authority for my words.

Why did the world witness that wonderful and beautiful spectacle a short time since on the northern coast of Africa? More than thirty years ago the American consul at Tunis died at that distant place, and there was buried. He was not great as statesman, jurist, or warrior. He had never led

in council, court, or field. Why was it that one whose name will never perish as the benefactor of the present and of future generations, and as the munificent patron of literature, the arts and sciences, called back the bones and dust that had lain so long on the far-off shores of the Mediterranean? William W. Corcoran, the most eminent citizen of the Republic in the love and esteem of his countrymen, simply asked his Government's permission to bring, at his own expense, the remains of John Howard Payne home to rest in his native land.

And then, on the 5th day of January, 1883, there gathered around his grave in the little cemetery at Tunis the representatives of the most powerful nations of the earth. The Christian and the Mohammedan stood together and bent with reverence over the hallowed spot where the American had slept so long on a foreign shore. They carefully raised his crumbling coffin and tenderly preserved every atom of his precious dust; and then in a triple casket all his mortal remains were covered with flowers, and to the music of an immortal song he started on his final voyage home.

As the ship that bore him rode into the harbor of New York the authorities of that great metropolis rose up to do him honor, as if one of the mighty dead had returned to earth. The city hall was opened, and there his remains, although invisible, were laid in state, while thousands and tens

of thousands of people crowded by to catch a glimpse of even the outside coffin in which they reposed.

At Washington, the capital of government of more than fifty-five millions of people, the wanderer's return was hailed with an ovation never to be forgotten while American history endures. Statesmen and heroes were his pallbearers; distinction, culture and refinement felt honored with a place at his funeral. Eloquence paid its lofty tribute, and music, with its sweetest, richest and most imposing strains, welcomed John Howard Payne to his final abode in the city of the dead.

And why, now, were all these honors, without a parallel in human history, paid to his memory? Ah! how well you know the answer, how quickly your swelling hearts respond! He wrote one song in which he embodied and unbosomed the most precious desire and the most undying emotion of the universal heart of man, woman and child. He wrote "Home, Sweet Home." There are but fourteen lines in this blessed song, including the chorus, but it will live as long as these blue mountains stand, "Home, Home! Sweet, Sweet Home!" Its strains have visited all lands and encircled the globe; they have ravished the listening ear in the palaces of royalty and wealth and in the peasant's lowly hut.

John Howard Payne sung the song of home; he interpreted the human heart. "There is no place

like home," the poet cries; and the whole world cries in unison, "Be it ever so humble, there is no place like home."

Can this be true, can this song live, if the defiler's step may cross the threshold of home with impunity? The habitation may be built of boards, or its walls may be constructed of unhewn logs; it may be a sheathing on the mountain side or a hovel in the valley below; the bleak winds of autumn and winter may blow through it; the rains may descend through its frail roof, and a leather string may be its latchkey by day and by night; but it is home, home where the wife and mother loves and nurses, where children are born and bloom in strength and beauty, where joy and smiles greet their coming, and groans and tears their departure; it is home where the ordinances of God are fulfilled for the progress and ultimate destiny of the human race.

On the 23rd day of September, 1884, this sad and lonely man, bereaved and stricken beyond cure in this world, made one battle, down in yonder mountain gorge, twelve miles away, not merely to punish the destroyer of his own dear home, but in vindication of the principle which makes all homes secure from the intrusion of the lustful outlaw. He fought for "Home, Home! Sweet, Sweet Home!" And when the reports of his double-barreled gun echoed on that autumn morning throughout these mountains of Greene County, and

throughout the State of Tennessee, and all over the Union, they were welcomed by all except lechers, libertines and adulterers, as a fit accompaniment to the spirit, letter and melody of the immortal song.

In barbaric countries home, depending on woman's virtue and domestic purity, is without conception or appreciation and is without value. In the interior of the dark continent the African prince, as the first and most pleasant duty of hospitality, invites the honored guest to make a selection from among his wives, and to share with her the pleasures of his sojourn. In the deep, dark recesses of Africa and other benighted lands the principles which inspire this prosecution would be better authority than here.

Yesterday my eloquent associate, in glorious and thrilling words, cited the law of God, written in the old and hallowed ages of the past, in defense of the homes of His people. May I not also be allowed to comment a moment on the theme, and to point out the actual relation in which Major Henry stood toward Captain Johnson from the time he accomplished the ruin of the defendant's wife until he died at the "Furnace" with thirty-two buckshot through heart and brain? Here is the high old law, and in the light of human experience how closely and cogently it comes into your counsels:

The man that committeth adultery with another man's wife, even he that committeth adultery with his

neighbor's wife, the adulterer and the adulteress shall surely be put to death.

I know how this is met in modern schools of thought. The law reads harshly as to the woman, and the question is interposed whether she should die as well as the man; whether our civilization and our times will admit of the full application of that law. Pause a moment; I will answer. There came after this Mosaic edict a new dispensation. He who walked the waters of Galilee, and bade the winds be still; He at whose touch the lame and crippled rose and ran; He at whose command the blind saw; He who spoke at the grave of Lazarus and the dead came forth from the grim embrace of the tomb, brought a new and gentler administration of the divine law into practice. He modified the law I have read. It sentenced both the offenders, the man and the woman, to death. The merciful Redeemer, during His three years' ministration on earth, granted a remission to the woman of her share in the death penalty, but never as to the man. You all know the record by heart. I have it here:

And early in the morning he came again into the temple, and all the people came unto him; and he sat down and taught them. And the Scribes and Pharisees brought unto him a woman taken in adultery; and when they had set her in the midst, they said unto him: Master, this woman was taken in adultery — in the very act. Now, Moses, in the law, commanded us that such should be stoned; but what sayest thou?

There was a square question: "Moses, in the law, commanded us that such should be stoned; but what sayest thou?" You remember all the rest: *Go, and sin no more.*

She was not stoned; she was not put to death. Her accusers slunk away, and the penalty of the Mosaic law as to the woman was remitted by the Saviour. Where was it ever remitted or repealed as to the man? Search these evangelists; search this blessed Book — guide in life and comforter in death. Let doubters scoff; but it is the power that regulates life and fills the last hour with peace. Where, between its holy lids, do you find any remission of the penalty of death against the man who committeth adultery with his neighbor's wife?

I stand here in the presence of the highest intelligence of this great State, and in the hearing of the ministers of the gospels of our blessed faith, and challenge a denial from any one, or from all, that the adulterer, "the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife," is, by the law of God, under present, continuing and eternal sentence of death. There is no point of time where this sentence stops. As to the woman, it has been remitted; as to the man, never!

And from the moment that Major Henry, this vile monster of mesmeric power or some other satanic agency, defiled the wife of his friend, committed adultery with the wife of his neighbor, from

that moment he walked by day and by night under a perpetual and unending sentence of death pronounced by Almighty God. Answer this who can! Answer it who may!

Let us come back to first principles, let us have an elementary review, let us understand one another. I assert that the home of man is under the especial care and guardianship of God, and that he who defiles a home has already been tried in higher courts than those of earth, and sentenced to death as an odious malefactor and common enemy of social peace and morality. After Johnson fell on his face — fell in the dust and in the ashes of domestic ruin, shame and humiliation — he arose, in the light of God's words, as the instrument of judgment and of the execution of judgment against one who bore the curse of divine condemnation on his brow henceforth and forever.

The able and accomplished gentlemen managing the prosecution seem to be amazed at the assertion by Captain Johnson that he considered himself an agent in the hands of the Almighty to inflict divine punishment on Henry. Well, let us look closer. When God pronounced the penalty of death against the adulterer he declared he should be stoned to death. That looks as if anybody could kill him. There is no trial provided for, no courthouse designated wherein to arraign him; there is no Attorney General to prosecute, and there are no funds provided with which to hire able counsel, as here, to

assist. It is all left to the people, and he is at their mercy; and to whose mercy and justice should he be surrendered rather than to the man he has wronged?

Indeed, this position has been sanctioned and approved in the most emphatic manner by your own great State of Tennessee. For, inasmuch as she has enacted no law for the punishment of the adulterer, she has thereby expressly recognized the binding force of the law of holy writ, and has left the seducer to the vengeance of the injured husband.

It was once said by a brilliant and distinguished lawyer of Indiana that while he fully yielded to the divine claim, "Vengeance is mine, saith the Lord, and I will repay," yet he as fully and sincerely believed and claimed that the Lord, Omniscient and Omnipotent, chose His own instruments and His own time and place for the execution of His will. What matters it who kills the adulterer? God gave him up to the people, to the multitude. It is true that the dishonored and outraged husband is likely to be the first in stoning the wretch, or in any other mode of putting him to death, and he ought to be.

Will I be answered here, "Thou shalt not kill"? But God says the adulterer shall be killed. He has no shelter under the great commandment, which was meant for the innocent and the blameless. Am I answered again, "You shall do no murder"?

God says, however, this is not murder; it is justifiable homicide for the criminal who saps and poisons the fountains of life to be exterminated.

In this old, historic town you have a glorious spring of wonderful size, beauty and purity. I have stood upon its brink and gazed with delight into its sparkling depths. I have wondered what would have been the destiny of Egypt, and how different history might have been, if such a fountain of living waters had cooled and fructified the parched plains of the Soudan. To you it comes a laughing, joyous blessing bestowing health in your households, causing the sward, like a velvet-green carpet, to vegetate down to its very edge, your gardens to be rich with their productions for the table, and these beautiful groves to grow dark, and strong, and majestic.

Suppose you now knew that last night that fountain was poisoned, and the miscreant was clearly identified; that day after day and night after night he had been there systematically poisoning its clear, sweet waters, and disseminating disease and death into all your households. I doubt whether you would be content that such a man should live an hour. I think the people, the multitude, as in the case of the adulterer, would stone him to death without trial. But the adulterer is far worse; he poisons the springs of eternal life, and kills the soul as well as the body of his victim.

In the case you are now trying, was adultery the

only crime for which Henry had forfeited his life? On the contrary the blood of murder was on his hands. Had he let his neighbor's wife alone; had he not pursued her like the sleuthhound after his prey, she would this day have been the proud and honored wife and mother, loving and beloved in her home in Indianapolis, the air redolent of happiness around her, and the future stretching away before her as pure and as bright as the flowers of spring. Why is this not so now? Because Edwin Henry murdered her.

You are prosecuting this defendant for murder. I will tell you who the murderer is — the man who corrupted the woman and drove her in remorse to robe herself for the grave and put a ball through her heart; and wherever he is in the world beyond he is this hour answering not only for adultery, but for murder. He, and he alone, was the cause that started the current of her misery, widening into a whirlwind gulf of fantasy and flame, and bringing her into a mental condition wherein death was her only refuge. In the act of suicide committed by the despairing victim, Edwin Henry committed the crime of murder as certainly and with as much guilt as if he had fired the pistol with his own hand.

