

INSANITY THE PLEA OF HARRY K. THAW

CONTINUED FROM FIRST PAGE.

were offered in evidence. Several witnesses testified that Thaw said before White's body was cold:

Evelyn Thaw Takes Stand Today.
The principal witness to-morrow is expected to be Evelyn Nesbit Thaw herself. She will tell of her relations with White and the circumstances that led her husband to shoot the architect.

For half an hour before Justice Fitzgerald took his seat on the bench this morning there was a probability that the district attorney would ask for the exclusion of at least one, and possibly two members of the jury. There is no doubt whatever that the district attorney's office was not wholly satisfied with the records of these two men so far as they might affect their abilities as jurors. There was a hurried conference over them there, but at the end of it Mr. Jerome had decided to go on with the case without any effort to alter the composition of the jury.

It was reported that he felt he had not sufficient circumstantial information to justify him in going before Justice Fitzgerald with a request to excuse the two jurors.

The opening of court was delayed twenty minutes because Justice Newburger was opening the February term of his court in the room used for the Thaw trial. Before Justice Fitzgerald took his seat, the Thaw family party had arrived. The Countess of Yarmouth was the only one absent whose face has become familiar at the previous sessions of the trial. It was stated that she had a cold.

Thaw's Mother Has Good Seat.
Harry Thaw's mother, gray-haired and self-contained as usual, sat in an aisle seat, her daughter, Mrs. George L. Carnegie, sitting between her and Evelyn Nesbit Thaw, who, as usual, was accompanied by the never-failing Mary McKeen. In front of the Countess of Yarmouth and Edward Thaw. The wife of Harry Thaw was gowned in the blue tailor-made suit that she has worn since the trial opened, and, as before, she wore a heavy veil through which her pale face and pretty, pallid features were dimly seen.

When Clerk Penny announced that, by order of the court, all persons who were to appear as witnesses in the trial would be excluded from the courtroom, the Countess of Yarmouth, Mrs. William Thaw, and Mary McKeen were the first official information that all of these three women would be seen upon the witness stand. The exceptions to this rule of exclusion were the various physicians and other expert witnesses employed on both sides.

These included Drs. Mabon, MacDonald, and Austin Flint, of the prosecution. These three, however, were not called to testify that Thaw was sane when he shot White, occupied seats inside the rail. Dr. Britton D. Evans, superintendent of the Morris Plains Insane Asylum, one of the defense witnesses, arrived early in the afternoon and sat with the counsel. Dr. Dana and Dr. Allan McLane Hamilton are also expected to appear for the defense.

Handwriting Expert There.
Before the case for the prosecution was all in, David N. Carvalho, the handwriting expert who has testified in so many murder trials, appeared. He, too, consulted with Thaw's lawyers and then sat down near them. It is supposed that he will be called upon to prove the authenticity of certain letters and notes alleged to have been sent to Evelyn Nesbit Thaw by Stanford White.

The courtroom as a whole presented a spectacle most unusual in the course of a murder trial of such importance. The spacious apartment was not half filled. The exceptions to the rule of exclusion, absolutely nobody connected with the case before the court and writers for the newspapers.

From the very first Justice Fitzgerald was taken over the prosecution to prevent the case from falling into the hands of a hipodrome or a public show, and the knowledge that admission could not be had discouraged throngs of the curious from besieging the Criminal Courts building. A strong detachment of police was on hand to picket the courtroom, and nobody got by them who could not show cause.

No Dramatic Features.
The proceedings themselves would probably have disappointed the curious if they had succeeded in getting in. There was little of the dramatic and no melodrama at all. Everything went on in a straightforward, businesslike manner that might well have obtained in a hearing before the Interstate Commerce Commission.

Not that there were not moments of tenseness. There were. But they were tense because of the issues of life and death that they involved, not because of anything theatrical in the method or the manner of the actors in the scene.

Such a moment arrived when, after Assistant District Attorney Garvan had distinctly, briefly, formally announced Harry Thaw of the "deliberate, malicious, and premeditated murder" of Stanford White, he announced the name of the prosecutor, and Clerk Penny called "Lawrence White, stand up."

There was a hush that lasted several seconds, while the muffled voice of a court officer was heard outside in the corridor repeating the name. Then the door opened and Lawrence White, a slender lad entered and made his way to the witness stand. It was the son of the man whom Harry Thaw slew. He is a sophomore in Harvard University, and told the court that he was nineteen years old.

