

EVIDENCE AS TO THAW'S INSANITY RULED OUT

Efforts to Prove That Relatives Died in Asylum Rejected by Judge

Pittsburg Alienist, However, Swears Prisoner Was Insane When He Killed Stanford White, But Jerome G.ves Him a Bad Three Hours' Cross-examination - Family Doctor Swears Defendant had St. Vitus' Dance When a Child.

New York, Feb. 5.—The task of proving to a jury that Harry Thaw was insane through heredity and mental stress—when he shot and killed Stanford White, was taken up today by the defense in this famous case, but when adjournment was announced later in the afternoon it was the general opinion in the court room that but little progress had been made.

Thaw's attorneys endeavored in vain to place before the jury evidence tending, it was said, to prove a strain of insanity in the collateral branches of the defendant's family, but they were blocked at every point by District Attorney Jerome, whose objections were upheld by the rulings of Justice Fitzgerald. The defense did, however, get before the twelve men in the box the testimony of an expert that, in his opinion, Harry Thaw was "suffering from insanity" on the night of the tragedy.

Mr. Jerome undertook to tear down the alienist, Dr. Wiley, of Pittsburg, and for three hours put him through a cross-examination as severe as was ever heard in a New York court. The prosecutor was relentless and before he had finished Dr. Wiley protesting declared:

"I didn't come here as an expert. I came as a witness to a fact and I have been converted into an expert without being prepared for it."

Jerome Loaded With Technical Questions.

The district attorney astonished everyone by his intimate knowledge of medicine, and his technical phrases, demonstrating the care with which he had prepared himself to meet the very defense Thaw's counsel have entered in his behalf.

Mr. Jerome searched inquired into Dr. Wiley's record as a physician, and as an expert on insanity. He hurled whole volleys of technical questions at the witness, who at times sat mute and at other times declared he could not answer, or gave evasive replies. Often he brought upon himself sharp warnings from the district attorney to make a reply and not an argument.

Dr. Wiley testified that he predicted his opinion as to Thaw's insanity on the night of the tragedy, as described to him in hypothetical questions propounded by the defense and by an incident which he witnessed on a Pittsburg street car during the summer of 1905. Thaw, said the doctor, acted irrationally on the car, coming in suddenly and jerking up one of the window blinds, slaming it down and then lifting it again, while engaged in a wordy war with the conductor.

"Have you ever examined this defendant with any of the recognized tests of insanity?" asked Mr. Jerome.

"No," replied the witness.

"Have you ever conversed with him?"

"No."

Dr. Wiley Baffled.

The district attorney then drew from the alienist the opinion that Thaw's acts on the Madison Square Roof Garden, when he killed Stanford White, were not acts of insanity when taken singly, but constituted evidence of insanity when considered collectively. At times Dr. Wiley seemed entirely baffled by the questions. He hesitated at each "and," before he could answer. Mr. Jerome had framed another question replete with impressive sounding technical terms of medicine and apparently offering a problem no less difficult than the previous ones.

The witness admitted that many of the tests which the district attorney referred in discussing insanity were unknown to him, and when he was asked to quote from any accepted work on insanity, declared he could not give the exact language from any book.

Mr. Jerome's well of knowledge, however, seemed never to run dry. He carried his cross-examination through practically the entire morning session, and for an hour and twenty minutes after luncheon continued to ply the alienist with all manner of questions. It was necessary for the ballistics witness to rap down the outskirts of laughter.

Thaw's counsel sat silent and without protest as Mr. Jerome grilled the first witness for the defense. Thaw himself seemed to take but little interest in the cross-examination at the outset, but later began to take notes and was often in earnest conversation with those of his counsel who sat nearest him. At times Thaw could not altogether suppress the suggestion of a grin at the keenness of some of Mr. Jerome's questions for the doctor's ordeal to end. His attorneys appeared a bit puzzled at first, but evidently determined to give the district attorney the widest liberty.

Jerome Blocks Insanity Evidence.

It was at the close of Mr. Jerome's cross-examination of Dr. Wiley that the attempt was made to introduce testimony tending to show the strain of insanity said to have existed in certain branches of the Thaw family. Among the witnesses called to the stand was Albert Lee Thaw, of Richmond, who said that his father and Harry Thaw's father were first cousins. The defense stated its purpose to draw from the witness the fact that his father died in an asylum for the insane, when Mr. Jerome objected. He declared that the relationship of both the witness and his father was too far removed from the defendant to be competent.