I charge here that by the law of Almighty God, as the destroyer of a home, he was under sentence of death and ought to have died, and that he died justly. It is some satisfaction to know that re-

morse haunted him; that when he returned to this community, when all his wickedness was known and his victim was in her grave, the men averted their faces and the women drew aside their skirts as if they said: "Room for the leper." Thus loathed and hated, avoided by all, he passed on to his doom.

In approaching, as I do now, the personal condition of this defendant, and the influence which "unmerciful disaster" has had upon him, my heart shudders, and I shrink from the task. As he says, in one of his heartbroken wails: "It seems that the depths of human misery were never fathomed before."

It may be said that Captain Johnson made a mistake, which increased his sufferings, when, after his wife's death, he attempted to conceal her dishonor. If that be so, it is the only mistake in conduct which he has made from the beginning to the end of this tragedy, and the motive on which he acted exalts him in the estimation of all honorable minds. We all have a clearer vision of things as we look back upon them from a cool, safe distance, than when in the midst of exciting and heart-rending scenes requiring immediate decision. Looking backward now, after nearly two years' experience, to that dreadful morning when he saw his poor wife in the cold but pure embrace of death, it would have been wiser, in the ways of the world, for him

to have given up at once the awful secret which had caused her, "rashly importunate," to seek the silence and the refuge of the tomb.

We can all see that now, but we can also understand the deep, undying love which controlled him. He determined that her name should not be sullied; he believed he could carry her guilty secret to the grave and hide her disgrace forever from the world. In answer to Mr. Dooley, his loved and trusted friend, he only said that in the distant future, when they were old men, if they lived that long, he might tell him all, but not sooner. He said his wife was insane, as the reason why she died by her own hand. Perhaps she was. Who shall determine? The medical opinion of the world is divided, and it is an unsettled question whether a sane person ever commits suicide. In this case I have the gravest possible doubts. I can not conceive Mrs. Johnson to have been entirely sane while here in Greeneville. Viewed in the light of all her previous life, conduct and reputation, she was an insane woman in her relations with Major Henry.

Be that as it may, however, Captain Johnson gave a natural, manly and humane answer—the answer of a man who loved her devotedly in life and cherished her memory in death. He laid her tenderly in her grave, fondly hoping and believing that shame would never mildew the flowers that would grow over her. Then, reeling from mental

anguish and physical weakness, broken in heart and broken in health, he found his way back to his post of duty at Knoxville.

But there were those who were unwilling for the dead wife and mother to sleep in peace, who questioned the reason of her death as given by her husband, and, when it was ascertained that certain arrangements of property had taken place on the evening she died, it was natural that interest and inquiry should be aroused. It was most unnatural, however, that personal enmity should seize such an opportunity as this to wreak vengeance for personal and political offenses on one already afflicted by the direst misfortunes known to the fate of man.

His wife's downfall and suicide by the arts of the brutal seducer were now to be followed by the publication of her shame to the world through the malevolence of heartless enemies. An action was brought in the Superior Court of Indianapolis, in the name of old Dr. Griffith, against this defendant, ostensibly to annul the deed executed by Dr. Griffith to Dr. Wakefield, but in reality solely for the purpose of compelling the surrender and publication of the letters of the poor dead woman to her husband, revealing the awful story of her fall.

Under a peculiar provision of our statute, enacting that either party in a pending suit may be examined on oath by the other party, Captain Johnson was brought before an officer and subjected to a sworn examination. He employed able counsel

and resorted to every legal expedient to avoid the threatened exposure. He offered to compromise the case by giving to Dr. Griffith, not only his original half, but the whole of the homestead property, if thereby the publication of his wife's letters could be averted. He humiliated himself before Governor Porter, begging him, as a friend of his dead wife, and in the name of purity and truth, to interpose, knowing that one word from him would avert the impending calamity.

It was all in vain. His overtures were all rejected. Porter responded to his appeal with jeers and taunts; and the cruel case went on. All else failing, he at last resorted to silence. He appeared, when summoned by the officer, but sternly closed his mouth. Question after question was hurled at him in vain. Defying counsel and court alike, he refused to answer. And it was only when he had driven the court to the last method of enforcing its authority, and only when over his head impended the majesty of the law, menacing fine and imprisonment for contempt, that he finally yielded. It was in this way that the sad, piteous letters of his wife were wrested from him and given to the world.

Before his wife was buried, and while she still lay a corpse in his house, these men deliberately, and without the slightest evidence upon which to base their assertions, made this hideous charge of murder, as false as if coined and minted in hell. The deposition of Mr. Woodward, the well-known

correspondent of the Cincinnati Enquirer, is before you. They first attempted through him to give publicity to the charge. He wrote the letter to the Enquirer, as they desired, but it was suppressed. Next, old Dr. Griffith was sought and induced to publish the charge, though the reporter of the Indianapolis Journal, who wrote the terrible publication, testifies here that Dr. Griffith had no agency in it, and that it came entire from J. W. Gordon. To Mr. Fortune, to Judge Hill, to Mr. Van Vorhis, to Mr. Brown, the prosecuting attorney, and to many others, Gordon repeated the imputation in strong and positive terms. It was again repeated in letters purporting to have been written by Dr. Griffith, though certainly composed by others, to the Southern press, and cruelest, most fiendish of all, in letters to the defendant's son.

These men well knew that this awful charge would not be believed unless it was shown that there was some motive actuating Captain Johnson to the commission of such a crime. Accordingly, two audacious fictions were invented and promulgated through Dr. Griffith along with the charge of murder. One was that he had killed his wife for her jewelry, alleged to be worth \$13,000; the other was that he had killed her that he might marry a rich woman of New Albany.

God of Heaven, what lying! The testimony of expert jewelers is before you who carefully examined every article of that jewelry, and they place

its full value at \$100.53. As to the New Albany lady, it is shown that at the time of Mrs. Johnson's death this lady was, and for six years had been, a married woman, the mother of two little children, and that Captain Johnson had not seen her for eight years. Thus two subordinate calumnies, both as groundless as the first, were invented and published in support of the horrible calumny of murder. It is hard to realize that human nature is capable of such depravity.

On the other hand, I have shown you who was responsible for Mrs. Johnson's death; I have shown you who was her murderer. It was the man whose dead body was carried last September out of Tennessee for burial. Why have I spoken on this point? The prosecution raises no question as to the manner of Mrs. Johnson's death, but I am determined that you shall know by the evidence the manner of man you are judging.

We have in evidence before you every movement he made the melancholy night of her death. When he went to his home that night he had with him a venerable Episcopal minister, Dr. Wakefield, who had married them, had baptized their babies, and officiated and wept with them at the funeral of little Eddie. What an excellent accomplice for hideous, cowardly wife-murder!

Gentlemen, it is hard for me to talk about this phase of the case, knowing Captain Johnson as I do. It is so thoroughly and damnably infamous

that it chokes me, stifles me, it humiliates me that he had to meet such a charge; but has he not met it? Has it not been met by Dr. Wakefield, by the evidence of the hack driver, of the chambermaid, of the porter, of the elevator boy, and of the clerk and the telegraph operator of the Denison House, who all testify that on the night of his wife's death he was in that hotel all night after returning to it early in the evening?

Away with this infamous calumny, horrible, execrable in the extreme. Murdered! How could she have died by any hand save her own? She was prepared, with a refined lady's taste, for the tomb. Knowing her poor body would be handled by her friends, she prepared it herself; she bathed and perfumed for the sepulcher; she made her own toilet in which to enter the royal court of death; she left off her underclothing as not pertaining to grave clothes; she robed herself in immaculate linen, fresh and white, put on her stockings of purest white silk, and her slippers, adjusted her dress around her limbs and person with that taste and grace which only belongs to a refined and cultivated woman; and then, with the picture of her husband placed where her last look on earth would be on his face and her last thought be his, showing the devoted wife, true and pure of heart at the last, she placed the pistol over her heart and died mercifully without a pang. The physicians say death was instantaneous; she did not move; not a muscle

shook with pain or convulsion. How strained, forced and malicious seems the suggestion of murder! Never within your knowledge or reading, nor within mine, has there been so systematic and, if I may use the word, so artistic a suicide as this.

In that household there lived an old man, more than eighty years of age, the father of Mrs. Johnson, who did not believe and did not intend to believe, and does not now, although she has written it all out herself, that his daughter had sinned or fallen or wronged her husband. Well, spare the old man; let him believe what he will. The men, however, who have taken advantage of the dotage and the childishness of old age and used his name unjustly and falsely to crush this defendant will have to answer for it, not to me, but to the public opinion of Indiana, and to Almighty God.

It is hard to think with patience of that other scurrilous and loathsome charge—that this defendant, born and bred a gentleman, cultivated, educated, widely read in literature, the arts, history and science, was a miserable sneak-thief of jewelry stolen from the trunks and drawers of his dead wife. Is it not a shame and a scandal that this man, who has proven by the most prominent and honored men in Indiana by the score, that no other man in the State, and I care not who the other is, has a higher, purer reputation than he enjoys, should be subjected to the necessity of meeting such a degraded lie as that? The liars and dealers in calumny as-

sented the jewelry to be worth \$13,000, and he proves that the articles he took away after his wife's burial were a few trinkets placed in his trunk by Mrs. Talbott and worth \$100.53.

But here is the other abomination: Captain Johnson, in his hour of deepest trial, has had hurled at him with the sanction of Governor Porter's name, never recalled or denied by him, that nine or ten years ago this defendant wanted a divorce from his wife; that at French Lick Springs, in Indiana, he had fallen in love with the rich lady of New Albany and desired to marry her, although then a married man. And how has this slander been met? Do you remember the testimony of Mary R. Lewis, his faithful and devoted old servant? She came into his family on the day of his marriage and is there yet. Let me read a passage from her deposition:

Q. Have you heard the charge that Mr. Johnson met and fell in love with some lady at the springs on the occasion mentioned, and after returning home sought a divorce from his wife? If so, what do you know about it?

A. I never heard of such a thing until after Mrs. Johnson's death. I know that the charge that he tried to divorce his wife is not true, because there never was an estrangement between them, and there was no period in their married life when they were happier and more devoted to each other than the time following his absence at the springs. Right after that visit, in the fall of 1874, he went to great expense improving and beautifying their house. He took the old mantel out of

the front parlor and put in its place a fine marble mantel and grate that cost about \$100. He furnished new and costly Brussels carpets for the parlors, and one, at least, of the chambers. He put a new carved center table in the back parlor that cost \$45 and a bronze drop-light on it that cost \$16. He bought a large and beautiful French-plate mirror for the front parlor which cost \$50. And he made his wife a present of a bedroom set of three pieces, bedstead, dressing-case, and washstand, which cost \$175. It was, and is, a magnificent set. He also put rich and costly lambrequins over the front parlor windows. I think they cost \$40 to each window. He also had the house repainted inside and out, and the parlors newly papered with very costly and elegant silver-leaf paper. The same season he gave her a fine horse and buggy worth \$500, a splendid piano which cost \$750, and a policy of insurance on his own life for \$5,000.