Defendant Watches Young White.
Harry Thaw, sitting with his face directly toward the boy whom he had made fatherless, gave one swift glance in the lad's direction. Then his lips twitched, his eyes fell, and he dropped his forehead into his hands. He did not lift his eyes from the table again while Stanford White's son sat in the witness chair.

For the first time during the trial, Thaw seemed nervous and uneasy. He, too, had been standing at the rear of the seats and had seen Thaw enter.

Thaw Surveilled Audience.
"He stopped in front of me for a short time and looked around over the audience for a while."
"Then he and you both moved?"
"When did you see him again?"
"After the second act. He came down the aisle and I watched him from the start, for my friend had called my attention to him. Thaw came down the aisle, turned when he got opposite White's table and fired three shots."
The witness showed on the diagram Thaw's course.

who cross-examined all the witnesses and decided upon every move made by Thaw. For the middle distance, heretofore occupied by Daniel O'Reilly and Mr. McPhee, while Mr. Gleason's work was confined to the opening address.

Justice Fitzgerald opened the court with a warning against anybody making unnecessary noise, and Mr. Garvan thereupon plunged into his brief statement of the prosecution's case.

"The defendant was already there," said Mr. Garvan "with his wife, Truxtun Beale, and Thomas McCaleb. After a while the defendant suggested to the party that they leave. He escorted them to the elevator. Then he turned, and, walking up to Stanford White, shot him, the bullet entering the left eye. As if not content with his work, he fired again, and turned away. Then he wheeled again and shot him a third time. White fell to the floor and died there."

Mr. Garvan recounted how Mrs. Thaw, who had not left the roof garden, threw her arms around her husband after his arrest. He told of Thaw's arrest and of his indictment.

"We contend that it was a cruel, deliberate, premeditated, malicious taking of life, and we ask for a verdict of guilty of murder in the first degree," said what was all of the presentation of the people's case in the address. Mr. Garvan had spoken fifteen minutes.

White's Son Tells Story.
When Lawrence White took the stand, he was asked:

"Where were you on Sunday, June 24?"
"At my home at St. James, Long Island."
He told of meeting his father at the house at 121 East Twenty-first street, with a friend, Leroy King.

"Did you go to dinner?"
"Yes, at the Cafe Martin."
"With your father and friend?"
"Yes."
"Had you bought theater tickets?"
"Yes; to the New Amsterdam Roof Garden. I did not know my father was to be with us."
"Did you talk to your father at dinner?"
"I did."
"What time did you leave Martin's?"
"About 25 minutes to 9."
"How did you go there?"
"In my father's hansom."
"He left you at the door?"
"Yes."
Young White told of going to the Harvard Club, the Grand Central Station, and home, to find reporters waiting at his door. From there, he went to the house at 121 East Twenty-first street, where his father was dead. He did not see his father's body, however, until two days later.

This concluded his examination. The defense did not ask any cross-questions, and the boy was allowed to go. He took a seat near the side door of the courtroom, and stayed for several minutes.

White Alone at Table.
Warner Faxton, the Madison Square Garden engineer, was the next witness. He told of the arrangement of the garden and the elevators.

"Did you see Stanford White that night?"
"Yes, he came in at 9:30, and sat at a table about twenty feet from the Twenty-third street entrance."
"Was he alone?"
"Yes."
"When did you first see the defendant?"
"About an hour and a half afterward. He was leaning over Mr. White's table."
"In front of Mr. White?"
"No."
"Tell us what happened."
"I heard a shot, and saw Thaw standing behind him. Mr. White was leaning with one elbow on the table and the other thrown carelessly over the back of the chair. Then Thaw fired two more shots. Then he turned the revolver down, holding it by the barrel and walked slowly away. As soon as I had collected myself, I followed him. Fireman Brudi had caught him, and I went and stood beside him. Thaw was a party of five, and Thaw said, 'I've got to go down the elevator anyway; can't you take me now; so I won't bother these people.'"

"He broke the pistol and held it up in the air."
"Broke it, you say?"
"Yes."
"Where was he recalled."
"Did the defendant's wife say anything to him?"
"Yes; on the ground floor of the garden she said: 'Harry, why did you do it?' and he said: 'It will be all right.'"
"Was he not cross-examined, and left the stand?"
"That closes the people's case," said Mr. Garvan. The case against Harry Thaw had taken just two hours to unfold itself.

It was then 12:45 o'clock, and the court took a recess until 2 p. m.

Thaw's Lunch in Courtroom.
As usual the members of the Thaw family would lunch in the little room next to the courtroom. Mrs. William Thaw wasn't there, having gone home soon after the witnesses were excluded from the courtroom. There was no great crowd fighting to get into the courtroom, although it had become generally known that the prosecution had closed its case and the defense was ready to outline its case.

