American Decisions

MORRIS LELAND, Appellant,
v.
STATE OF OREGON

SUMMARY OF DECISION

Oregon criminal law provides that "morbid propensity" to commit a crime is no defense. It also casts upon a defendant the burden of proving his defense of insanity "beyond a reasonable doubt." At defendant's trial for murder in the first degree, the court instructed the jury in accordance with these statutory rules, but also charged that the state had the burden of proving beyond a reasonable doubt every element of the crime, including premeditation, deliberation, malice, and intent. Defendant's conviction was affirmed by the Oregon Supreme Court. He raised due process objections.

In an opinion by Clark, J., seven members of the United States Supreme Court held that due process was not violated either by the state's casting upon the defendant the burden of proving insanity "beyond a reasonable doubt" or by its choosing "the right and wrong" test rather than the "irresistible impulse" test of insanity.

Frankfurter and Black, JJ., dissented on the ground that due process was violated by the state's requiring the defendant to prove his insanity "beyond a reasonable doubt."

HEADNOTES

Constitutional Law—due process—burden of proof as to accused's insanity.

1. A state statute which casts upon a defendant, including one charged with murder in the first degree, the burden of proving his defense of insanity "beyond a reasonable doubt" does not violate due process, where, under other statutory requirements and the trial court's instructions to the jury in accordance therewith, the state has the burden of proving every element of the crime charged beyond a reasonable doubt, including, in the case of first degree murder, premeditation, deliberation, malice, and intent.

Constitutional Law—due process—criminal law—practice adopted by many states.

2. The fact that in the administration of criminal justice a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice offends some principle of justice so rooted in the traditions and conscience of the nation as to be ranked as fundamental.

Constitutional Law—due process—criminal procedure.

3. The criminal procedure of a state does not violate the Fourteenth Amendment because another method may seem fairer or wiser or give a surer promise of protection to a defendant.

Appeal and Error; Constitutional Law—due process—deference to judgment of state court.

4. The judicial judgment in applying the due process clause must move within the limits of accepted notions of justice and is not to be based upon the idiosyncrasies of merely personal judgment. An important safeguard against such merely individual judgment is an alert deference to the judgment of the state court under review.

Trial—instructions as to burden of proof—accused's insanity.

5. Instructions charging the jury at a trial in a state court for murder in the first degree that the state has the burden of proof of guilt, and of all the necessary elements of guilt and that the defendant should be found not guilty if the jury found his mental condition to be so diseased that he could formulate no plan, design, or intent to kill in cool blood, coupled with instructions, given in accordance with the pertinent statute, that the jurors were to consider separately the issue of legal sanity per se and that on that issue the defendant had the burden of proving his insanity beyond a reasonable doubt, are not subject to the objection that they might have confused the jury as to the distinction between the state's burden of proving premeditation and the other elements of the charge on one hand and defendant's burden of proving insanity on the other.

Constitutional Law—due process—"morbid propensity" to commit crime.

6. Due process is not violated by a state statute providing that a "morbid propensity to commit prohibited acts, existing in the mind of a person, who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor."

Constitutional Law—due process—accused's insanity—"right and wrong" test.

7. Due process does not require a state to eliminate the "right and wrong" test of insanity and to adopt the "irresistible impulse" test.

Constitutional Law—due process—defendant's confession—availability to defense counsel before trial.

8. A trial court's refusal to require the district attorney to make defendant's confession of crime available to his counsel before trial is not contrary to due process, where the confession was produced in court five days before defendant rested his case, and, in addition, the trial judge offered further time both for defense counsel and expert witnesses to study the confession; and this is particularly so where no assignment of error was made on that score in defendant's motion for a new trial.

POINTS FROM SEPARATE OPINION

Constitutional Law—due process—government's burden of proof in criminal case.

9. The government's duty to establish a defendant's guilt beyond a reasonable doubt is a requirement of due process in the procedural content of the term. [Per Frankfurter and Black, JJ.]

Constitutional Law—due process—insanity of accused.

10. Without violating due process, a state may require that the defense of "insanity" be specially pleaded, or that he on whose behalf the claim of insanity is made should have the burden of showing enough to overcome the assumption and presumption that normally a man knows what he is about and is therefore responsible for what he does, that the issue be separately tried, or that a standing disinterested expert agency advise court and jury. [Per Frankfurter and Black, JJ.]

[No. 176.]

Argued January 29, 1952. Decided June 9, 1952.

Appeal by defendant from a judgment of the Supreme Court of Oregon affirming a conviction of murder in the Circuit Court of Multnomah County. Affirmed.

Thomas H. Ryan, of Portland, Oregon, argued the cause for appellant.

J. Raymond Carskadon and Charles Eugene Raymond, both of Portland, Oregon, argued the cause for appellee.

Mr. Justice Clark delivered the opinion of the Court.

Appellant was charged with murder in the first degree. He pleaded not guilty and gave notice of his intention to prove insanity. Upon trial in the Circuit Court of Multnomah County, Oregon, he

was found guilty by a jury. In accordance with the jury's decision not to recommend life imprisonment, appellant received a sentence of death. The Supreme Court of Oregon affirmed. 190 Or 598, 227 P2d 785. The case is here on appeal. 28 USC § 1257 (2).

Oregon statutes required appellant to prove his insanity beyond a reasonable doubt and made "a morbid propensity" no defense.[1] The principal questions in this appeal are raised by appellant's contentions that these statute deprive him of his life and liberty without due process of law as guaranteed by the Fourteenth Amendment.

The facts of the crime were revealed by appellant's confessions, as corroborated by other evidence. He killed a fifteen-year old girl by striking her over the head several times with a steel bar and stabbing her with a hunting knife. Upon being arrested five days later for the theft of an automobile, he asked to talk with a homicide officer, voluntarily confessed the murder, and directed the police to the scene of the crime, where he pointed out the location of the body. On the same day, he signed a full confession and, at his own request, made another in his own handwriting. After his indictment, counsel were appointed to represent him. They have done so with diligence in carrying his case through three courts.