"And the law," he added, "is not satisfied that a man is insane merely because he dies in an asylum or a retreat for persons suffering from mental disorders. The fact that a man dies in an institution, such as that conducted by Dr. Wiley, the eminent specialist we had upon the stand today, for instance, is not proof that he was insane. There must be competent testimony to the fact."

Justice Fitzgerald upheld this view of the matter, saying, however, that his ruling was subject to revision if the attorneys for the defense would cite authorities on the subject. Mr. Gleason, who alone conducted the case for Thaw today, did cite some cases, but promised to have more authorities in court tomorrow.

The defense next introduced as a witness Benjamin Boman, who testified that in January, 1904, he had a conversation with the defendant. He was about to tell what the conversation was when Mr. Jerome interrupted, declaring a conversation so far back was not relevant or material. Justice Fitzgerald again called upon Thaw's attorneys for citations of authorities covering the introduction of testimony of the character proposed.

"We did not expect to reach this witness today," explained Mr. Gleason, "and I have not my authorities here."

Justice Fitzgerald sustained Mr. Jerome's objection and the witness stepped aside.

Thaw Had St. Vitus' Dance.

Dr. J. C. Bingham, of Pittsburg, who has been a family physician of the Thaw's for thirty years, took the stand and testified that he had known Harry Thaw ever since his infancy. He had treated him once for St. Vitus' dance. He seemed to be a lad of highly nervous temperament and slept badly at night, said the witness.

Mr. Jerome's Cross-examination was Brief.

"How old was the defendant when he had St. Vitus' dance?" he asked.

"Seven."

"That is all, doctor."

Dr. John F. Deemar, of Kittanning (Pa.), the family physician of the Copleys, Mrs. William Thaw, the prisoner's mother, having been a Miss Copley, was the last witness of the day. He was called to testify as to the mental condition of John Rose, a cousin of Harry Thaw, when Mr. Jerome objected.

Justice Fitzgerald held that until the defense's authorities on the introduction of testimony as to collateral insanity were presented, he thought it best to rule out all such testimony. Mr. Gleason again protested in vain. It was at this point that the adjournment until tomorrow was taken.

Dr. Wiley.

Dr. C. C. Wiley of Pittsburg, the Thaw family physician, was the first witness for the defense.

Dr. Wiley is connected with the Dismont Insane Asylum. He was asked to state his recollection of an incident in 1895, in which Harry K. Thaw was concerned.

"In the summer of 1905," said the witness, "I was a passenger on a street car of the Fifth Avenue line in Pittsburg, when Harry Thaw came in. Without any apparent reason Thaw rushed for one of the blinds to a window, drew up the blind, slammed it down again and then drew it up once more. He had a quarrel with the conductor."

"What was Thaw's manner?"

"He was defiant, vague and his eyes flashed from right to left in this way" (indicating).

"As an expert and from your personal observation, can you say whether his actions were rational or not?"

"Irrational."

Mr. Gleason formed a hypothetical question in which he outlined Thaw's acts of killing Stanford White and coupled with it the interrogation as to whether the witness could express an opinion of such an act committed by the person he saw in the Pittsburg street car.

"I can," said Dr. Wiley.

"Will you express that opinion?"

"I believe that that man—"

District Attorney Jerome objected. "You must not state a belief," said Mr. Jerome, "that is not evidence. You must give an opinion."

"My opinion is that the man who committed the act described was suffering from insanity."

The witness was asked to define hereditary insanity, which he did, but when questioned by Mr. Gleason as to the influence of hereditary insanity, an objection by Mr. Jerome was sustained.

Cross-examined by Mr. Jerome, Dr. Wiley said that in hereditary insanity the common blood flows through brothers and therefore a cousin, the son of an uncle of the defendant, might follow the same hereditary influence.

"Are you acquainted with the form of insanity which the law of this state defines as an excuse for crime?" asked Mr. Jerome.

"Not entirely."

"Then your opinion of the hypothetical question you have answered was given as a scientific and medical man, and you had in mind the various forms of mental aberration which scientific men meet together and discuss?"