It was during these very days of happiness, and at the very time when these many tokens of his love and devotion to his wife were being bestowed, that these calumniators assert he was seeking a divorce. That horrible calumny came to his ears when he was mourning the death of his wife, when he was weeping over her new-made grave. Again he shrieked with pain, as if a bruised and wounded place on his body, commencing to heal, had been made to bleed afresh from the blows of an iron hammer.

How dares this infamous suggestion of divorce to be made? What kind of a home at Indianapolis was disclosed by the evidence? Did you see a

picture of discord in which there was strife, bitterness, or coldness, and want of connubial love? On the contrary, we stand here on the proof, meeting every malicious slander. I am now speaking to the shocking accusation hurled at him from Indianapolis, when he was crying out in his extremity: "Oh, if they would only let me alone!" Who are the people who testified to us about his home? There are here the names of nineteen persons, embracing those of social prominence, and also embracing every servant they ever had, and the old servant, Mary R. Lewis, who has been in the service of the defendant's family since their wedding day to the present hour, and is at their old home now. I wish her to speak in her own person:

Mr. Johnson and his wife were always to me a model couple. I never knew any other couple so completely devoted to each other or so happy and contented with each other as they were. From their marriage to the end, their devotion and affection seemed to increase and become stronger as they grew older. They treated each other always with great kindness and tenderness of manner and speech. There was never a time, when in the house, that I did not witness acts of love and affection. I have seen them in each other's arms a thousand times. His knee was her favorite perch when he was at home. Sitting together in the family, evenings and other times, they were always near each other, and never satisfied except when together. They loved their children devotedly, and were all perfectly united. They had for years and years a kind of little baby speech which they used to one

another in conversation, when nobody but ourselves was present. I have often heard Mrs. Johnson say that she was careful never to ask her husband for anything that he could not readily afford, because if he found there was anything she wanted he would know no rest until he had procured it for her, and he would furnish it, if she asked for it, whether he could afford it or not. This was true. So far as I could judge, his greatest happiness consisted in making his family, and especially his wife, happy and contented. There were no quarrels, no bickerings, and no ill feelings between them at any time, so far as I knew or could observe. I never heard of an unkind word or act between them. My intimacy with them was so close that if there had been difficulty or unhappiness I certainly would have known it. I never saw a cloud or a shadow in their home until after Mrs. Johnson's return from Tennessee late in September, 1883.

Another old domestic, Maria Jones, says:

Their relations were very kind and affectionate. They were all devotedly attached to one another. Mr. Johnson was extremely fond of his children, and his wife said he was too good to them and not strict enough. He believed in governing them altogether by love and affection, and such a thing as striking one of them, he often said, was not to be thought of. He considered it barbarous. I have heard it said in the family that little Eddie lived and died without ever hearing from his father a harsh word, and I have heard Mr. Johnson say that for Eddie he never had in his heart one ill or harsh feeling. When in health, he devoted much of his time to the children, amusing and playing with them; often down on the floor with them tousling and tumbling over him, and often romping about the house and yard with Eddie on his back and Griffith hanging

to his coat-tail. When Eddie died it almost broke his heart. All their friends spoke of his great sorrow at the loss.

Mr. Johnson and his wife always treated each other with kind regard and affection. He was more affectionate than she was, and always showed a great deal more feeling. He always kissed her good-by when going down town and again, when he could find her, on returning; and when he came in, if she was out of sight, the first thing was to ask for or call her. He always had pet names for her and they often prattled to each other like little children. I have seen a great many demonstrations of fondness between them, and I can truly say that I never knew or heard of anything but love and affection between them.

Here is another domestic, Lena Wachstetter. Listen to her strong language:

I was a servant in the family for years. I never saw nor heard of a single harsh or unkind word or act between them. It was the happiest family I ever knew.

I could stand here and read by the hour voluminous testimony of the same import. Mary Bordley, a cousin of Mrs. Johnson, testifies to the unbroken kindness and affection between them. A. P. Stanton does the same. So does Mr. White, Mrs. Robbins, and all the rest.

Colonel Thomas Hunt, who knew them, perhaps, better than anybody else, tells the whole story of their life together. His home was their home; they came, they went, they loved him and his, and all his household loved them. Their baby, Eddie, died

in his hospitable mansion. His heart is like the blue-grass acres of Wayne County — broad and generous. We have heard him mentioned by the Attorney General as "the man of the name of Hunt." Yes; he is well known in Eastern Indiana by that name, and he has traveled long miles to be here, as he is now, close to his friend in the hour of peril. To this defendant and his family, though not of kin, he is known as Uncle Tom. I love such a man. He leaves his business and the large interests which are in his hands to come and see whether Tennesseans have the same hearts we have in Indiana. I am satisfied he will find they have.

Suppose we turn to this community; what kind of relation did this family seem to bear toward each other during their sojourn here? Were this husband and wife on such terms of coldness and indifference as to lay her open to and invite the approaches of the seducer? Sometimes such cases occur and the wife is exposed to temptation.

I have one such instance in my mind now where the husband was a millionaire. His palatial home was invaded and defiled; but he had been so neglectful of wife and home, so absorbed in money-making, such a constant worshiper at the shrine of Mammon, so seldom a worshiper at the altar of domestic peace and felicity, that the world did not much sympathize with him, while the world was unusually tolerant towards her. But the adulterer fled the country to escape death. There was neither

toleration, nor sympathy, nor safety for him, though people divided as to the husband and wife. But was there any such opening for the tempter presented here? Was there any such invitation for the persistent, pertinacious, remorseless pursuit which was made of Mrs. Johnson?

Dr. Taylor testified that while Captain Johnson was here he was sick, and the wife came and joined him; and you all remember his testimony as to her kindness to her invalid husband. In that connection the doctor used a word I was glad to hear. As the doctor described the tenderness and assiduity of the wife, he said in return Captain Johnson was very grateful. It is the good heart that is grateful for kindness. Some natures receive the kind offices of the wife as mere duties and without thanks, while others brighten her pathway and sweeten her life by gentle and loving words of appreciation and affection.

Dr. Boyd, who also attended the defendant, says there was "the utmost kindness and affection between them that could prevail between husband and wife." Mrs. Godfrey, the landlady where they lived, testifies the same. She says they never came to a meal without the son on one side of his mother and the father on the other, with their arms around her, making common cause in their admiration for the wife and mother, both much in love with her. Martha Garrison, the colored woman, describes the same thing.

You have this picture of domestic happiness and peace, of harmony and love, as you first see it at Indianapolis, and then brought down here, to refute the abominable and atrocious falsehood that there had been bitterness, coldness and want of affection between them. We have traced them from their wedding day, when Dr. Wakefield pronounced them man and wife, and in the name of God announced that no man should put them asunder. In the light of the most critical and trying evidence which ever searched a household we have traced them from that time to the day of her death, and I defy the production of one word of proof that a single unkind word ever passed between them, or a frowning look was ever given by one to the other. We have examined all their household servants—one who has been with them from the morning she helped dress her mistress as a bride until she helped to lay her in her untimely coffin. We have revealed all the inside of the house. Society sees the surface; social callers see the parlor, where politeness and courtesy reign. The servants see the dining room; they see the kitchen; they see the bedrooms; they know all the family secrets; they unlock the closets of the house; and if there is a skeleton there, do not deceive yourselves—they will know it.

We have passed through this most searching ordeal; no domestic skeleton is found, not a word of discord is heard; and yet we have thrust into

our faces, even during this trial, not from the counsel for the prosecution, but from one source and one alone, that only a few years ago Captain Johnson loved another woman, and offered a large fee to a distinguished lawyer to secure him a divorce from his wife. I put my foot on this calumny here, now and forever; and the man who hereafter repeats it, whether in Indiana or elsewhere, will be marked and branded as an outlaw from every sense of truth and decency.

The next charge was that he had robbed her of her home; that he had extorted a deed from her and taken the roof from over her head. Now, men and brethren, once again I ask you, put yourselves in his place. Here was a home that stood, half of it in her name and half of it in old Dr. Griffith's name — thus held for convenience, Dr. Griffith not having a dollar invested in the property. Dr. Griffith, at the age of eighty-two or eighty-three, as he was then, was liable shortly to die. Captain Johnson knew then, as he knows now, that his own lease of life can not be a long one; that the candle will go out at no very distant day. Suppose that he and Dr. Griffith had both died, as the title then stood. The one was a very old man and the other a very sick man; one on the brink of the grave, having far outlived the allotted time of life, and the other with no secure hold upon life from day to day. In the event of the death of both, Mrs. Johnson became the owner of the entire property. Suppose

then, again, that this infatuation, which Captain Johnson had only discovered a few weeks before, for this wretch from New York had continued.

I speak of him as a wretch from New York. Pardon for a moment the digression. I have here and there heard Major Henry spoken of as a Tennessean. No, no; he was not a Tennessean. He was a bastard. He tried to run for the legislature here and he voted here; but he was a bastard — not a legitimate growth of your State. I know the people of Tennessee. One of the greatest men of Indiana was Tighlman A. Howard, born in Tennessee, and here in East Tennessee. Your people are brave, generous, and love pure homes and domestic bliss. Do not tell me that this crawling, besotted old beast belongs here at all. He was worse and baser than the kite in the eagle's nest. Your nests here in these mountains were made for eagles, and not for filthy carrion crows.

But to return: Suppose her infatuation for him had lasted, and suppose there had been a legal divorce between Henry and the woman who makes formal advertisement that she is now his widow, which I presume is true, whether she lived with him or not during the last eighteen or nineteen years; what then? I am now following the workings of Captain Johnson's mind on the subject of the homestead property.

He felt, and said to himself, and was entitled to say, "If I should die and if Dr. Griffith should die,

both likely events in the near future, my wife would hold the legal title to the entire property, and, being already torn from the anchorage of virtue, she might very readily be again thrown into the clutches of this beast, again subjected to his will and power, and be drawn into a marriage with him, and he thus become the possessor and control everything."

Captain Johnson reasoned that with himself and Dr. Griffith in the grave, and the slight tie that bound Henry to Flushing, Long Island, broken, a marriage would take place, stripping his son of every dollar and making him dependent on a combination founded in crime the most detestable. This is all in evidence. To preserve the property to the boy, to whom it rightfully belonged, and to save him from the fate of becoming stepson to this wretch, who might crawl into his father's place, Captain Johnson thought it best that Dr. Griffith, for his part, and his wife, Mariette, for her part, should join in a trust deed for the whole property, and to whom? Whom did he select for a trustee to rob his wife, as it is charged, of the roof that sheltered her? Whom? I again rejoice and feel well in showing you how his truth and honor shines out at every step. He selected Dr. Wakefield as the trustee. Was he to rob the wife? No. He was to so handle the property, in the fear of God, as to take care of her and her aged father, and save it eventually for the son.