Just before court reconvened Mrs. Harry Thaw sat in his chair, hurried through the courtroom to see her husband, who had been brought over from the Tombs. She spoke to him for a second, and waited in the room with the other witnesses for the defense all the afternoon.

The first report was that Lawyer Gleason would consume four hours in making the opening speech. There were prayers that he would take that long, but it was hoped that in addition to giving the jury a lecture on insanity, and its various causes, he intended to tell very clearly just what the defense would be. He made good on the latter part, but when he began going on insanity District Attorney Jerome, in a very gentle speech, said that Mr. Gleason was taking too much latitude, and Justice Fitzgerald agreed with Mr. Jerome. The result was that Mr. Gleason cut off a good slice of that part of his speech.

"Never before in the history of any capital case," said Mr. Gleason, in his opening address, "has the amount and the extent of ingenuity been expended on theories with reference to the defense of this case as here. It is important, therefore, gentlemen, at the outset, that your minds should be absolutely disburdened of any idea or impression that this defendant here can come before you and defend himself against this homicide by anything except by the law."

Defense Will Be on Laws.
The defense, then, gentlemen, rests entirely upon the examination and the laws of the Imperial State of New York. Upon the laws we alone rely, and we depend entirely on our thoughts and ask you to dismiss entirely from your contemplation that this defendant or his lawyers claim the protection of any other law, or higher than the laws of the State of New York." Then he said that one of the laws of the State was on trial, because only a short time ago a man with an opinion on the guilt or innocence of a defendant

slapped his hands together quickly three times. "Then he held up the gun with the barrel down for some seconds," continued the witness. "And I went back toward the rear of the room fearing a panic."

Cross-examination by Mr. Delmas brought out the fact that Thaw had not stood with his arms spread far apart, as had been previously testified.

Paul Brudi, the fireman who held Thaw, was next on the stand. He was about twenty feet from White, and saw Thaw approach him.

"He came up to the table where White was sitting and then the first shot was fired."
"Did you see it fired?"
"Yes."
"How many shots were fired?"
"I recollect two."
"Which way was Mr. White sitting?"
"I could not see him very well."
"And which way was Thaw standing?"
"Facing toward Madison avenue."
"After the shots were fired, what did you do?"

"I went up and grabbed Thaw and took him to the elevator."
"He Ruined My Wife," He Said.
"Yes, he said 'He ruined my wife.'"
"Did he say anything else?"
"Not that I know of."
On cross-examination Mr. Delmas brought out that Brudi had been to the rear and right of White when the shots were fired.

"Describe what you did after the first shot."
"I went up behind him slowly, so as not to start a panic, and grabbed his right hand, which held the pistol up in the air. He gave it to me without any trouble and looked at me over his shoulder with a staring eye. He said 'My wife, my wife, I led him to the elevator.'"
"Describe Thaw's condition, as you remember it."
"He looked like a man scared."
"I don't want that. Was his face pale or red?"
"It was very pale and his eyes staring."
Edward H. Convey, the roof manager of the garden, was called to identify the revolver which he had given to Policeman Debs. It was a black, short buldog affair, and exhibited with it were six cartridges, three of which had been fired.

After him came Anthony Debs, the policeman who arrested Thaw. He met him, he said, at the bottom of the elevator, and put him under arrest.

"Did he say anything to you?"
"Yes, I did. 'Did you kill Stanford White, and he said 'Because he ruined my wife, or life, I couldn't catch him. He asked me where we were going and I said 'To the station.'"
"He said 'All right, that was all.'"
Debs was not cross-examined.

Coroner's Physician Testifies.
Coroner's Physician Timothy Lehane, who performed the autopsy on Stanford White's body, was the next witness.

"Did you find any pistol-shot wounds?"
"Yes."
"What were they?"
"The physician described them at great length and in complicated terms. He testified that one bullet had entered beside the left eye and had entered the brain, another had entered the right side of the face near the cheekbone, and the third had entered and passed through the right arm."

The bullets were produced and placed in evidence. Mr. Delmas took them out of their envelopes and put them on the table. They were flattened into an irregular shape and looked very like pieces of compressed. Most of the time he held his face in his hands. He got cold, apparently, for he got up and drew his coat over his shoulders, then he let his head fall on his hands. His face was lost the look of eagerness which it has shown during most of the trial, and altogether it appeared that something had happened to make Thaw very dejected. Mr. Gleason, however, looked on with a calm and collected air.