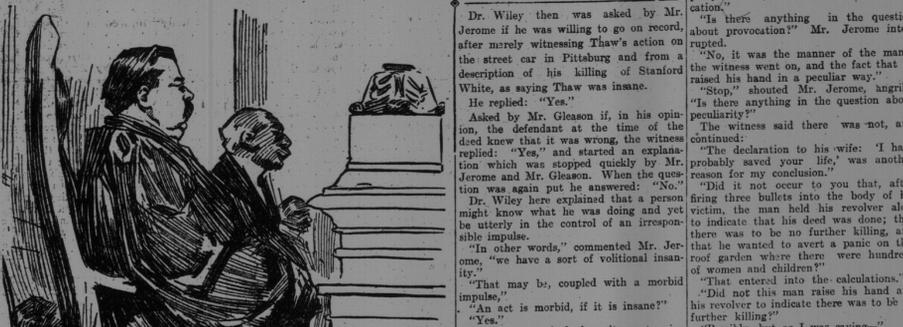
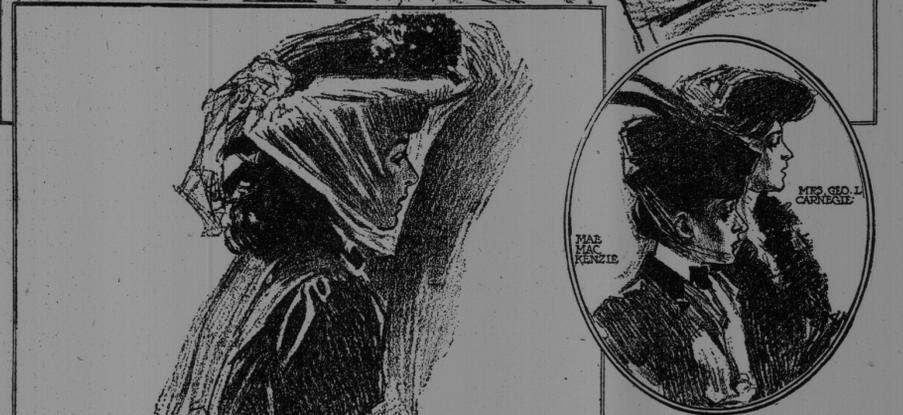
"Yes, and from my own application of the medical knowledge on the subject."

Mr. Jerome then asked the witness if he really considered himself an expert.

"I feel I have had the experience."

Harry Thaw's Array of Counsel, His Wife and Sister and Former's Friend

JOHN D. GLEASON C.W. HARTRIDGE D. M. DELMAS DANIEL O'REILLY HENRY MCFIE A. EMMETT FEARNEY



Dr. Wiley then was asked by Mr. Jerome if he was willing to go on record, after merely witnessing Thaw's action on the street car in Pittsburg and from a description of his killing of Stanford White, as saying Thaw was insane.

He replied: "Yes."

Asked by Mr. Gleason if in his opinion the defendant at the time of the deed knew that it was wrong, the witness replied: "Yes," and started an explanation which was stopped quickly by Mr. Jerome and Mr. Gleason. When the question was again put he answered: "No."

Dr. Wiley here explained that a person might know what he was doing and yet be utterly in the control of an irresponsible impulse.

"In other words," commented Mr. Jerome, "we have a sort of volitional insanity."

"That may be, coupled with a morbid impulse."

"An act is morbid, if it is insane?"

"Yes."

Mr. Jerome asked the witness to give the substance of the hypothetical question on which he based "so important an opinion in this case."

In repeating the question the witness inadvertently admitted that he had taken into consideration his knowledge of the case outside of the question.

"Then you did not base your opinion entirely upon the question asked?"

"Not entirely; I based it on what I saw in Pittsburg and what I know of the case."

Mr. Jerome then moved that the entire question and answer be stricken out, and the motion was granted.

Mr. Gleason then reformed the question and asked: "What is your opinion, based on the form of insanity as laid down by the law of this state?"

"The act was one of an insane man."