Captain Johnson at the same time gave an obligation for the support of the demented old man who has been used to pursue him, and is now paying interest on \$3,000 to provide food and raiment for the man whose name is invoked to send him to the gallows.

Captain Johnson says, "I told Mariette that night that so long as I lived her father should be comfortable and respectably supported." And he has faithfully kept his word. He selected Dr. Wakefield as trustee to take and hold this property in a condition of safety, not for himself, but as trustee for his and Mariette's son. Did he do right or wrong? It is not a question that bears upon his life or death, but I want to feel that I have left my duties at Washington and my loved ones there and come here to appear for a man who can answer on every point in his whole life, every one. We ask no grace or quarter. We answer on everything.

Did he vilely rob or attempt to rob his wife, according to this evidence? On the contrary, he put the property in the hands of an Episcopal minister of forty years' standing, with a reputation and character as good as that of any man in Indiana, to hold for the benefit of that boy, and to care for his mother and grandfather.

But at this point I shudder to hear another charge, which reached this defendant as he wandered in sickness of the soul and in midnight

despair, so hideous and revolting that human nature recoils and cries out in maledictions against its author, whoever he may be. It is in proof in this case that a report was put in circulation, and came to the knowledge of this defendant, to the effect that he had connived at the ruin of his wife, and that his son was in the conspiracy for the pollution of his mother! And upon this charge this innocent boy has been disinherited by his grandfather's will. O, God! I can not talk of this; I can not discuss it. If the gates of the bottomless pit were opened, and the great dragon unchained on the earth for a thousand years, with all his malice and guile, in all those years he could not invent a calumny so atrocious, so heart-breaking, so villainous as that. Is it any wonder that at times reason tottered on her throne, and ungovernable emotions swept like waves of madness over the suffering and tumultuous soul of the defendant?

In January the defendant returned again to the South. From Knoxville he went to New Orleans. Early in February he was assigned to North Georgia. And everywhere his pursuers were on his track. Letter after letter was written to his son, filled with poisonous falsehoods, to alienate him from his father, to destroy the last hope, to break the last link which bound Captain Johnson to life. Once the rose tree bore its fullest bloom for him; once it was loaded with promises of happiness and of honor; but "leaf by leaf the roses have

fallen," until Griffith, the darling son, was the last on the stem; and then, as Judge Ingersoll said yesterday, with more than the hate of fiends, persistent and repeated attempts were made to poison his young mind against his own father.

Malice could go no farther; and do you wonder, oh, do you wonder that there is insanity in this case? I wonder there is not more. I wonder he lives. I do not wonder that he has shrieked and raved and wailed and wept and wearied the hours from night to morn and from morn to night again with the wish that he was dead; but I wonder he is not dead.

Early in June he resigned his office and settled at Marietta. And now the bolts fall thick and fast. The galling persecutions had done their deadly work also upon the mind of this noble son. The cruel, heartless letters of the crazy old grandfather had driven the boy to desperation. His mind, as well as that of his father, had become filled with tragic purposes. To kill the destroyer of his mother had become the one absorbing, all-consuming purpose of his soul. In presence of this terrible thought all the better and gentler impulses of his nature were perishing.

Captain Johnson says he tried to weed this deadly thought from his son's mind, but to no purpose. The bloodhounds kept howling on his father's track, and the boy was bent on revenge. He lost his spirits. He became gloomy, morose

and exclusive. His father says, "I could not bear the thought of seeing his fair young hand stained with blood." To see his brave boy kill Major Henry, or to do it himself—that was the terrible alternative to which he was driven by his persecutors.

Just before leaving Georgia, late in July, he received from his faithful friend, Mr. Self, editor of the *Greenville Herald*, that dreadful letter, written for publication in his paper. It contains an elaborate defense of Edwin Henry, and a labored argument to prove that this defendant had murdered his wife. It went farther still, and declared that he was a "surpassing liar," a swindler, a thief and an adulterer, and closed with the challenge: "Whosoever wishes to learn his infamous character has only to inquire at Indianapolis, where he is well known and is universally detested."

Well, we have accepted that challenge. We have inquired at Indianapolis; and in that heap of depositions you have the answer to that inquiry, and also the answer to these reckless and appalling slanders.

But who wrote that letter? It bears the signature of Dr. Griffith; but Colonel Hunt, who has known him for thirty years, tells you it is perfectly absurd to suppose that he was the author of any part of it. He says that he is so old and senile that he can scarcely speak two coherent sentences together on any subject, and that he is almost il-

literate. This letter is written in clear, logical, lawyerlike style, and Colonel Hunt is right in saying that "Dr. Griffith could not have written it. He could neither compose its sentences nor spell its words."

Can you conceive anything better calculated than that letter to goad this defendant to utter desperation, to absolute insanity?

Early in August, utterly broken in health, he went with his friend, Colonel Hunt, to Tate Springs, Tennessee. Hardly had he arrived there when he received the letter written by Dr. Griffith to his son, and by him transmitted to his father, asserting that he had been dismissed in disgrace from the Government service for infamous crimes. The son knew better, as you know better; but to this defendant the slander, uttered to his faithful son, was bitterer than the stab of a dagger dipped in poison.

It was one week later, at Galbraith Springs, that in the same manner he received another letter, written also by Dr. Griffith to his son, in which occurs this shocking passage: "Here public opinion is universally against him. He is utterly infamous. There is not a respectable house in the city that would open its doors to him. Yesterday I heard a gentleman say that if he ever returned to Indianapolis he would be tarred and feathered and burnt alive."

And that to his idolized young son! Those

words — that awful falsehood written by Mariette's father to his only grandchild, her only son! How quickly and with what exquisite sense of torture did Captain Johnson perceive that the "gentleman" by whom those words had been put into the mouth of that old madman was no other than one of his own arch tormenters.

Reeling onward from Galbraith, it was the last of August when he reached Greeneville. It was here, and only a few days before the great tragedy, that he learned of the last and most inhuman act of all. In his own words, their malice had pursued him, or rather preceded him, even into the grave. In his burial lot at Crown Hill cemetery, in the grave which he had reserved for himself, they buried the body of an old woman who had died at St. Vincent charity hospital. The graves in his lot, six in number, corresponding with the number of members in his family, had all been designated on a plat, and each grave marked with the name of the individual destined to inhabit it. Mrs. Griffith, Mrs. Johnson and Eddie are all in their graves. On Mrs. Johnson's right lies her aged mother, to whom she fled in death. On her left, in the grave reserved for her husband, lies the body of the involuntary intruder. She lies in his grave, by the side of his wife, and between poor Mariette and her little Eddie.

No place is left in that lot for him to rest, and he must seek a grave elsewhere, banished, even

in death, from his own family. No wonder he wrote to his friend, Mr. Condit: "It is the most painful thing I ever heard of. I drop the pen in the utmost perplexity and grief."

Who was the author of that sickening outrage? That it was perpetrated by Dr. Griffith's direction is certain; but it is impossible to believe him, sunken as he is in senility, capable of conceiving anything so horrid. It must have been, it was, instigated by others. Of them we can only say:

They are neither man nor woman,
They are neither brute nor human —
They are ghouls!

A brave man will never strike another who is in misfortune. In his utter desolation, in his total downfall, with his high hopes of professional success gone; his ambition in the political world destroyed; his home taken away; his wife in the grave, and dishonor grinning and gibbering over her memory — it was at such a time as this that two or three people, and no more, sought to annihilate his feeble remains from the face of the earth.

You heard the lamentations of Captain Johnson over the loss of his reputation. You have heard read his letters to Lamb and Hill, his counsel at Indianapolis. He felt like one who had stood on the mountain top, in the sunlight of hope and glory, suddenly hurled into an abyss a thousand feet below, among hissing serpents and crawling reptiles. What change or transition could have been more

terrible than this impression that he had fallen from the high estate of his splendid reputation under the calumnious reproaches and vile accusations of his enemies?

When he wandered forth the last time from Indianapolis and fresh calumnies followed him while he sojourned amongst strangers in Georgia, he felt he was utterly and entirely lost at his old home. He conceived that his traducers had the power to blacken him beyond the recognition of his old friends. In that he was laboring under a delusion. Else why this all-powerful pile of depositions as to character and reputation? Everything he heard he magnified. The whisper of the wind was the shriek of the hurricane in his ear. There are inmates in the asylums to whom the chirping of a cricket, or the running of a mouse across the floor, is a startling event. They hear in the one the premonitions of the storm, and in the other they see the lion leaping in his strength. These are the exaggerations of a diseased mind.

Captain Johnson exaggerated upon this one subject. You have heard his letters to Lamb, to Hill, to Dooley, to Stanton, and to Condit. Whose eyes have been dry while listening to them? Every heart throbbed, every lip quivered, and every eye moistened as they were read by my gifted colleague. Their one great burden, their one sad refrain, is the incessant wail, "I am lost, lost in the estimation of my friends."

He says, in one of these letters: "You know that no one has lived more for the good opinion of honorable men than I have. No one has cherished the regard of virtuous people more than I, and now I shall lose them all. My enemies are painting me as the murderer of my wife. What can we do?"

He was like one chained to a post, and he suffered more than man ever did, in my reading, to live. Men have died at the stake in flames. Latimer and Ridley, when chained to the stake in England for religious opinions, smiled to each other and said: "We will light a fire this day in England that will never be extinguished."

And so they died, upheld by the joyous consciousness that there was a future for their doctrines and a future for their souls.

It has not been long since, passing through Pennsylvania, there was pointed out to me the old home of Colonel Crawford, who was burned at the stake by the Indians at Lower Sandusky. I have read the horrible details of his cruel death, of his walking steadily around and around the stake to which he was chained, in the midst of the flames, while the merciless savages thrust blazing fagots into his writhing flesh at every step. He was long in dying, and he appealed to his enemy, the infamous Simon Girty, to end his torture by shooting him. His appeal was in vain, and at last he fell upon his face and expired on a bed of live coals.

Dreadful as are these details of human pain and dissolution, I can read them with more composure than I can recall here in your hearing the scenes of misery which this defendant experienced during the last six dismal months before he started, in August, as if impelled by a higher power than his own, in the direction of Greeneville, the original seat of all his woe. Day after day his shriek of sorrow told of his utter wretchedness.