"Gentlemen, when you have gone into the jury box, apply the test to the acts of this defendant as testified to by the witnesses, and I know you will say, gentlemen, that that act may have been an act of insanity, but could not have been an act of crime."
His Test of Sorrow Also.
"I have another test, the test of sorrow. For we will prove to you the grief and sorrow of the defendant, which acted upon his mind before it gave way and culminated in this fatal act. There is the verse of that great German poet:

"Who never his head in sorrow sets,
Had seen his bed of sin,
He knows not you, ye heavenly powers,
Gentlemen, I have eaten my bread in sorrow; I have sat through the nights, weeping, and I know, and you know, that from experiences of sorrow, insanity may come, but never crime."
It did not mean, Mr. Gleason said, that because a man was insane he was insane on all things. He told of a woman he knew who killed her three children, and when she was found, every recollection of her was gone. "Every body said she was insane because of the extraordinary nature of her act, but he added, in an act in a high degree irrational, the suggestion of insanity was blown to the winds of heaven."
"We will introduce to you," said Mr. Gleason, "in detail, the evidence of these facts that there was hereditary insanity in this man's family, so that if he were subjected to a course of treatment, the hypothesis of insanity would become a reasonable one, in fact the only one you could take."

Insanity Knows No Wrong.
"An insane man may know, in the abstract, what is right and what is wrong," Mr. Gleason said, "and he might have an abhorrence of murder, yet the insane impulse of the mind would separate the right and the conscience of the general wrong. In addition the freedom of the will is destroyed, and because the conscience is falsified by delusions and hallucinations."
"A man acting under the influence of a delusion that it was an act of Providence to kill Stanford White is a man you can readily see was not a sane man, even by the standards of his own acts. So the law requires that conditions and requires the people to prove that the act was the act of a sane man beyond a reasonable doubt. For, if not, the act was not the act of a free will, and he is no more responsible for it than if, by superior force, should take the arm of one of you jurors and place in your hand a knife and punch it to the heart of a fellow-juror. If the man by reason of his insanity is compelled to do this act, the law says he is not responsible for it."

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Mr. Gleason then quoted the law on insanity and gave the definitions of murder by eminent judges and legal authorities. There was a difference, he said, between what is called legal insanity and medical insanity. He added: "The physicians have an idea that a man is something like a glass of water in this respect, that when you pour ink into it, just as if I should pour some ink into that glass of water (there was a glass in front of him), every particle of water would be affected and tinged by the dark fluid put into it. Therefore, the doctrine of these alienists is, that if a man is insane, he cannot know right from wrong. In other words, they go beyond the legal definition. They say that insanity, being a distress of the mind and operating in the manner I speak of, it is not possible for an insane man to know right from wrong. He is not responsible for his acts, and he does not know the difference between right and wrong in any instance."

Dr. Austin Flint and Dr. Charles MacDonald, who in the examination directed the jury, smiled at Mr. Gleason's reference to the ink and the glass of water. Mr. Gleason said that a man is something like a glass of water in this respect, that when you pour ink into it, just as if I should pour some ink into that glass of water (there was a glass in front of him), every particle of water would be affected and tinged by the dark fluid put into it. Therefore, the doctrine of these alienists is, that if a man is insane, he cannot know right from wrong. In other words, they go beyond the legal definition. They say that insanity, being a distress of the mind and operating in the manner I speak of, it is not possible for an insane man to know right from wrong. He is not responsible for his acts, and he does not know the difference between right and wrong in any instance."

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could not enter the jury box. He told the jurors that they had sworn that they would put aside any opinion they had had, and most of them had opinions on the case when examined—and he knew that he had intellectual power enough to do it. On this subject he quoted these lines from the work of John Hay:

"Why should you worry in thinking whom you should marry?"
"Choose whom you will, you will find you have married some other fellow."
"Gentlemen," Mr. Gleason continued, "in the case here. Your previous opinions have been formed with reference to a different state of facts, with reference to the idea of emotional insanity upon a single point with reference to things of that kind, all of which defenses will be rejected by this defendant as he stands here before you."

Defense Is 'Not Guilty.'
"What, then, is the defense that will be introduced in this case? The defense will rely upon all defenses which we may be able to prove, under the plea of 'not guilty,' upon all circumstances tending to show that the defendant acted without malice and without premeditation, and in the belief of self-defense, induced by the threats of White to kill the defendant. You will consider the evidence which will be presented in that regard."