Mr. Jerome then led the witness through a long series of questions dealing with all manner of subjects, among them mythology, and asking his opinion as an expert on most of them. The district attorney's purpose to break, as far as possible, the doctor's influence with the jury, was apparent. Finally he said:

his body—do you think that was an act of insanity?"

"Yes."

"Then the killing of any person in a jealous rage is per se an act of insanity?"

"Yes."

Mr. Jerome took the witness over every incident of the night of the tragedy and asked him if, in each case, he thought Thaw's acts were those of an insane man. The witness finally summed up his answers as follows:

"Taken alone they do not impress me so; but taken together they do."

Replying to a question, Dr. Wiley said the occurrences of the night of the tragedy had not wholly convinced him that Thaw was insane.

Asked if his opinion was based entirely on the street car incident in Pittsburg and the occurrence on Madison Square Roof Garden, Dr. Wiley said it was.

Mr. Jerome led the witness through a chain of questions dealing with pathology, which at times seemed to baffle the witness, who often hesitated and evaded direct answers.

Thaw's Lawyers Disagree.

Scarcely had the court before whom Harry K. Thaw is being tried for the murder of Stanford White adjourned late today, when there was a conference of the defendant's counsel and it became known that certain of the attorneys were not well pleased with the day's developments. Delphin M. Delmas, upon leaving the court room, declared flatly that he was dissatisfied with the proceedings and said that he was surprised that the conduct of the defense for the day had been entrusted to John B. Gleason rather than to himself.

"I expected to go on and conduct the case today," Mr. Delmas added. "I was surprised that Mr. Gleason should have done it."

It had been rumored in the court room that Thaw was pleased with Mr. Gleason's address to the jury on Monday and directed that the jury on Monday should take charge of the case today.

Thaw's attorneys were seated at Attorney McPike's office well into the evening and when the conference broke up nothing definite as to what transpired was made public.

When Mr. Delmas was asked what had been done at the conference, the Californian replied:

"I can say nothing at the present time."

Mr. O'Reilly's reply was: "There was a conference, that's all. Nothing of importance happened."

Messrs. Hartridge and Gleason refused to discuss the matter.

After the lawyers had left, Mr. McPike remained for some time in his office. He said:

"The lawyers for the defense held a conference at which the plans were gone over. There was really nothing of importance done."

Mr. McPike was then asked as to the rumor that unless Mr. Delmas was given entire charge of the defense he would withdraw was correct.

"As to that rumor I can only say that Mr. O'Reilly's reply was: 'There was a conference, that's all. Nothing of importance happened.'"

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After the trial had adjourned Lawyer McPike visited Thaw in the Tombs. He talked with the prisoner for about fifteen minutes and when he left he refused to make any statement.

Later a note was sent to the prisoner asking him if the report that his lawyers had disagreed was true and his reply was: "No, there is no truth in the report. It is all nonsense."

Thaw did not appear worn from his tedious day in court. If he was disappointed in the proceedings he did not give evidence of the fact. He was taken from the court room by a deputy sheriff and when he reached the Tombs asked permission to walk up and down the prison yard for a few minutes.

The request was granted and after five minutes tramp in the cold Thaw announced that he was satisfied and felt comforted by the brisk walk. He then mounted the prison steps, three at a jump.

Asked what he thought of the day in court he replied that the day had been "apparently satisfactory."

It was said last night that at the conference five of the defendant's counsel informed Mr. Gleason that, unless he desisted from conducting Thaw's case individually and irrespective of their wishes, they should withdraw from the court room at the opening of the session tomorrow morning.

When Mr. Gleason heard the ultimatum of his fellow counsellors repeated, he declared again, it was stated, that the wishes of their client were paramount to his and, he supposed, to the wishes of the others. Under these conditions the council broke up.

Strong Evidence for Thaw.

New York, Feb. 6.—The defense of Harry K. Thaw, under the direction of Attorney Delphin M. Delmas, of California, began to assume definite shape today and when an adjournment was taken testimony had been placed before the jury to the effect that Stanford White had been heard to say to him and fired three bullets into

Emotional Attitudes of Harry Thaw, Now on Trial for His Life



Anxiously scanning triemen as pass him on way to the stand for examination.



Apparently in reverie, but actually listening as jury candidates answer as to eligibility.



Glancing ever and again toward the women of the family who he tacitly consults before accepting testimony.