One of the Oregon statutes in question provides:

"When the commission of the act charged as a crime is proven, and the defense sought to be established is the insanity of the defendant, the same must be proven beyond a reasonable doubt . . ."[2]

Headnote 1

Appellant urges that this statute in effect requires a defendant pleading insanity to establish his innocence by disproving beyond a reasonable doubt elements of the crime necessary to verdict of guilty, and that the statute is therefore violative of that due process of law secured by the Fourteenth Amendment. To determine the merit of this challenge, the statute must be viewed in its relation to other relevant Oregon law and in its place in the trial of this case.

In conformity with the applicable state law,[3] the trial judge instructed the jury that, although appellant was charged with murder in the first degree, they might determine that he had committed a lesser crime included in that charged. They were further instructed that his plea of not guilty put in issue every material and necessary element of the lesser degrees of homicide, as well as of the offense charged in the indictment. The jury could have returned any of five verdicts:[4] (1) guilty of murder in the first degree, if they found beyond a reasonable doubt that appellant did the killing purposely and with deliberate and premeditated malice; (2) guilty of murder in the second degree, if they found beyond a reasonable doubt that appellant did the killing purposely and maliciously, but without deliberation and premeditation; (3) guilty of manslaughter, if they found beyond a reasonable doubt that appellant did the killing witthout malice or deliberation, but upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible; (4) not guilty, if, after a careful consideration of all the evidence, there remained in their minds a reasonable doubt as to the existence of any of the necessary elements of each degree of homicide; and (5) not guilty by reason of insanity, if they found beyond a reasonable doubt that appellant was insane at the time of the offense charged. A finding of insanity would have freed appellant from responsibility for any of the possible offenses. The verdict which the jury determined—guilty of first degree murder—required the agreement of all twelve jurors; a verdict of not guilty by reason of insanity would have required the concurrence of only ten members of the panel.[5]

It is apparent that the jury might have found appellant to have been mentally incapable of the premeditation and deliberation required to support a first degree murder verdict or of the intent necessary to find him guilty of either first or second degree murder, and yet not have found him to have been legally insane. Although a plea of insanity was made, the prosecution was required to prove beyond a reasonable doubt every element of the crime charged, including, in the case of first degree murder, premeditation, deliberation, malice and intent.[6] The trial court repeatedly emphasized this requirement in its charge to the jury.[7] Moreover, the judge directed the jury as follows:

"I instruct you that the evidence adduced during this trial to prove defendant's insanity shall be considered and weighed by you, with all other evidence, whether or not you find defendant insane, in regard to the ability of the defendant to premeditate, form a purpose, to deliberate, act wilfully, and act maliciously; and if you find the defendant lacking in such ability, the defendant cannot have committed the crime of murder in the first degree.

"I instruct you that should you find the defendant's mental condition to be so affected or diseased to the end that the defendant could formulate no plan, design, or intent to kill in cool blood, the defendant has not committed the crime of murder in the first degree."[8]

These and other instructions, and the charge as a whole, make it clear that the burden of proof of guilt, and of all the necessary elements of guilt, was placed squarely upon the State. As the jury was told, this burden did not shift, but rested upon the State throughout the trial, just as, according to the instructions, appellant was presumed to be innocent until the jury was convinced beyond a reasonable doubt that he was guilty.[9] The jurors were to consider separately the issue of legal sanity per se—an issue set apart from the crime charged, to be introduced by a special plea and decided by a special verdict.[10] On this issue appellant had the burden of proof under the statute in question here.

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1 Or Comp Laws, 1940, §§ 26-929, 23-122.

2 Id, § 26-929.

3 Id, §§ 26-947, 26-948.

4 Six possible verdicts were listed in the instructions, guilty of murder in the first degree being divided into two verdicts: with, and without, recommendation of life imprisonment as the penalty. Since the jury in this case did not recommend that punishment, the death sentence was automatically invoked under Oregon law. Id, § 23-411.

5 The agreement of ten jurors would also have been sufficient for a verdict of not guilty, a verdict of guilty of second degree murder, or a verdict of guilty of manslaughter, R 333-334.

6 Id, §§ 23-401, 23-414, 26-933; of State v. Butchek, 121 Or 141, 253 P 367, 254 P 805 (1927).

7 R 321, 323, 324, 330, 331, 332.

8 R 330. Again:

"I instruct you that to constitute murder in the first degree, it is necessary that the State prove beyond a reasonable doubt, and to your moral certainty, that the defendant's design or plan to take life was formed and matured in cool blood and not hastily upon the occasion.

"I instruct you that in determining whether or not the defendant acted purposely and with premeditated and deliberated malice, it is your duty to take into consideration defendant's mental condition and all factors relating thereto, and that even though you may not find him legally insane, if, in fact, his mentality was impaired, that evidence bears upon these factors, and it is your duty to consider this evidence along with all the other evidence in the case." R 332.

9 R 321, 324.

10 Or Comp Laws, 1940, § 26-846 (requiring notice of purpose to show insanity as defense); id, § 26-955 (providing for verdict of not guilty by reason of insanity and consequent commitment to asylum by judge). After defining legal insanity, the trial court instructed the jury:

"In this case, evidence has been introduced relating to the mental capacity and condition of the defendant . . . at the time (the girl) is alleged to have been killed, and if you are satisfied beyond a reasonable doubt that the defendant killed her in the manner alleged in the indictment, or within the lesser degrees included therein, **then** you are to consider the mental capacity of the defendant at the time the homicide is alleged to have been committed." R 327 (emphasis supplied).

By this statute, originally enacted in 1864,[11] Oregon adopted the prevailing doctrine of the time—that, since most men are sane, a defendant must prove his insanity to avoid responsibility for his acts. That was the rule announced in 1843 in the leading English decision in M'Naghten's Case:

"[T]he jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and . . . to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing . . ."[12]

This remains the English view today.[13] In most of the nineteenth-century American cases, also, the defendant was required to "clearly" prove insanity,[14] and that was probably the rule followed in most states in 1895,[15] when Davis v. United States was decided. In that case this Court, speaking through Mr. Justice Harlan, announced the rule for federal prosecutions to be that an accused is "entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt whether he was capable in law of committing crime."[16] In reaching that conclusion, the Court observed:

"The views we have expressed are supported by many adjudications that are entitled to high respect. If such were not the fact, we might have felt obliged to accept the general doctrine announced in some of the above cases; for it is desirable that there be uniformity of rule in the administration of the criminal law in governments whose Constitutions equally recognize the fundamental principles that are deemed essential for the protection of life and liberty."[17]

The decision obviously establishes no constitutional doctrine, but only the rule to be followed in federal courts. As such, the rule is not in question here.