It may be said he ought to have controlled himself. Put yourself in his place! He was sick; he was lonely, bereaved, and perishing, away from home. His will power had gone in the presence of his burning and intense emotions. He could not, if he tried, stop thinking on the one subject, where his heart and brain concentrated all their power. He could not stop; his malignant foes would not let him. Goaded to desperation, moody to the confines of madness, he did nothing, and he could do nothing, except look incessantly into the face of his dead wife, and into his home as it once was, but is now no more, and listen to the false, unjust and brutal railings of those who chose the hour of his helplessness in which to thrust their blazing fagots, not into his flesh, but into his soul. But one thing, and only one, upheld him on the shores of time.

No more shall bloom the thunder-blasted tree,
Nor the stricken eagle soar.

But by the side of this defendant, riven and blighted as he is, there grows in beauty, grace and strength the production of all that is noblest and best in father and mother, and for this son and for him alone Captain Johnson has lived. You have heard the evidence. "I would not," he says repeatedly, "live an hour but for my boy; I want to die every day."

Not an hour would he have staid, but with uplifted hand of self-destruction he would have followed the loved and lost one, had not the glorious child of their sacred love given him pause. He was the link, the only link, and the link of more than gold, that bound his life to the earth. We see him moving round and round, like the tortured prisoner at the stake being burned to death in unhallowed fires, shrieking in his misery. Might all this be simulated? No, no! You remember how often he said, in every form, in the evidence, "If they would only let me alone, I would try to live through this for the sake of my boy." Did they let him alone? It is a most sad and melancholy truth that they did not.

I know not why these calamities came. I am a believer in the providence of God. I believe there is an overruling power directing men and nations. We may not question the Deity; His ways are past finding out; but why unbearable affliction should fall with such merciless force on this man,

who has never done you nor me nor any man evil, is a mystery not to be solved in this world. If he has sinned, we do not know wherein.

Judge Ingersoll alluded yesterday to Job. Whether history, or a teaching by fable, God gave the man of Uz to be touched and hurt by Satan himself. He had seven thousand sheep, five thousand camels, three thousand she asses, five hundred yoke of oxen and other property in proportion. All was taken from him. His harvests were burned in the fields; his children died. He bore all this, and cried: God's will be done! Then power was given to the arch enemy of mankind to smite his person, only sparing his life.

In sackcloth and ashes Job bewailed, in tones that have lived in all languages and through all ages, his overthrow and desolation; but the utmost humiliation of man he was spared. Almighty God did not permit his home to be defiled. He had decreed the death of the adulterer, and the wife of Job was not debauched by some libertine inspired by Satan. She was untouched and unpoluted in order that home could be rebuilt. Home was rebuilt. It never could have been if the wife had been corrupted, defiled, and worse than slain. The wife, the key to the domestic arch, remained pure and strong; and that fact alone enabled every blessing to be restored.

Had Job's home been laid desolate by the impurity of his wife, could he never have had a hope of

happiness in the future, perhaps he too would have had emotional insanity and irresistible impulses; possibly he would have cursed God and died. Who knows? I only know that the wife in her purity was left, and, after the test was over, Job had fourteen thousand sheep, ten thousand camels; all his property was restored twofold; children came again, seven sons and three daughters, and he lived one hundred and forty years. The elders, all the people, did him honor; no shame was on his name. He had suffered, but was not disgraced.

Anything can be borne but dishonor; anything but to hear our names, and the names of our loved ones, associated with shame and mocked with scorn. We can follow the pure and honored wife or daughter to the grave, and time, after a while, with its healing influences, will bring calmness and consolation to our hearts and enable us to control our grief. Death is no calamity if we die with a good name; but let dishonor once come to follow us over the world like a hissing serpent, and neither in life nor in death is there peace or rest.

Gentlemen, I am now approaching a phase of this case which I have often heard discussed with great ability; I wish I could discuss it myself today with more. After a life, not now very short and never inactive, I am deeply impressed that there is far more insanity darkening the minds of men and women in this world than is generally understood or admitted. People stare and wonder,

with incredulous looks, when the plea of insanity is raised in court, and sometimes fools are heard to deride and jeer, as if such a thing as insanity did not exist.

Let us glance for a moment at statistics. According to the census of 1880, the splendid State of Tennessee had a population of 1,542,359 and her insane numbered 2,404, the ratio being one insane person to six hundred and forty-one sane persons throughout the State. You have an insane asylum at Nashville which accommodates about 500 people; I am informed you are finishing another and a larger one at Knoxville; and then you will fall far short of sufficient room. Indiana, with her two million population, has more than thirty-five hundred insane, showing an insane man or woman in the midst of every five hundred and sixty inhabitants of the State. We have an asylum at Indianapolis sheltering with its beneficent care about thirteen hundred of these children of misfortune, and we are building three other extensive institutions of a similar kind in different parts of the noble Commonwealth. The ratio of the insane to the entire population of the United States is about one to five hundred and sixty-six, or almost identical with Indiana.

I mention these instructive facts in order to ask whether insanity is of such rare occurrence that its plea should fall under your suspicion or displeasure. It is around you and on every hand; and

I appeal to you, on your consciences, to answer whether, in all your observation, experience or reading, you ever knew causes of insanity more bitter, more impelling, more infernal than those which have tortured the man you are now trying for his life? And yet men may have said that our plea in this case is merely the lawyer's plea. It is not. I say here, in the fear of my Maker, that I know our plea to be true. I have had the experience among men —

Mr. Robinson: I object, if Your Honor please, to the course which this argument is taking. I know counsel does not intentionally violate our rules of practice, but one-third of his speech has been in direct violation —

Mr. Voorhees: I have tried cases in many States of this Union, and I was never before arraigned for such an extensive violation of the rules of court. I only wish to know the rules, Your Honor, and I will obey them.

The Court: The rule will not allow —

Mr. Voorhees: Perhaps my statement is too broad. But have I not a right to believe this evidence? I think I will venture to do so. If I did not, I would take my seat. I repeat, with the permission of the court, that the plea of insanity in this case comes before you not under any bar of adverse opinion, not under any supposition that it is manufactured, or that mental disease is so unusual that you ought not to credit the plea.

There are one or two features as to the defendant's mental condition upon which I wish to dwell. While these fearful and baneful accusations were being hurled after him day after day, in his letters to Condit, Dooley, Hill, Lamb, Stanton and others, we discover, by his agonized utterances, the condition of his mind, as well as the physician would know his physical health by holding his finger on his pulse.

The mind has been likened to a stringed instrument, and when in health it gives forth a perfect tune, a strain of harmony on all subjects; but let a string be relaxed or broken, and there will be harsh discord. On one subject there was a broken string in Captain Johnson's mind; the harp of reason was jangled and out of tune. There was one string that gave forth a strange, unnatural, weird, unearthly sound. It was the chord in the instrument which responded to a horrible memory, which threw him on his face, as one dead, at Knoxville. It was the broken chord in the great harmonium of his mind which caused him to cry out to John Condit: "Oh, tell me how it now is! Last night I was almost lost. My God! What is it all for? Mariette, my wife; oh, my precious wife, where are you? For months I have not seen you or heard your voice. Sweet, sweet wife, come back. It must be all a dream; she is not dead; she will return. Oh, where, where is she?" That is his lamentation; it is everywhere in his writings.

It is the perpetual refrain of his mourning heart — "Mariette, oh, my precious wife, where are you?"

Is this the natural call of a sane mind? No one ever charged this intense and candid man with feigning anything. He is the least of a sham I ever knew. God help him! I wish things could be at times less awfully real to his earnest, truthful nature. "Oh, I am so heartsick!" What cry is that? The stomach is sick, the lungs are sick, and the other portions of the human frame are sick; but when one of manly spirit exclaims, "Oh, I am so heartsick!" you know the soul is shrouded in gloom, depressed, walking in the shadows of present death and in the horrors of the past. "Oh, I am so heartsick, so weary! The oblivion of the grave would be a thousand times preferable to this existence of agony and torture."

Is that the voice of one fit for retributive punishment? Again, this man of pallid lip and blazing eye shrieks forth: "My wife appeared to me last night"; not that he *thought* she did, not that she *seemed* to be there; but, "My wife *appeared* to me last night, dressed in a robe of white, with a spot of blood just over her heart. She said: 'Eddie, rely on yourself.'"

Gentlemen, lay not your hands on this man. Beware! God's hand has been heavy enough. Take yours off. He saw sights and beheld visions. The horrors of his persecutions, his bereavements, the death of his wife, haunted him everlastingly.

There was not for him a moment's surcease of sorrow. If a drop of water falls incessantly on one spot it will wear away your hard blue limestone; and a grief, pressing intensely and perpetually on the mind, with nothing to mitigate its tortures, will at last drive the strongest intellect shrieking to the cells of a madhouse.

I have been through the greatest benevolent institutions in this country. I know by my own experience and by the evidence in this case that a man may be entirely sane on all subjects but one, just as Dr. Boyd, that rare ornament to his profession here in your midst, has testified. He tells you, under the sanction of an oath—and all the great authors sustain him—that a person may think, and talk, and write, and play music, and attend to business, and trade with rationality, and yet, on one subject, be insane, and, when acting on matters pertaining to that one subject, be not responsible.

That is the history of the world, and that is the proof in this case. Dr. Boyd has given testimony here that this defendant was rational on all subjects but one; that he would talk on any other subject but this one in a normal tone; but strike that one bruised and always bleeding place in his heart, and the response that came was emotional and beyond the power of his will.

He says: "I saw certain names written in blood across my window." This is an insane emotion,

distortion, delusion. "My wife appeared last night," he says, "dressed in white, stained with blood," and, I may say, murdered by Henry, driven to suicide by her seducer. "I saw her," he raves, "and she said, 'Eddie, rely on yourself.'"

When we attempt to analyze the mind of a man tortured to insanity by one burning, searing thought, it is most difficult to trace every diseased fiber, every detail of aberration, every involved and unnatural motive, and every indication of unhealthy and illogical evolution. All I ask is that you do not think of the defendant as you do now of yourselves—you who are healthy, strong and robust in body and in mind. Think of him as he was when he poured forth his disordered conceptions to Colonel Hunt, and wrote in the following strain to the beloved Condit:

But the principal trouble, of course, is my great mental nervous depression. My agony is unutterable and inconceivable. I would not like to have you know what a night of horrors last night was. Every hour I wish myself dead. Duty to others is the only remaining tie that binds me to life. I must educate my son, and I must repay the debts of gratitude I owe my friends. First of all these is yourself. The obligation is far stronger and far more sacred, not that its discharge would be so great a benefit to you. Yes: I must live. But oh, what a sad, broken, ruined life! I search my own heart daily to find, if possible, some ground for self-reproach. Of course, my life has been full of minor errors—all lives are; but I want to convince myself of the true state of my own conscience. All

my introspection ends always in substantial self-satisfaction. I believe that all my main purposes have been right; that all my chief motives have been good; and that I have been all through life actuated by a sincere desire to do right and do good. Therefore my conscience is clear. If I were called to die to-night, I am sure I should respond without the least fear as to the great hereafter. I feel deeply, and oh! so painfully, that I am a helpless victim of misfortune.