"But the greater part of the evidence will be to prove to you that the defendant killed Stanford White under the delusion that it was an act of Providence, that he was the agent of Providence, that he was the agent of Providence for three years had been suffering from a disease of the brain which culminated in the killing of Stanford White, and which left its effect clearly observable after the homicide. When examined after the homicide, he was not aware of his mental condition and insisted that he was sane, and that the act was an act of Providence."

"Gentlemen, we have here the principal defense which will be presented to you. The defendant killed Stanford White because he did not know that the act was wrong. Why did he not know the act was wrong? Because, gentlemen, he was suffering from a disease of the brain which produced that condition of mind, under the explosive operations of which he believed he had a right to kill Stanford White, acting under the influence of Providence."

Insanity Is Hereditary.
"What was the cause of this mental condition of the brain? Hereditary insanity in the family; the story of his life and the acts of Stanford White, and the conclusions they produced on the mind of the man, under which it finally gave way."

Mr. Gleason said that the jurors were competent judges of insanity, even more competent than some of the alienists or trained lawyers. He went into a description of the brain, and pictured the impulses under which men act. His talk was very eloquent and full of imagery. Thaw seemed to be very depressed. Most of the time he held his face in his hands. He got cold, apparently, for he got up and drew his coat over his shoulders, then he let his head fall on his hands. His face was lost the look of eagerness which it has shown during most of the trial, and altogether it appeared that something had happened to make Thaw very dejected. Mr. Gleason, however, looked on with a calm and collected air.

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Gleason's statement that it was the duty of the prosecution to show that the defendant was sane at the time of the act caused some comment. It was explained later that a defendant is presumed to be sane until the defense injects some thing into the case. Then, of course, the prosecution has got to combat that testimony.

The first interruption in Mr. Gleason's speech came when he said that he had in his hands a paper by Dr. MacDonald in "which he severely criticized" that which was the assistant District Attorney Garvan said he objected to, saying that the paper wasn't in evidence.

"The doctor's evidence will be," said Mr. Gleason. "If the court has the slightest objection, I am entirely willing not to mention it."
Justice Fitzgerald said he understood Mr. Gleason, however, had an idea that he had the right to read what was on the paper, as he announced his intention of calling it to the attention of Dr. MacDonald.

"By concealing that it is a witness for the prosecution," added Justice Fitzgerald.

Wants to Read Paper.
"By concealing that it is a witness for the people," continued Mr. Gleason. "I think it is proper for me to refer to the paper. But I do not care to argue the question in the slightest degree or to take the time to do it, because it is not necessary. But I do not want to leave this question with the idea that I have not the right to refer to the paper."

Then Mr. Gleason went on discussing whether an insane man could tell the difference between right and wrong. "If that position were true," he said, "why, then, in certain weak cases of insanity the case would be stronger for the defendant. I mean that if that proposition were true it would do us any harm, but it tends to do the people's case harm, by making out that everybody that is insane cannot know right from wrong."

But the defense didn't rely on that. "There will be no different constructions of the statutes," he said. "Nor will there be any argument or inference to be drawn by experts or laymen from the wisdom, that they are higher than the laws of the State of New York. We are satisfied with the definition of the law as it stands to-day. It is entirely adequate, proper, and sufficient for the proper definition which should be applied here. The law, therefore, submits to you but one question, when that man shot Stanford White, was he sane?"

Jury Must Have No Doubt.
"Are you satisfied beyond a reasonable doubt that when that man shot Stanford White he was sane? The prosecution is bound to prove to you, after we have introduced to you the evidence from which you find that this man was insane—the prosecution is bound to prove to you beyond a reasonable doubt that that man was sane when he killed Stanford White. So that, gentlemen, the question is right here. Here is the man in the theater. He kills one one. Why did he kill? Well, he may have been crazy, he may have been intoxicated, he may have been acting under the influence of revenge, he may have been acting under the influence of jealousy, or some one or another of these motives that man was acting. The prosecution has got to exclude from your mind the doubt that insanity may have been a factor in the homicide."

Mr. Gleason said that the jurors were competent judges of insanity, even more competent than some of the alienists or trained lawyers. He went into a description of the brain, and pictured the impulses under which men act. His talk was very eloquent and full of imagery. Thaw seemed to be very depressed. Most of the time he held his face in his hands. He got cold, apparently, for he got up and drew his coat over his shoulders, then he let his head fall on his hands. His face was lost the look of eagerness which it has shown during most of the trial, and altogether it appeared that something had happened to make Thaw very dejected. Mr. Gleason, however, looked on with a calm and collected air.

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