Today, Oregon is the only state that requires the accused, on a plea of insanity, to establish that defense beyond a reasonable doubt. Some twenty states, however, place the burden on the accused to establish his insanity by a preponderance of the evidence or some similar measure of persuasion.[18] While there is an evident distinction between these two rules as to the quantum of proof required, we see no practical difference of such magnitude as to be significant in determining the constitutional question we face here. Oregon merely requires a heavier burden of proof. In each instance, in order to establish insanity as a complete defense to the charges preferred, the accused must prove that insanity.

Headnote 2

The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts, 291 US 97, 105, 78 L ed 674, 677, 54 S Ct 330, 90 ALR 575 (1934).

Nor is this a case in which it is sought to enforce against the states a right which we have held to be secured to defendants in federal courts by the Bill of Rights. In Davis v. United States (US) supra, we adopted a rule of procedure for the federal courts which is contrary to that of Oregon. But "[i]ts procedure does not run foul of the Fourteenth Amendment because another method may seem to our thinking to be fairer or wiser or to give a surer promise of protection to the prisoner at the bar." Snyder v. Massachusetts, supra (291 US at 105, 78 L ed 677, 54 S Ct 330, 90 ALR 575). "The judicial judgment in applying the Due Process Clause must move within the limits of accepted notions of justice and is not to be based upon the idiosyncrasies of a merely personal judgment . . . An important safeguard against such merely individual judgment is an alert deference to the judgment of the state court under review." Mr. Justice Frankfurter, concurring in Malinski v. New York, 324 US 401, 417, 89 L ed 1029, 1039, 65 S Ct 781 (1945). We are therefore reluctant to interfere with Oregon's determination of its policy with respect to the burden of proof on the issue of sanity since we cannot say that policy violates generally accepted concepts of basic standards of justice.

Headnote 3

Headnote 4

Nothing said in Tot v. United States, 319 US 463, 87 L ed 1519, 63 S Ct 1241 (1943), suggests a different conclusion. That decision struck down a specific presumption created by congressional enactment. This Court found that the fact thus required to be presumed had no rational connection with the fact which, when proven, set the presumption in operation, and that the statute resulted in a presumption of guilt based only upon proof of a fact neither criminal in itself nor an element of the crime charged. We have seen that, here, Oregon required the prosecutor to prove beyond a reasonable doubt every element of the offense charged. Only on the issue of insanity was an absolute bar to the charge was the burden placed upon appellant. In all English-speaking courts, the accused is obliged to introduce proof if he would overcome the presumption of sanity.[19]

Headnote 5

It is contended that the instruction may have confused the jury as to the distinction between the State's burden of proving premeditation and the other elements of the charge and appellant's burden of proving insanity. We think the charge to the jury was as clear as instructions to juries ordinarily are or reasonably can be, and, with respect to the State's burden of proof upon all the elements of the crime, the charge was particularly emphatic. Juries have for centuries made the basic decisions between guilt and innocence and between criminal responsibility and legal insanity upon the basis of the facts, as revealed by all the evidence, and the law, as explained by instructions detailing the legal distinctions, the placement and weight of the burden of proof, the effect of presumptions, the meaning of intent, etc. We think that to condemn the operation of this system here would be to condemn the operation of this system here would be to condemn the system generally. We are not prepared to do so.

Headnote 6

Much we have said applies also to appellant's contention that due process is violated by the Oregon statute providing that a "morbid propensity to commit prohibited acts, existing in the mind of a person, who is not shown to have been incapable of knowing the

11 Deady's Gen. Laws Or 1845-1864, Code of Crim Proc, § 204.

12 10 Clark & F 200, 210, 8 Eng Reprint 718 (HL, 1843).

13 Stephen, Digest of the Criminal Law (9th ed, Sturge, 1950), 6; of Sodeman v. Rex (Eng) [1936] WN 190 (PC); see Woolmington v. Director of Public Prosecutions (Eng) [1935] AC 462, 475—HL.

14 Weihofen, Insanity as a Defense in Criminal Law (1933), 151-155. "Clear proof" was sometimes interpreted to mean proof beyond a reasonable doubt. e. g., State v. De Rance, 34 La Ann 186, 44 Am Rep 426 (1882), and sometimes to mean proof by a preponderance of the evidence, e.g., Hurst v. State, 40 Tex Crim 378 378, 383, 50 SW 719 (1899).

15 Se Wharton, Criminal Evidence (9th ed 1884) §§ 336-340.

16 160 US 469, 484, 40 L ed 499, 504, 16 S Ct 353 (1895); see Hotema v United States, 186 US 413, 46 L ed 1225, 22 S Ct 895 (1902); Matheson v. United States, 227 US 540, 57 L ed 631, 33 S Ct 355 (1913).

17 Id, 160 US at 488, 40 L ed 506, 16 S Ct 353.

18 Weihofen lists twelve states as requiring proof by a preponderance of the evidence, four as requiring proof "to the satisfaction of the jury," two which combine these formulae, one where by statute the defense must be "clearly proved to the reasonable satisfaction of the jury," one where it has been held that the jury must "believe" the defendant insane, and one where the quantum of proof has not been stated by the court of last resort, but which appears to follow the preponderance rule. Weihofen, Insanity as a Defense in Criminal Law (1933), 148-151, 172-200. Twenty-two states, including Oregon, are mentioned as holding that the accused has the burden of proving insanity, at least by a preponderance of the evidence, in 9 Wigmore, Evidence (3d ed 1940 and Supp 1951) § 2501.