And again, a little later:

MY DEAR OLD FRIEND: I am sorry, indeed, that I wrote you a letter that gave you so much pain, for your suffering on your own account is enough for you to bear. But since the beginning is made you may be relieved by a few additional lines. I wish I had your faith, your charity, your patience, your noble magnanimity. But alas! I have not. Yet, who can wonder that I am less than a perfect man—less than you? Have you ever known a young man to start in life with brighter prospects, higher motives, or better purposes than I possessed? Have you ever witnessed such a pitiless succession of calamities, ending in so complete and hopeless a shipwreck of life? Have you ever known a life, in itself so high and serene, rendered by outward influences so troubled, so turbulent, so tragic? I recall so often the piteous wail in one of poor Mariette's letters: "Oh, Eddie, what is it all for? Why has it been permitted?" God knows, poor lost wife; I cannot tell. St. Pierre says: "There are in life such terrible, such unmerited evils that even the hope of the wisest is sometimes shaken." Is it, then, to be wondered at that the entire nature of one like me, who was never wise, should be wholly subverted by calamities like mine? Faith is dead. Hope is extinct. Ambition is a forgotten dream. My home is a paradise

lost. *Ashes! Ashes! Ashes!* But *courage* remains, and *revenge*, like a consuming thirst, burns and rages throughout my being. I have strange illusions. My bed often rises and falls, as if I were riding waves higher than hill-tops. I frequently clutch my chair to save myself from falling when the floor seems giving way. I fall sometimes twenty or fifty feet perpendicularly down with a force that is terrific.

In this condition of mind he started from North Georgia. You and I have been with him, in this evidence, through the dismal hours he spent with Colonel Hunt, and in writing on the one corroding, cankering theme to others; we have listened to his long talks, in which, with the simplicity of a sobbing child, he said he did not know but these things would drive him insane; we have heard this true and conscientious man, Colonel Hunt, say he was absolutely insane on the subject of his wife's ruin and death.

Captain Johnson went from North Georgia first to Tate Springs, and there Dr. McAllister, a competent, eminent physician, was called to attend him. You have already heard his deposition, and heard it commented on by my learned associate with infinitely more eloquence and power than I possess. I will ask you, however, to allow me to submit some portions of this cogent and conclusive testimony:

He was suffering from indigestion, and his color and appearance indicated a bilious condition.

But his principal trouble, as I soon perceived, was mental and nervous. His nervous system was seriously disordered and he was in great mental distress. I did not inquire into the cause of this condition, but was convinced that he was suffering from some great grief or other trouble, which was exerting a powerful influence over his mental and nervous condition. He was in a state of most serious mental and nervous depression. To this cause I ascribe, in large degree, his mere physical derangement.

Q. What, if anything, of unusual or peculiar character, did you observe in his conduct?

A. One thing was that he was always alone. He had no associates. The first time I saw him he asked me not to introduce him to any one as he wanted no acquaintances. Though feeble in strength, he seemed to seek relief from his nervous agitation and restlessness in walking. He moved slowly, but walked about the ground a great deal. He often stopped to rest, and would sit or lie down on the benches or the grass. All the time he seemed abstracted, gloomy, and sad. Sometimes he would smile or weep. I saw him several times with the tears streaming down his face. His manner generally indicated deep abstraction. He seemed absorbed in gloomy thought, and totally unconscious of his surroundings.

Q. What did this conduct suggest to your mind as to his mental state?

A. Overwhelming grief or sadness and deep mental disturbance.

Q. What were usually the subjects of your conversation?

A. So far as I could control them they generally related to commonplace topics, for one method I used was to divert his thoughts as much as possible from the secret trouble, whatever it was, that I saw was

preying so terribly upon his mind. But he would frequently break away and commence talking about his son, who seemed to occupy a large space in his mind, and who, in some mysterious way, seemed to be closely connected with the sources of his mental trouble.

Q. What did he say on that subject?

A. He described his son as a very beautiful boy, and spoke of his great courage and fortitude and his devotion to him. I remember expressions of this kind: "He has stood by me through everything, and has all the time been the braver, stronger, better man of the two. I could not have survived what I have without his aid. He walks the streets with his arm around me. He is absolutely devoted to me, and is now ready at the shortest notice to fly to his papa." He frequently spoke of him as his brave, beautiful, noble boy, and he talked of him a great deal.

Q. If you can recall any other of his conversations please state as fully as you can what was said.

A. One I remember very distinctly. He came into my office and was talking to me about mesmerism. The same evening he had created great consternation among the guests of the hotel by rushing excitedly into the parlor and interfering with some exhibitions of mesmeric power which were being given by a gentleman there; and that was the occasion of his speaking of the subject to me. He talked with great excitement. He said he knew by terrible experience the danger of that mysterious power of mesmerism. He took from his pocket a picture and handed it to me. It was the portrait of a beautiful lady. While I was looking at it his breathing became heavy, and when I looked at him he was weeping, and the tears were streaming from his eyes. He said: "There was one of the loveliest and purest beings that ever lived. She is dead.

She was the victim of a scoundrel who overcame her by mesmerism."

Q. While in conversation generally what was his manner?

A. He impressed me as a gentleman of high culture and thorough good breeding. His manner was always gentlemanly, but always sad and never cheerful. In talking of commonplace matters he was affable and agreeable. But this was never long at a time. Very soon he would suddenly become dejected; his whole expression would change to sadness; and then he would break off and become silent, or leave, or else abruptly change the subject. While talking about his son he always exhibited much emotion, and frequently cried, and talked in a way that seemed to indicate that he regarded the boy as the innocent victim of some great misfortune. At the time when he showed me the picture, his manner was of the greatest mental anguish. I think I never witnessed a more painful exhibition of mental distress.

Q. What did his manner suggest to your mind as to his mental condition?

A. That his nervous system was completely disordered, and his mind thoroughly morbid on the one subject of his troubles.

Q. Did he tell you who the lady was whose picture he showed you?

A. He did not.

Q. What, if anything, did he ever say to you about his wife?

A. Nothing directly; but I inferred that the lady whose picture he showed me had been his wife and was the mother of his boy. And this was the only clew I had to his troubles. And this was confirmed by subsequent developments.

Q. From what you observed and knew of his condition what is your opinion as to whether he was sane or insane?

A. On the one subject of his grief or trouble he was undoubtedly insane. He was governed entirely by his emotions, and his emotions were all morbid and unnatural. My judgment, therefore, is that he was the victim of emotional insanity.

Behold that scene, when, for mere amusement, mesmeric influences were invoked. He was alone, amongst strangers, with not a single acquaintance, save his physician of two or three days' standing. A few persons had gathered in the parlor, and, in a most harmless, social way, were going through the forms of mesmerism, when, with a step and look of fury, the defendant strode in and broke up the performance and the gathering. Immediately afterward his physician found him in a paroxysm of agony and excitement, and drawing from his pocket the picture of a beautiful woman, with tears streaming down his face he exclaimed: "This was once as good a woman as ever lived, a virtuous wife and mother, and she was ruined by that accursed craft called mesmerism." He said he would not allow it to be practiced in his presence.

Was that a sane act? And then the testimony shows that he wandered over the grounds alone, weeping, and in great sorrow. As Judge Ingersoll said yesterday, a sane man may be overcome by sudden grief; but you do not see a man in his right

mind walking about and indulging in silent, solitary paroxysms of tears in the grounds of a public resort. Dr. McAllister testifies that Captain Johnson at that time was undoubtedly insane.

This was in the first week of August, 1884; and from there, as if under a spell, he moved on to Galbraith Springs. He seemed to have to move on. Perhaps he heard a voice we can not hear which said he could not stay; perhaps he saw a hand we do not see which beckoned him away; perhaps he followed a phantom of the mind — such things have been.

At Galbraith Springs the testimony of Dr. Leighton and his wife shows that he was a frenzied man. Their united voices are those of a Christian minister of forty-four years' standing and his wife.

But it is said that as he left Galbraith Springs and came in the direction of Greeneville, he declared he had a mission in East Tennessee. I care not for that. Perhaps he said it. How could it differ from the declaration we all know he did make, that he considered himself an instrument in the hands of God for the punishment of the malefactor who had ruined his home and murdered his wife? The best books on insanity lay it down that one of the most frequent forms of mental alienation is for one to conceive himself chosen by divine authority to execute some great purpose.

Temporary emotional insanity upon one given subject is our defense, and is as well recognized

by the highest authorities as any other form of human infirmity. I might cite many names of the highest standing in support of this position. It was recognized by Chief Justice Shaw of the Supreme Court of Massachusetts as early as the year 1844, in the case of the Commonwealth against Rodgers; and it was again presented, in his charge to the jury, by Chief Justice Gibson, of the Supreme Court of Pennsylvania, then holding an oyer and terminer in Philadelphia, in 1846. He there speaks of "an unseen ligament pressing on the mind, drawing it to consequences which it sees but can not avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance."

Dr. Ray, in his celebrated Medical Jurisprudence, quoting Hoffbauer with approval, says:

It is clear that mania may exist uncomplicated with mental delusion; it is, in fact, only a kind of moral exaltation, a state in which the reason has lost its empire over the passions and the actions by which they are manifested to such a degree that the individual can neither repress the former nor abstain from the latter. It does not follow that he may not be in possession of his senses, and even his usual intelligence, since, in order to resist the impulses of the passions, it is not sufficient that the reason should impart its counsels; we must have the necessary power to obey them.

Dr. William A. Hammond, an eminent living author on this subject, says:

The knowledge of right and wrong is not a test of the mental condition of an individual except in a very limited degree. A person manifestly insane will reason logically in regard to conduct which he knows has been contrary to law and at variance with the principles instilled into him from childhood, but which he was not able to prevent or control. The emotions are at all times difficult to control; but they may acquire such undue prominence as to dominate over the intellect and the will, and assume entire mastery of the actions in one or more respects. The emotions are also subject to insane exaggeration through the influence of motives which act slowly, but with constantly increasing force. The brain may be so disordered that insanity is manifested only as regards the will. There is a form of insanity which in its culminating act is extremely temporary in its character, and which in all its manifestations, from beginning to end, is of that duration. This species of mental aberration is well known to all physicians and medical jurists who have studied the subject of insanity.

Where now is the weight of evidence on the question of emotional and partial insanity in this case? We do not have to convince you that Captain Johnson was insane; we do not have to show a general impairment of his intellect. He may have been as clear, acute, analytical and exhaustive in his mental processes as ever in his life; but if it appears there was an uncertainty as to his mental soundness on the subject of his domestic misfortunes and the author of them, then you will stay your judgment and tell him to go free. If you doubt whether the defendant was sane, you doubt

whether a guilty act has been committed — nobody but a sane, responsible person can commit crime — if you doubt whether Captain Johnson was sane, you doubt whether the crime named in this indictment ever took place, and you must acquit.