19 Weihofen, Insanity as a Defense in Criminal Law (1933), 161; 9 Wigmore, Evidence (3d ed 1940) § 2501.

wrongfulness of such acts, forms no defense to a prosecution therefor."[20] That statute amounts to no more than a legislative adoption of the "right and wrong" test of legal insanity in preference to the "irresistible impulse" test.[21] Knowledge of right and wrong is the exclusive test of criminal responsibility in a majority of American jurisdictions.[22] The science of psychiatry has made tremendous strides since that test was laid down in M'Naghten's Case,[23] but the progress of science has not reached a point where its learning would compel us to

Headnote 7 require the states to eliminate the right and wrong test from their criminal law.[24] Moreover, choice of a test of legal sanity involves not only scientific knowledge but questions of basic policy as to the extent to which that knowledge should determine criminal responsibility.[25] This whole problem has evoked wide disagreement among those who have studied it. In these circumstances it is clear that adoption of the irresistible impulse test is not "implicit in the concept of ordered liberty."[26]

Appellant also contends that the trial court's refusal to require the district attorney to make one of appellant's confessions available to his counsel before trial was contrary to due process. We think there is no substance in this argument. This conclusion is buttressed by the absence of any

Headnote 8 assignment of error on this ground in appellant's motion for a new trial. Compare Avery v. Alabama, 308 US 444, 452, 84 L ed 377, 382, 60 S Ct 321 (1940). While it may be the better practice for the prosecution thus to exhibit a confession, failure to do so in this case in no way denied appellant a fair trial. The record shows that the confession was produced in court five days before appellant rested his case. There was ample time both for counsel and expert witnesses to study the confession. In addition the trial judge offered further time for that purpose but it was refused. There is no indication in the record that appellant was prejudiced by the inability of his counsel to acquire earlier access to the confession.

Affirmed.

Mr. Justice *Frankfurter*, joined by Mr. Justice *Black*, dissenting.

However much conditions may have improved since 1905, William H. [later Mr. Chief Justice] Taft expressed his disturbing conviction "that the administration of the criminal law in all the States of the Union (there may be one or two exceptions) is a disgrace to our civilization" (Taft, "The Administration of Criminal Law," 15 Yale LJ 1, 11), no informed person can be other than unhappy about the serious defects of present-day American criminal justice. It is not unthinkable that failure to bring the guilty to book for a heinous crime which deeply stirs popular sentiment may lead the legislature of a State, in one of those emotional storms which on occasion sweep over our people, to enact that thereafter an indictment for murder, following attempted rape, should be presumptive proof of guilt and cast upon the defendant the burden of proving beyond a reasonable doubt that he did not do the killing. Can there be any doubt that such a statute would go beyond the freedom of the States, under the Due Process Clause of the Fourteenth Amendment, to fashion their own penal codes and their own procedures for enforcing them? Why is that so? Because from the time that the law which we have inherited has emerged from dark and barbaric times, the conception of justice which has dominated our criminal law has refused to put an accused at the hazard of punishment if he fails to remove every reasonable doubt of his innocence in the minds of jurors. It is the duty of the Government to esablish his guilt beyond a reasonable

Headnote 9 doubt. This notion—basic in our law and rightly one of the boasts of a free society—is a requirement and a safeguard of due process of law in the historic, procedural content of "due process." Accordingly there can be no doubt, I repeat, that a State cannot cast upon an accused the duty of establishing beyond a reasonable doubt that his was not the act which caused the death of another.

But a muscular contraction resulting in a homicide does not constitute murder. Even though a person be the immediate occasion of another's death, he is not a deodand to be forfeited like a thing in the medieval law. Behind a muscular contraction resulting in another's death there must be culpability to turn homicide into murder.

The tests by which such culpability may be determined are varying and conflicting. One does not have to echo the scepticism uttered by Brian, C. J., in the fifteenth century, that "the devil himself knoweth not the mind of men" to appreciate how vast a darkness still envelopes man's understanding of man's mind. Sanity and insanity are concepts of incertitude. They are given varying and conflicting content at the same time and from time to time by specialists in the field. Naturally there has always been conflict between the psychological views absorbed by law and the contradictory views of students of mental health at a particular time. At this stage of scientific knowledge it would be indefensible to impose upon the States, through the due process of law which they must accord before depriving a person of life or liberty, one test rather than another for determining criminal culpability, and thereby to displace a State's own choice of such a test, no matter how backward it may be in the light of the best scientific canons. Inevitably, the legal tests for determining the mental state on which criminal culpability is to be based are in strong conflict in our forty-eight States. But when a State has chosen its theory for testing culpability, it is a deprivation of life without due process to send a man to his doom if he cannot prove beyond a reasonable doubt that the physical events of homicide did not constitute murder because under the State's theory he was incapable of acting culpably.

This does not preclude States from utilizing common sense regarding mental irresponsibility for acts resulting in homicide—from taking for granted that most men are sane and responsible for their acts. That a man's act is not his, because he is devoid of that mental state which begets culpability, is so exceptional a situation that the law has a right to devise an exceptional procedure regarding it. Accordingly, States may provide various ways for dealing with this exceptional situation

Headnote 10 by requiring, for instance, that the defense of "insanity" be specially pleaded, or that he on whose behalf the claim of insanity is made should have the burden of showing enough to overcome the assumption and presumption that normally a man knows what he is about and is therefore responsible for what he does, or that the issue be separately tried, or that a standing disinterested expert agency advise court and jury, or that these and other devices be used in combination. The laws of the forty-eight States present the greatest diversity in relieving the prosecution from proving affirmatively that a man is sane in the way it must prove affirmatively that the defendant is the man who pulled the trigger or struck the blow. Such legis-

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20 Or Comp Laws. 1940 § 23-122.

21 State v. Garver, 190 Or 291, 225 P2d 771 (1950); State v. Wallace, 170 Or 60, 131 P2d 222 (1942); State v. Hassing, 60 Or 81, 118 P 195 (1911).

22 Weihofen, Insanity as a Defense in Criminal Law (1933), 15, 64-68, 109-147.

23 10 Clark & F 200, 8 Eng Reprint 718 (HL, 1943).

24 Compare Fisher v. United States, 328 US 463, 475, 476, 90 L ed 1382, 1389, 1390, 66 S Ct 1318, 166 ALR 1176 (1946).

25 See Holloway v. United States, 80 App DC 3, 148 F2d 665 (1945); Glueck, Mental Disorder & the Criminal Law (1925); Hall, Mental Disease and Criminal Responsibility, 45 Col L Rev 677 (1945); Keedy, Insanity and Criminal Responsibility, 30 Harv L Rev 535, 724 (1917).

26 Palko v. Connecticut, 302 US 319, 325, 82 L ed 288, 292, 58 S Ct 149 (1937).

lation makes no inroad upon the basic principle that the State must prove guilt, not the defendant, innocence, and prove it to the satisfaction of a jury beyond a reasonable doubt.

For some unrecorded reason, Oregon is the only one of the forty-eight States that has made inroads upon that principle by requiring the accused to prove beyond a reasonable doubt the absence of one of the essential elements for the commission of murder, namely, culpability for his muscular contraction. Like every other State, Oregon presupposes that an insane person cannot be made to pay with his life for a homicide, though for the public good he may of course be put beyond doing further harm. Unlike every other State, however, Oregon says that the accused person must satisfy a jury beyond a reasonable doubt that, being incapable of committing murder, he has not committed murder.

Such has been the law of Oregon since 1864. That year the Code of Criminal Procedure defined murder in the conventional way, but it also provided: "When the commission of the act charged as a crime is proven, and the defence sought to be established is the insanity of the defendant, the same must be proven beyond a reasonable doubt .. .. .." Gen Laws Or 1845-1864, pp. 441 et seq, Sections 502, 204. The latter section, through various revisions, is the law of Oregon today and was applied in the conviction under review.

Whatever tentative and intermediate steps experience makes permissible for aiding the State in establishing the ultimate issues in a prosecution for crime, the State cannot be relieved, on a final showdown, from proving its accusation. To prove the accusation it must prove each of the items which in combination constitute the offense. And it must make such proof beyond a reasonable doubt. This duty of the State of establishing every fact of the equation which adds up to a crime, and of establishing it to the satisfaction of a jury beyond a reasonable doubt is the decisive difference between criminal culpability and civil liability. The only exception is that very limited class of cases variously characterized as mala prohibita or public torts or enforcement of regulatory measures. See United States v. Dotterweich, 320 US 277, 88 L ed 48, 64 S Ct 134; Morissette v. United States, 342 US 246, ante, 180, 72 S Ct 240. Murder is not a malum prohibitum or a public tort or the object of regulatory legislation. To suggest that the legal oddity by which Oregon imposes upon the accused the burden of proving beyond reasonable doubt that he had the mind with which to commit murder is a mere difference in the measure of proof, is to obliterate the distinction between civil and criminal law.

It is suggested that the jury were charged not merely in conformity with this requirement of Oregon law but also in various general terms, as to the duty of the State to prove every element of the crime charged beyond a reasonable doubt, including in the case of first degree murder, "premeditation, deliberation, malice and intent." Be it so. The short of the matter is that the Oregon Supreme Court sustained the conviction on the ground that the Oregon statute "cast upon the defendant the burden of proving the defense of insanity beyond a reasonable doubt." State v. Leland, 190 Or 598, 638, 227 Prd 785. To suggest, as is suggested by this Court but not by the State court, that, although the jury was compelled to act upon this requirement, the statute does not offend the Due Process Clause because the trial judge also indulged in a farrago of generalties to the jury about "premeditation, deliberation, malice and intent," is to exact gifts of subtlety that not even judges, let alone juries, possess. See International Harvester Co. v Kentucky, 234 US 216, 224, 225, 58 L ed 1284, 1288, 34 S Ct 853. If the Due Process Clause has any meaning at all, it does not permit life to be put to such hazards.

To deny this mode of dealing with the abuses of insanity please and with unedifying spectacles of expert testimony, is not to deprive Oregon of the widest possible choice of remedies for circumventing such abuses. The multiform legislation prevailing in the different States evinces the great variety of the experimental methods open to them for dealing with the problems raised by insanity defenses in prosecutions for murder.

To repeat the extreme reluctance with which I find a constitutional barrier to any legislation is not to mouth a threadbare phrase. Especially is deference due to the policy of a State when it deals with local crime, its repression and punishment. There is a gulf, however narrow, between deference to local legislation and complete disregard of the duty of judicial review which has fallen to this Court by virtue of the limits placed by the Fourteenth Amendment upon State action. This duty is not to be escaped, whatever I may think of investing judges with the power which the enforcement of that Amendment involves.

BROTHERHOOD OF RAILROAD TRAINMEN, an Unincorporated Association, et al., Petitioners, v. SIMON L. HOWARD, Sr., and St. Louis-San Francisco Railway Co.

SUMMARY OF DECISION

To avoid a strike, a railroad entered into a collective labor contract with a union, composed exclusively of white trainmen, which provided that train porters should no longer do any work as brakemen, and the effect of which was to compel the railroad to abolish the position of "train porters," therefore occupied by Negroes doing all the work of brakemen, and to fill their jobs with white men. The contracting union did not represent porters, who were represented by another union of their own choosing. A Negro train porter who was given notice by the railroad brought a class action in a federal district court for a decree enjoining the railroad from discontinuing the jobs known as "train porters" and from hiring white brakemen to replace the Negro porters.

In an opinion by *Black, J.*, six members of the Court held that injunctive relief should be granted, taking the view that a bargaining representative who acts by the authority of the Railway Labor Act has the duty to refrain from using its statutory bargaining power so as to abolish the jobs of the colored workers, even though they are in a separate class for representation purposes and are, in fact, represented by another union of their own choosing.

Minton, J., with the concurrence of *Vinson, Ch. J.*, and *Reed, J.*, dissented on the grounds that no applicable federal law prohibited racial discrimination by private parties such as the railroad and the union, and that the case involved a dispute between employees of a carrier as to whether the union was the representative of the train porters, a matter to be resolved by the National Mediation Board, not by the courts.

HEADNOTES

Labor—bargaining representative acting under Railway Labor Act—duty toward colored employees in craft or class not represented by it.

1. The Railway Labor Act imposes on a labor union acting by authority of the statute as the exclusive bargaining agent of brakemen the duty to refrain from using its bargaining power so as o abolish the jobs of colored porters and drive them from the railroads, even though these porters have for many years been treated by the carriers and the union as a separate class for representation purposes and have in fact been represented by another union of their own choosing; and such duty is violated by the negotiation by such a union of a collective labor contract the effect of which is to compel a railroad to abolish the position of "train porters" theretofore occupied by Negroes and to fill their jobs with white brakemen.