The Supreme Court of Tennessee has decided that if there is any uncertainty in your minds whether the defendant was sane on that subject at the time of the homicide, it is the same to you, in the discharge of your duty, as if it was uncertain whether Major Henry was killed. If there is a doubt as to sanity, the benefit of that doubt must go to the prisoner, and he is to be acquitted.

But have we put in evidence enough to raise this doubt? We have followed this unhappy man through all his life, as it lies open now before you, until he came again to this, to him, most fatal and unhappy town, on the last day of last August. We have seen him at Knoxville, at Indianapolis, at New Orleans, in North Georgia; we have seen him at the different springs — at Tate and at Galbraith; and, finally, we see him here. Here his family physician and his friend, Dr. Boyd, took him in charge, and he tells you, from his learning, his experience, and his knowledge of this defendant, that he was emotionally insane; that his emotions, in connection with the tragic fate of his wife, the brutality of her destroyer, and the unparalleled, unprovoked, and seemingly diabolical persecutions he had experienced from Governor Porter and Major

Gordon, had unbalanced his reasoning faculties, and left him a helpless prey to ungovernable impulses.

Dr. Boyd spoke of the defendant's eager, morbid and uncontrollable desire for revenge, and I observed the prosecution make a note. Very well; those maddened by the desecration of home most thirst for revenge. This is true of the inmates of asylums, placed there by the disgrace, shame, and death of their best beloved, as well as of those who walk the streets and are rational on a hundred subjects, while irresponsible and dangerous on one.

The defendant was here three weeks, from the last of August to the 23rd of September, before the homicide, and every hour under the observation of Dr. Boyd, Dr. Taylor and others. The evidence shows he came here a wreck, bleeding at the lungs and staggering from physical weakness, while his mind was lurid and inflamed. The ugly and hateful memory of his former stay and experience in Greeneville rose up to greet and clutch him and to suck his life away, like the octopus, the devilfish first described to the world by Victor Hugo. He had learned that Major Henry was keeping and carrying about with him a letter from his dead wife and a portrait of his beloved son.

Were his relations to Mrs. Johnson, and her consequent death, a pleasant subject for the seducer to dwell upon? Did he pass his nights in looking at that letter and at the face of this boy? Was the man under the influence of a spell, a species of

madness, on this subject? Would not any man, except one with a mind imbruted with passion, have burned every scrap of paper and destroyed every memento that reminded him of this dismal and guilty chapter of his life, and then slunk away from these pure hills and scenes, never to have shown his face again?

But, no; and when the defendant heard he was defiling her memory by carrying that letter, and also outraging his son by keeping his picture as a memento of his mother's ruin and death, the effect on his mind, as described here, was something never to be forgotten. As Major Pettibone expressed it, his mind flamed up.

Yes! It is in proof from various sources that he saw flames of fire at times, burning down forests and devastating cities. He saw the earth open and felt himself falling into its depths, and then at other times he seemed to be rocked and tempest-tossed on the bosom of the sea. All these things he had often suffered; and when, therefore, he dwelt upon the thought that the letter and the picture were treasured up in the possession of the man who had first destroyed his wife's soul and then had driven her to kill the body, it is no wonder he saw flashes of fire, bright and red as blood.

In the spirit of kindness, and aiming to be peace-makers, Major Pettibone and Mr. McWilliams undertook to get them and return them to the defendant. On Sunday, two days preceding the death

of Major Henry, they were returned. You will never forget the effect upon him, the agonizing, burning grief and pain, as he looked that letter over; and then that baleful, deadly look of murderous insanity gleaming from his eyes when McWilliams told him, "Why, Henry says your wife seduced him; that he did not seduce her."

McWilliams was a man of deadly dangers in these mountains during the war, and has iron nerves in the face of peril; but he says when that look came into Johnson's face he watched him. When asked on the witness stand, "Why did you watch him?" he answered: "I watched him closely on my own account; I did not know what he might do. I never want to look into a face like that again." That was his condition Sunday afternoon. To many millions that day was one of blessed peace and rest; to him it was one of inexpressible torment. The last drop of degradation had been poured into his cup, and he had drained it.

The juggling fiend who had wrecked his home and life now leered in his face and mocked him with the horrible taunt: "The woman tempted me, and I did eat"—"she seduced me; I did not seduce her." With these false and accursed words scorching brain and heart, the sun went down on him, the most miserable being in all the broad confines of the State of Tennessee.

He went to his room, but not to sleep or repose. An accomplished and intelligent lady occupied a

room adjoining. We all listened to the clear and graphic testimony of Miss Virginia Davis. She says he walked the floor of his room all night; that it was daylight Monday morning before he was still; that he was alone, but talked incessantly to himself, and often called some one, whose name the witness could not distinguish. This was less than thirty-six hours from his final and fatal meeting with Henry at the "Furnace." All night he walked; his wounds had been made to gape and bleed afresh.

A blow with an iron hammer on flesh already bruised, inflamed and swollen, will cause shrieks of pain and new streams of blood; but such an affliction would be merciful compared to that which fell upon the bleeding, bruised heart of this defendant when he heard Henry's last brutal calumny, making his wife utterly shameless, proclaiming her a prostitute, luring men to her wanton embrace.

This was more than a sane man could have borne; but, falling upon the defendant in his condition, do you wonder he walked all night and talked to himself, calling somebody all the time? Whom do you think he was calling? Doubtless, his cry was the same as it was to Condit—"My God! What is it all for? Mariette, my wife! Where is my precious wife? Oh, where are you?" Yes; he was calling somebody. "Where are you, Mariette? Where are you? I have not seen you for months nor heard your voice. Come back,

sweet wife; come back. It must all be a dream. She is not dead. She will return. Come back. Oh, where, where is she? ”

Do you recall the painful description of a similar occasion by Colonel Hunt? It was on the fearful night at Cleveland, when they were on their way to Tate Springs. Let me read it to you again:

He begged me to do something for him. I got him into his own bed and held him there. I smoothed his temples and held his wrists, and tried every way I could to quiet him. He kept up his wild, incoherent talk a long time, and until his strength was gone. After an hour or so I got him quieted down and he went to sleep. But it was a restless, troubled sleep, and for a long time he lay tossing and grinding his teeth, and now and then muttering oaths, and at times crying and calling for his wife. It seems to me that nearly all night he kept, at intervals, calling his wife, as if he expected her to answer, and crying and wailing because there was no response.

All that long Sunday night he called and paced the floor. His wretched heart one melancholy burden bore. Miss Davis heard him hour after hour totter wearily along talking and calling, calling the loved, the lost, the beautiful dead. Whom else did he ever call? Who else ever heard him and came back to him? She came once, he says. He saw her once, and his cry is now, and ever will be: “Come back again, my poor, lost wife!” Thus he spent the last night in Greeneville while this man, Henry, lived to curse the earth.

The next day he seemed bewildered, and, at times, frantic, as has been described by Harrell and others; at last evening came again, and with it the strangest, most unnatural scene of all. You say there was a plan that night, and method. Yes. I know a reported case where a lunatic, a patient in an asylum, incensed at his keeper, lay in wait for him months with a gun and finally shot him dead. There was method and planning; but, at the same time, he was insane and an inmate of a hospital for the cure of mental diseases. But were Captain Johnson’s plans that night and the next morning the indications of a healthy mind in its normal condition? I will not pause to comment on the little one-horse wagon without springs in which a man in his condition jolted over these rough mountain roads in midnight darkness, driven by a negro he never knew before, and who knew not where he was driving or the object of the mysterious expedition.

Perhaps it will be urged that these were preparations for assassination. But he did not assassinate Major Henry when he could have done so. When he was in the barn Tuesday morning, what had he to do but to remain there until Henry came out on the steps of the store and then shoot him down? If he had gone there with a sane idea of assassination it would have happened in that way. But he reached the vicinity of the “Furnace” sometime in the night. In the morning he went into the barn,

and waited there until ten o'clock. Then he crossed the road in full view of the store, walked slowly to the door, spoke to the hunchbacked boy, Lamb, and entered the store. From that moment he was exposed to instant death.

The office in which Major Henry sat was divided from the main storeroom by a partition, the lower portion, perhaps three feet in height, being of wood, and all above was composed of common panes of thin window glass. Captain Johnson walked a distance of twelve feet by the side of this thin glass partition while Henry was on the other side, and looking at him, with his pistol on his person. The defendant exposed himself as absolutely as if he had met Henry in the road and told him to get ready, that he would give him a chance.

He did give him his chance by walking into that store as he did. A braver deed was never performed. The moment he was inside Henry saw him; and yet he walked the whole of that distance in order to get to the door where he could turn, look him in the eyes, and fire. The defendant could have fired through that glass; he could have shot Henry the moment he entered the door; but he would not. There was no thought of assassination in his suffering mind. When he fired they were standing face to face. Henry died with his pistol half drawn from his pocket. It was far more like a duel than an assassination.

Why should the prosecuting attorney complain that "Johnson gave Henry no chance"? He gave him an equal chance with himself. But in point of justice and right, what chance for his life did Major Henry merit at the hands of this defendant? Did he give Johnson any chance when toiling day and night over his pension books and over soldiers' claims here in East Tennessee? Did he give him any chance then to defend honor, home, peace, purity, love, and hope, and all the other domestic blessings, each one of which is a thousandfold dearer than life itself?

It is true, and it could not be otherwise, that the bereaved husband followed up the adulterer; but he gave him an equal chance to fight for his life at the last hour. Henry professed to be the defendant's friend, his bosom friend, and wrote him touching letters when he was turning his home into a hell upon earth. He followed his friend's wife like a sleuthhound; he followed her to her unde-filed home at Indianapolis. He sought to see her at the hotel, as a preliminary step, but in his friend's house he designed to resume his lecherous conduct of Greeneville.

When the counsel for the State say that Captain Johnson followed Henry, I say he did right. Let me, in return, ask: Why did Henry follow his friend's wife? Why did he desolate his home? Why did he bring himself under the eternal and

unrepealable condemnation of Almighty God as an adulterer? Why did he become a convicted felon, sentenced to death by the written law of Jehovah? Why did he make it right for Captain Johnson to follow and kill him? He might have left a happy home unsullied, and been alive to-day, if he had obeyed the laws of God and man. But he did not. He went on, and died as the fool dieth; and by your verdict you will say that the man who follows your wife shall not complain if you turn and follow him.

What license has a man to follow our loved ones and invade our homes? If he is punished with death, shall his voice come back from the grave whining in the courts because he has not been permitted to remain and pollute other households? As far as my voice can extend, I declare, supported as I am by the word of God and by the laws of civilized lands, that the seducer who falls has nobody to blame but himself. He takes his life in his hands; and if he plays a losing game, good morals and pure society win by his death.