Labor—bargaining representative acting under Railway Labor Act—destroying colored workers' jobs.

2. The Railway Labor Act prohibits bargaining agents it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers.

Courts—federal jurisdiction—unlawful use of power granted by federal statute.

3. Federal courts can protect those threatened by an unlawful use of power granted by a federal act.

Labor—resort to courts for protection of rights of colored railroad employees.

4. No existing administrative remedy precludes resort to courts for protection of colored railroad employees against obliteration of their rights under the Railway Labor Act by a bargaining agent acting by the authority of the act.

Labor—administrative remedies under Railway Labor Act.

5. No adequate administrative remedy against obliteration of the rights of colored railroad employees under the Railway Labor Act by a bargaining representative acting by the authority of the act can be afforded by the National Railway Adjustment or Mediation Board, where the dispute involves racial discrimination practiced against them and the validity of a collective bargaining contract, not its meaning, and does not hinge on the proper classification of these employees.

Labor—acts enjoinable—racial discrimination by bargaining representative authorized by Railway Labor Act—effect of Norris-La Guardia Act.

6. Notwithstanding the restrictions imposed on the injunctive powers of federal district courts by the Norris-La Guardia Act, such a court has jurisdiction and power to issue necessary injunctive relief against racial discrimination practiced against colored railroad employees by a bargaining representative acting by the authority of the Railway Labor Act, even though they belong to a class or craft represented by another union.

Labor—duties of bargaining representatives acting under Railway Labor Act.

7. Bargaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasions of the right of other workers.

Labor—injunction against racial discrimination by bargaining Constitutional Law—due process—burden of proof as to accused's insanity.

8. A railroad and a union acting as bargaining representative by the authority of the Railway Labor Act should be permanently enjoined from using a collective labor contract or any other similar bargaining choice for ousting colored train porters from their jobs. In fashioning its decree the trial court is free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the union, bearing in mind, however, that disputed questions of reclassification of the craft of "train porters" are committed by the Railway Labor Act to the National Mediation Board.

[No. 458.]

Argued and submitted April 22, 1952. Decided June 9, 1952.

On writ of Certiorari to the United States Court of Appeals for the Eighth Circuit to review a judgment reversing, in part, a judgment of the United States District Court for the Eastern District of Missouri which dissolved an interlocutory injunction in a suit brought by Negro porters against a railroad nd a labor union and stay dismissal of the cause to afford them an opportunity to exhaust the administrative remedies of the Railway Labor Act. Affirmed.

Charles R. Judge, of Washington, D. C., and *Victor Packman*, of St. Louis, Missouri, argued the cause for respondent, Samuel L. Howard, Sr.

Eugene G. Nahler, James L. Homire, Cornelius H. Skinker, Jr., and *Alvin J. Baumann*, all of St. Louis, Missouri, submitted the cause for respondent, St. Louis-San Francisco R. Co.

Mr. Justice *Black* delivered the opinion of the Court.

This case raises questions concerning the power of courts to protect Negro railroad employees from loss of their jobs under compulsion of a bargaining agreement which, to avoid a strike, the railroad made with an exclusively white man's union. Respondent Simon Howard, a Frisco[1] train employee for nearly forty years, brought this action on behalf of himself and other colored employees similarly situated.

In summary the complaint alleged: Negro employees such as respondent constituted a group called "train porters" although they actually performed all the duties of white "brakemen"; the Brotherhood of Railroad Trainmen, bagaining representative of "brakemen" under the Railway Labor Act,[2] had for years used its influence in an attempt to eliminate Negro trainmen and get their jobs for white men who, unlike colored "train porters," were or could be members of the Brotherhood; on March 7, 1946, the Brotherhood of Railroad Trainmen, bargaining representative the colored "train porters" and fill their jobs with white men who, under the agreement, would do less work but get more pay. The complaint charged that the Brotherhood's "discriminatory action" violated the train porter's rights under the Railway Labor Act and under the Labor Act and under the Constitution; that the agreement was void because against public policy, prejudicial to the public inerest, and designed to deprive Negro trainmen of the right to earn a livelihood because of their race or color. The prayers were that the court adjudge and decree that the contract was void and unenforceable for the reason stated; that the Railroad be "enjoined from discontinuing the jobs known as Train Porters" and "from hiring white Brakemen to replace or displace plaintiff and other Train Porters as planned in accordance with said agreement."

The facts as found by the District Court, affirmed with emphasis by the Court of Appeals, substantially establish the truth of the complaint's material allegations. These facts showed that the Negro train porters had for a great many years served the Railroad with loyalty, integrity and efficiency; that "train porters" do all the work of brakemen;[3] that the Government administrator of railroads during World War I had classified them as brakemen and had required that they be paid just like white brakemen; that when the railroads went back to their owners, they redesignated these colored brakemen as "train porters," "left their duties untouched," and forced them to accept wages far below those of white "brakemen" who were Brotherhood members; that for more than a quarter of a century the Brotherhood and other exclusively white rail unions had continually carried on a program of aggressive hostility to employment of Negros for train, engine and yard service; that the agreement of March 7, 1946, here under attack, provides that train porters shall no longer do any work "generally recognized as brakeman's duties"; that while this agreement did not in express words compel discharge of "train porters," the economic unsoundness of keeping them after transfer of their "brakemen" functions made com-

1 St. Louis-San Francisco Railway Company and its subsidiary St. Louis-San Francisco & Texas Railway Company.

2 44 Stat 577, as amended, 48 Stat 1185, 45 USC §§ 151 et seq.

3 In addition to doing all the work done by ordinary brakemen, train porters have been required to sweep the coaches and assist passengers to get on and off the trains. As the Court of Appeals noted, "These aisle-sweeping and passenger-assisting tasks, however, are simply minor and incidental, occupying only, as the record shows, approximately five per cent of a train porter's time." 191 F2d 442, 444.

plete abolition of the "train porter" group inevitable; that two days after "the Carriers, reluctantly, and as a result of the strike threats" signed the agreement, they notified train porters that "Under this agreement we will, effective April 1, 1946, discontinue all train porter positions." Accordingly, respondent Howard, and others, were personally notified to turn in their switch keys, lanterns, markers and other brakemen's equipment, and notices of job vacancies were posted to be bid in by white brakemen only.

The District Court held that the complaint raised questions which Congress by the Railway Labor Act had made subject to the exclusive jurisdiction of the National Mediaton Board and the National Railroad Adjustment Board. 72 Supp 695. The Court of Appeals reversed this holding.[4] It held that the agreement, as construed and acted upon by the Railroad, was an "attempted predatory appropriation" of the "train porters" jobs, and was to this extent illegal and unenforceable. It therefore ordered that the Railroad must keep the "train porters' as employees; it permitted the Railroad and the Brotherhood to treat the contract as valid on condition that the railroad would recognize the colored "train porters" as members of the craft of "brakemen" and that the Brotherhood would fairly represent them as such. 191 F2d 442. We granted certiorari. 342 US 940, ante, 372, 72 S. Ct 551.

While different in some respects, the basic pattern of racial discrimination in this case is much the same as that we had to consider in Steele v. Louisville & N. R. Co. 323 US 192, 89 L ed 173, 65 S. Ct 226. In this case, as was charged in the Steele Case, a Brotherhood acting as a bargaining agent under the Railway Labor Act has been hostile to Negro employees, has discriminated against them, and has forced the Railroad to make a contract which would help Brotherhood members take over the jobs of the colored "train porters."

There is difference in the circumstances of the two cases, however, which it is contended requires us to deny the judicial remedy here that was accorded in the Steele Case. That difference is this: Steele was admittedly a locomotive fireman although not a member of the Brotherhood of Locomotive Firemen and Enginemen which under the Railway Labor Act was the exclusive bargaining representative of the entire craft of firemen. We held that the language of the Act imposed a duty on the craft bargaining representative to exercise the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against any of them. Failure to exercise this duty was held to give rise to a cause of action under the Act. In this case, unlike the Steele Case, the colored employees have for many years been treated by the carriers and the Brotherhood as a separate class for representation purposes and have in fact been represented by another union of their own choosing. Since the Brotherhood has discriminated against "train porters" instead of minority members of its own "craft," it is argued that the Brotherhood owed no duty at all to refrain from using its statutory bargaining power so as to abolish the jobs of the colored porters and drive them from the railroads. We think this argument is unsound and that the opinion in the Steele Case points to a breach of statutory duty by this Brotherhood.

Headnote 1

As previously noted, these train porters are threatened with loss of their jobs because they are not white and for no other reason. The job they did hold under its old name would be abolished by the agreement; their color alone would disqualify them for the old job under its new name. The end result of these transactions is not in doubt; for precisely the same reasons as in the Steele Case "discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discriminations." Steele v. Louisville & N. R. Co. supra (323 US at 203, 89 L ed 183, 65 S Ct 226), and cases there cited. Cf. Shelley v. Kraemer, 334 US 7, 92 L ed 1161, 68 S Ct 836, 3 ALR 441. The Federal Act thus prohibits bargaining agents it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers. And courts can protect those threatened by such an unlawful use of power granted by a federal act.

Headnote 2
Headnote 3

Here, as in the Steele Case, colored workers must look to a judicial remedy to prevent the sacrifice or obliteration of their rights under the Act. For no adequate administrative remedy can be afforded by the National Railway Adjustment or Mediation Board. The claims here cannot be resolved by interpretation of a bargaining agreement so as to give jurisdiction to the Adjustment Board under our holding in Slocum v. Delaware, L. & W. R. Co. 339 US 239, 94 L ed 795, 70 S Ct 577. This dispute, involves the validity of the contract, not its meaning Nor does the dispute hinge on the proper craft classification of the porters so as to call for settlement by the National Mediation Board under our holding in Switchmen's Union of N. A. v. National Mediation Board, 320 US 297, 88 L ed 61, 64 S Ct 95. For the contention here with which we agree is that the racial discrimination practiced is unlawful, whether colored employees are classified as "train porters," "brakemen," or something else. Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders no withstanding the provisions of the Norris-LaGuardia Act.[5] We need add nothing to what was said about the inapplicability of that Act in the Steele Case and in Graham v. Brotherhood of Loc. Firemen & Enginemen, 338 US 232, 239, 240, 94 L ed 22, 29, 70 S Ct 14.

Headnote 4
Headnote 5
Headnote 6

Bargaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasions of the right of other workers. We agree with the Court of Appeals that the District Court had jurisdiction to protect these workers from the racial discrimination practiced against them. On demand, the District Court should permanently enjoin the Railroad and the Brotherhood from use of the contract or any other similar discriminatory bargaining device to oust the train porters from their jobs. In fashioning its decree the District Court is left free to consider what provisions are necessary to aford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that disputed questions of reclassification of the craft of "train porters" are committed by the Railway Labor Act to the National Mediation Board. Switchmen's Union of N. A. National Mediation Board (US) supra.

Headnote 7
Headnote 8

The judgment of the Court of Appeals reversing that of the District Court is affirmed, and the cause is remanded to the District Court for further proceedings in accordance with this opinion.

It is so ordered.

Mr. Justice *Minton*, with whom The *Chief Justice* and Mr. Justice *Reed* join, dissenting.

The right of the Brotherhood to represent railroad employees existed before the Railway Labor Act was passed. The Act simply protects the employees when this right of representation is exercised. If a labor organization is designated by a majority

4 One part of the District Court's order was affirmed. The Court of Appeals held that the District Court had properly enjoined the Railroad from abolishing the position of "train porters" under the notices given, on the ground that these notices were insufficient to meet the requirements of § 2, Seventh, and § 6 of the Railway Labor Act. The view we take makes it unnecessary for us to consider this question.