On Monday night, just before starting on his strange and fatal journey, the defendant wrote his bosom friend Condit this touching adieu:

Greeneville, Sept. 22, '84.

MY DEAR FRIEND: It is 11 o'clock at night. I am just starting to the mountains, bleeding at the lungs, and weary, weary of life. I may never again grasp your kind, friendly hand. There is danger among the

gorges where the wild beast hides. The last line I write is to you. God avenge my wrongs! Farewell, my dearest friend, farewell!

E. T. Johnson

Gentlemen, I have sometimes thought, when this thin, pale, wan, ghostlike apparition left Greeneville in the direction of the "Furnace" that Monday night, he was the somnambulist of a horrid dream. That dream was of a once happy home, now desolate and black, as if the fires of hell had scorched it. That dream was of a once happy wife, radiant with beauty, loving, smiling in her welcome home, now dead in her dishonored grave. Perchance it was the dream as he last saw her, robed in white, with a bloodspot on her breast, saying to him, "Eddie, rely on yourself." Again it changed, and it was the dream of one who had taken a fiend to his fireside, had introduced him to his wife as a gentleman, who turned to a serpent and stung him in the heart, and who still lived to hiss and mock at him: "The woman tempted me."

It has seemed to me that all these things and more were in his dream that night, as he jolted along, lying prostrate upon the straw, in the negro's little old board wagon, coughing and bleeding at the lungs, a prey to physical and to mental misery. The night before he had walked and groaned and cried and called; and all this night he jolted on the road in the darkness, and at times talked like a man in his sleep, no more responsible for what he

was doing or was going to do, than the mariner for the course of his ship with rudder broken, compass gone, the North Star blotted out, and an irresistible storm walking the waters of the great deep.

I make this statement in no vein of fancy, but supported by the proof. Shall I array this testimony before you? Who are they who say the defendant's mind was broken down on the one subject of his domestic ruin? Shall we sum them up? At Indianapolis lives a gentleman by the name of Dooley, an experienced and able editorial writer. On this point he says: "He was under a great mental strain."

Mr. Stanton's testimony I will recall to you: "He was not capable of forming a rational judgment on any subject connected with his wife's dishonor and death."

John D. Condit, the best beloved, perhaps, of all, devoted to Captain Johnson, having loaned him thousands upon thousands of dollars, and indorsed for him for many thousands more, was asked: "From your knowledge of him, and from the letters and card made a part of this deposition, what, in your opinion, was the defendant's mental condition in the latter part of September, 1884?" His answer was: "He was undoubtedly insane."

The deposition of Colonel Thomas Hunt has been read to you. He says: "On the subject of his great loss, owing to his abuse and ill treatment

by enemies, and ill health, I think he was morbidly insane."

Hon. A. H. Pettibone, of Greeneville, while not saying in words that he was insane, stated that his excitement was terrible and his emotions beyond his own control; that he was beside himself. Miss Virginia Davis, who testified as to the walking scene of that dismal night, discloses a condition no one can misunderstand. Dr. M. B. Taylor, Dr. J. R. Boyd, Dr. M. M. Alexander, Dr. McAllister — there are, in fact, thirteen persons of respectability and high intelligence, four of them practicing physicians of eminence, and nine others who knew the defendant well, all testifying that he was insane on one point at the time of the homicide.

Are you going to say, or is anybody going to ask you to say, with these thirteen men, four of them leading physicians, swearing to his insanity at that time on the subject of his overwhelming grief, that we have raised no doubt in your minds that he was an entirely sane man? Are you going to say that he was not insane, because Mr. Starnes and Mr. Snapp and perhaps two or three others, all good men, no doubt, but almost total strangers to the defendant, and without the slightest pretensions to educated knowledge of this subject, say they saw nothing unnatural in his conduct immediately after the homicide except, perhaps, that he repeatedly kissed his gun?

I will not discuss such testimony as a contradiction to such proof as we have made. People in a normal condition do not kiss cold steel nor sticks nor stones. In his distorted emotions he invested that gun with a living power and a sentient being for which he was grateful. These few unlearned witnesses for the prosecution, called in rebuttal, think but little of such a startling paroxysm as the highest manifestation of human love bestowed on an inanimate object, and pronounce the defendant an exceedingly cool man just after he had avenged his home and fulfilled the law of God. He may possibly have been. If so, however, it was because he believed he was upheld by a higher power than earth affords.

But, after all, this is a practical question; and whom will you accept as competent to guide you to a correct verdict on the subject of mental disease? You must find beyond a reasonable doubt that the defendant was without mental disease and under self-control as to Major Henry, or you must acquit him. If we have put in enough proof to raise a doubt in your minds whether he was sane or not, not whether he could distinguish between right and wrong, but whether he could control himself and his emotions with reference to the deceased; whether he thought he was an instrument in the hands of God for punishment — if we have raised a doubt in your minds on these points, he is entitled to an acquittal, and the court will so instruct you.

Gentlemen, when you render your verdict, as you soon will, it will ring joyously through the world. I have not a doubt what it will be. For the last two hundred years, since the dissolute and debauched reign of Charles the Second of England, no man, free-born and invested with all the rights of citizenship, has ever been punished in an English-speaking nation for slaying, in good faith, the seducer of his wife, daughter, or sister.

After the Restoration, in 1660, and during the reign which followed, it is a matter of history that female virtue was a mockery and a jest. The wife, the sister and the daughter were open to the approach and solicitation of the adulterer and the seducer. A carnival of immorality, a banquet of lust succeeded, during which the injured husband was the sport of sarcasm, the jest of the clown, while the successful seducer and the lady of licentious pleasure constituted the hero and the heroine of public and private life, of the parlor, the ball-room and the stage.

The courts followed their king and the fashion he made for the times. If a manly husband slew a privileged and presumptuous scoundrel for dishonoring the bed made sacred by marriage vows he was punished. But since that degraded, bawdy reign, both in England and in America, the husband who fights an honest battle for the purity of home has been sheltered in safety, not only by the common law of England, as molded by custom, but by

the common law of mankind, as written in the verdicts of juries, and derived from the inspiration of the Most High.

Home is of divine sanction and origin, and he who kills the destroyer of a home has an especial protection, both human and divine. There is not a verdict of an American jury, in our one hundred years as an organized people, wherein or whereby a husband who, in good faith, slew the man who had defiled his wife, has been punished. The father who slays the seducer of his daughter has the same protection. The brother who kills the seducer of his sister can never be punished.

The voice that comes down from the ancient days of Israel is ringing now just as freshly over the world as when Jacob rebuked his hot-headed sons, Simeon and Levi, for slaying the abductor and seducer of their sister, Dinah. Jacob was old, and in his fear he said: "Ye have troubled me, to make me stink among the inhabitants of the land, among the Canaanites and the Perizzites; and I, being few in number, they shall gather themselves together against me and slay me; and I shall be destroyed, I and my house."

Notwithstanding, however, the alarming picture he drew before his sons, fresh and bloody from the slaughter of the seducer of their sister, they answered, doubtless with their hands on their swords: "Shall he deal with our sister as with a harlot?"

Then, as if God was pleased with what had hap-

pened, Jacob journeyed from that country in safety to another, and the fear of God fell on all his warlike enemies; not one lifted his finger against him or his. The sons of Jacob smote the adulterer, the seducer of their sister and the daughter of their aged father, and then went in safety, God's power and influence falling upon the surrounding troops, all ready for assault, and holding them while Israel went their way.

"Shall he deal with our sister as with a harlot?" How just and powerful comes that expression! It has survived the chasm of the ages, and stirs your hearts this moment as it did the hearts of men in the remote and illimitable past. It embodies an eternal truth, that the home shall be pure and protected; it contains the primary and vital element of civilization; it was the keynote utterance in behalf of human happiness, elevation, culture, refinement and Christian purification.

It was this same old cry, with the antiquity and authority of God upon it, on which Captain Johnson spoke and acted. The burning, throbbing, incessant, unappeasable cry of his heart was, "Shall he treat my wife in life and in death as a harlot?"

I have known the father to bathe the upturned face of his daughter, still in death, with his tears, plant evergreens over her grave, and then call her betrayer and murderer to deadly account with the stern and awful question: "Shall he deal with my daughter as with a harlot?"

This question comes down from the days when Jehovah dwelt face to face with His people; when He declared the adulterer should die; that the sentence was eternal, and there was no reversal. The bloodstained earth, from the plains of Judea, where Jacob fed his cattle, down to the county of Greene, in East Tennessee, all speaks the same voice; and God is here, the same yesterday, to-day and forever.

You can render but one of two verdicts in this case. If Captain Johnson is guilty of anything, he is guilty of murder in the first degree, and should suffer death. If you should reach that conclusion, I pray you, when you go home, tell your wives and children, as they cluster around you in love and happiness and ask you about the great trial, what was said and what was done; what the truth was, and what it was all about — tell them this defendant was feeble and sick, hardly able to appear in court, that his wife, whom he loved with tender, deep devotion, had been ruined and defiled by his pretended friend; his whole life had been laid waste, his idolized son put to shame; and in all this he was without fault, and had done no unmanly thing; yet you have decided he shall die on the gallows. Tell them all, and they will be filled with wonder and horror at such a verdict.

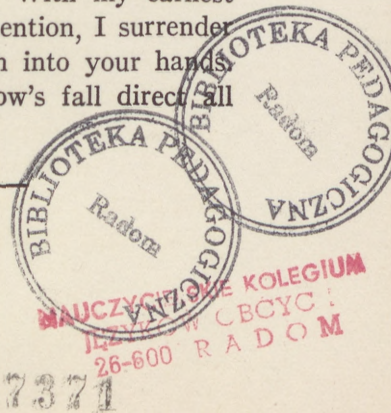
But I turn away from such a hideous thought and picture. There is no such fate in store in your minds and hearts for this manly man, this kind

husband, this loving father, this good citizen, with a life record free from stain or blemish. Soon you will perform a far different duty. You will not render this fair-faced boy fatherless as well as motherless. In one of his letters to his wife the defendant said: "I can not forget that you are the mother of a hero and an angel." One boy on earth and one in heaven. The hero is here in court looking on with rigid lines in his young face, sustaining his feeble father as he has from the beginning, and waiting to lead him forth once more to liberty and to a life, perhaps, beyond the region or the reach of the whips and scorns by which he has been so cruelly scourged.

How often a father pleads for a son. The scene is here reversed; the son of only sixteen pleads for his father of only forty-three. They are both young, and they are all the world to each other. By your verdict they will be reunited and walk the world together.

My task is done. I drop this sorrowful theme, knowing by the universal law of the human heart that there is light just ahead. With my earnest thanks for your interest and attention, I surrender this great issue of life or death into your hands. May He who marks the sparrow's fall direct all your thoughts aright.

The defendant was acquitted.



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