5 47 Stat 70, 29 USC §§ 101 et seq.

of the employees in a craft or class as bargaining representative for that craft or class and is so recognized by the carrier, that labor organization has a duty to represent in good faith all workers of the craft. Steele v. Louisville & N. R. Co. 323 US 192, 202, 89 L ed 173, 183, 65 S Ct 226. In the Steele Case, the complainant was a locomotive fireman; his duties were wholly those of a fireman. The Brotherhood in that case represented the "firemen's craft," but would not admit Steele as a member because he was a Negro. As the legal representative of his craft of firemen, the Brotherhood made a contract with the carrier that discriminated against him because of his race. This Court held the contract invalid. It would have been the same if the Brotherhood had discriminated against him on some other ground, unrelated to race. It was the Brotherhood's duty "to act on behalf of all the employees which, by virtue of the statute, it undertakes to represent." Steele, supra (323 US at 199, 89 L ed 181, 65 S Ct 226).

In the instant case the Brotherhood has never purported to represent the train porters. The train porters have never requested that the Brotherhood represent them. Classification of the job of "train porter" was establishd more than forty years ago and has never been disputed. At that time, the principal duties of the train porters were cleaning the cars, assisting the passengers, and helping to load and unload baggage; only a small part of the duties were those of brakemen, who were required to have higher educational qualifications. As early as 1921, the train porters organized a separate bargaining unit through which they have continuously bargained with the carrier here involved; they now have an existing contract with this carrier. Although the carriers gradually imposed upon the train porters more of the duties of brakemen until today most of their duties are those of brakemen, they have never been classified as brakemen.

The majority does not say that the train porters are brakemen and therefore the Brotherhood must represent them fairly, as was held in Steele. Whether they belong to the Brotherhood is not determinative of the latter's duties of representation, if it represents the craft of brakemen and if the train porters are brakemen. Steele was not a member of the Brotherhood of Locomotive Firemen and Enginemen and could not be because of race—the same reason that the train porters cannot belong to the Brotherhood of Trainmen. But Steele was a fireman, while the train porters are not brakemen.

The Brotherhood stoutly opposes the contention that it is the representative of the train porters. For the Court so to hold would be to fly in the face of the statute (45 USC § 152 Ninth) and the holding of this Court in General Committee of Adjustment, B.L.E. v. Missouri-Kansas-Texas R. Co. 320 US 323, 334-336, 88 L ed 76, 83, 64 S Ct 146.* The majority avoids the dispute in terms but embraces it in fact by saying it is passing on the validity of the contract. If this is true, it is done at the instance of persons for whom the Brotherhood was not contracting and was under no duty to contract. The train porters had a duly elected bargaining representative, which fact operated to exclude the Brotherhood from representing the craft. Steele, supra (323 US at 200, 89 L ed 181, 65 S. Ct 226); Virginia R. Co. v. System Federation, R.E.D. 300 US 515, 548, 81 L ed 789, 799, 57 S. Ct 592.

The majority reaches out to invalidate the contract, not because the train porters are brakemen entitled to fair representation by the Brotherhood, but because they are Negros who were discriminated against by the carrier at the behest of the Brotherhood. I do not understand that private parties such as the carrier and the Brotherhood may not discriminate on the ground of race. Neither a state government nor the Federal Government may nor the Federal Government may do so, but I know of no applicable federal law which says that private parties may not. That is the whole problem underlying the proposed federal Fair Employment Practices Code. Of course, this Court by sheer power can say this case is Steele, or even lay down a code of fair employment practices. But sheer power is not a substitute for legality. I do not have to agree with the discrimination here indulged in to question the legality of today's decision.

I think there was a dispute here between employees of the carrier as to whether the Brotherhood was the representative of of the train porters, and that this is a matter to be resolved by the National Mediation Board, not the courts. I would remand this case to the District Court to be dismissed as nonjustificiable.

* "Nor does § 2, Second make justiciable what otherwise is not. It provides that 'All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.' As we have already pointed out, § 2, Ninth, after providing for a certification by the Mediation Board of the particular craft or class representative, states that "the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act.'

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"It is clear from the legislative history of § 2, Ninth that it was designed not only to help free the unions from the influence, coercion and control of the carriers but also to resolve a wide range of jurisdictional disputes between unions or between groups of employees. H.R. Rep. No. 1944, supra, p. 2; Rep. No. 1065, 73d Cong., 2d Sess., p. 3. However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them."

WHEN CROSS-EXAMINATION WENT TOO FAR

THIS STORY occurred at Fort Collins, Colorado, perhaps 25 years ago, and at least the principal participants have passed to another jurisdiction.

We were defending a very prominent citizen charged with statutory rape. The District Attorney was assisted by a very able lawyer whom we may know as R. Immediately after the arrest, the girl in the case had been taken to Denver, where she had been kept in a Catholic Home until the trial.

In the course of her testimony, on cross-examination, she stated that a detective had come to her in the Home disguised as a priest and had offered her $500.00 to change her story. This testimony came just before closing in the evening. During the night we succeeded in inducing the priest in charge of the Home, with a couple of nuns, to be presented in the court the next day. Having kept them out of sight, we put the girl back on the stand and asked her if she could identify the detective if she saw him. Upon her saying "yes," we had the priest step out and said that was the man

The prosecution closing its case shortly after, we put the priest on the stand. He was a brilliant man. Upon direct examination, he said that as priest he had charge of this Home, and that no other man could possibly have communicated with the girl. He said that he did talk with her fully about the case. She told her story and insisted that it was true. He, of course, denied any bribe or anything of the sort.

Of course, cross-examination for the purpose of emphasizing the girl's affirmance of her story under the circumstances was something like this:

First, he was asked as to the details of her story which were repeated by counsel from her testimony. He said she had told him that story. "Did you advice her of the seriousness of making changes like this against this defendant?" "I did sir." "Did you call attention to the prominent position of this defendant in the community as a particular reason why no false charge should be made against him?" "I did, sir." All of this in great detail, as may be imagined. "How long did you talk with her?" "Perhaps an hour, sir." "And in spite of all of your insistence upon the gravity of her charges, and the sin and punishment, both in this world and the next, for false testimony, she still insisted she was telling the truth, did she?" "She did, sir." Certainly an ideal place to stop. But one more fatal question; "Now, Father, please tell this jury, sir, how this young lady impressed you." "She impressed me, sir, as wise beyond her years, a liar and a common prostitute." Of course, the defendant won the case.—GEORGE CLAMMER, in DOCKET, Vol. 4 No. 36, p. 3964.