COURT TESTIMONY OF ALIENISTS.*

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Specialists in mental and nervous diseases were not called into courts of law as experts until long after it had been the custom to command the services of persons supposed to be skilled along other scientific or special lines of work.

A hasty review of the literature having reference to expert testimony shows that the real development of a demand for expert medical evidence began with the calling of surgeons as advisers in court procedures, where complicated surgical problems were presented. Surgical methods and surgical results so greatly varied that justices of the courts of law, it seems, naturally felt incompetent to pass intelligently upon matters so foreign to their training and so far removed from the field of their general operations.

In English judicial tribunals, the expert made his appearance first as an adviser of the court. As early as 1353 the sheriff was ordered to summon skillful surgeons from London in an appeal of mayhem, to inform the court whether the wound in question was really mayhem or not.

In the seventeenth century it became necessary to call experts as helpers of the jury. In 1665 at the noted trial of the Suffolk witches, Sir Thomas Browne, a prominent physician and natural philosopher, was called upon to examine the accused, after which he gave expert testimony in court. This seems to have been a starting-point in English courts in the calling of medical experts, for the purpose of having them give their opinions in order that the courts and juries might be enlightened upon scientific medical subjects.

It is the purpose of this paper to discuss in a somewhat general manner some of the relations of medicine to law, but to particu-

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larly deal with medico-legal matters which involve the question of mental unsoundness. We may differ as to the proper order of the discussion of this subject and entertain different views as to the force of the contentions herein set forth. That there should be a difference of opinion in the discussion of this subject is natural, since differences of opinion are so common to scientific subjects in general.

It is generally admitted in the columns of the lay and medical press that medical experts occasionally disagree. It is also quite well known that the average American citizen believes himself to be a standard authority on medical expert testimony. Men who know nothing of the responsibilities and duties of a presiding justice freely criticise his rulings. Men who know little of medicine pay their critical respects to the experts. The spirit of criticism goes further: Members of the legal profession with brotherly sarcasm discuss openly the gross mismanagement of court cases and the palpable blunders of the counsel; but this is not where the storm center of criticism is to be found. The testimony of medical experts furnishes the one theme which all men seem to feel fully qualified to analyze, simplify, rearrange, boil down or build up to meet individual fancy or personal prejudice.

The advisability, wisdom, necessity and propriety of employing expert testimony, as well as the weight that should be given it, has for more than a century been subjected to severe criticism and more or less violent discussion. The fact that it has for so long a period been given the critical attention of the ablest exponents of the bar, and the most accomplished members of the medical profession, and that it still is found to be an indispensable and highly important part of a large proportion of court procedures, is at least presumptive evidence that its importance is recognized in the courts of the civilized world, and that it will always be a necessary feature in the promotion of the cause of justice.

From a psychological standpoint it may be noted that it is a remarkable peculiarity of human nature that men who seem totally unqualified to do a thing properly are prone to arrogate to themselves an unlimited qualification to enlighten others as to the only correct mode of action. This manner of conduct has always obtained, and so long as we are human it will continue in a greater or lesser degree in spite of the babblings of superficial critics and

the malicious and caustic fault-findings of persons who feel they have found palpable errors but possess no ability to offer a practical remedy.

This particular phase of our subject calls for some consideration since highly reputable members of the professions of law and medicine have published their disapproval of the present mode or process of selecting medical experts, the manner of conducting their direct and cross examinations, the latitude accorded to them in the giving of their testimony, the value placed upon hypothetical evidence, the wide scope to the formation and use of hypothetical questions, the fact that experts on the opposite sides of a given cause so frequently disagree as to diagnosis, classification, testamentary capacity, criminal responsibility and contractual capacity, the fees paid to experts for their court work and services and the matter of the expert witness becoming either argumentative or combative while testifying.

These contentions are worthy of serious thought and discussion, and I feel that before this body of professional and scientific men, these important phases of the subject should be taken up and discussed in a deliberate and dispassionate way.

In taking up these propositions in regular sequence, it may be well to bear in mind that some lawyers have contended that the remedy rests with the medical profession; other lawyers assert that the proper solution must be reached by the co-operation of the two professions; some medical men contend that the statutes which regulate court procedure are at fault; others declare that the desire of medical witnesses to become advocates is responsible for a large part of the adverse criticism. Without taking issue at this time with any of these critics upon these points and assuming that they are all experts upon the question which they have attempted to analyze, it is clear to us who desire to be impartial and fair, that among this array of expert critics there is evidenced a considerable diversity of opinion about a proposition in which they contend there should be absolute unanimity on the part of medical experts, and since these savants fail to agree among themselves, and since no two suggest the same remedy, how are we to assume that they are capable of furnishing a practical legal order of procedure which will place expert testimony upon a more satisfactory basis?

Dr. F. W. Langdon, of Cincinnati, Ohio, says in the *Lancet Clinic* of August 15, 1908: "While it is plain that it is not our province as medical men to instruct the representatives of the law as to methods of court procedure, we may properly insist that any blame or failure attaching to faulty methods of procedure shall not be shifted in the slightest degree upon the medical profession or such of its members who may chance to serve as expert witnesses."

It is not difficult to discover unsatisfactory features in established systems. When we attempt to correct defect which we in our wisdom feel we have found, then the real trouble begins.

Difference of opinion exhibited by physicians in court often depends upon the fact that the witnesses on different sides of a given cause have not been afforded equal opportunities for the examination of the person being tried or are required to form their judgments upon a radically different set of facts, or a set of facts so differently grouped and presented as to make agreement next to impossible.

Dr. Langdon, in the article referred to, says: "Another proposed solution of the difficulty is to abolish the hypothetical question and the expert witnesses altogether in cases concerning insanity and substitute a commission appointed by the court. This procedure is now available whenever the judge desires to exercise it. I have known it to be applied in Ohio, and have served on such a commission. The press has also informed us that it was carried out in New York State in a recent case of wide notoriety. The commission there, we are told, consisted of two lawyers and one physician appointed by the judge. The trial was stopped while the commission examined the defendant as to his sanity. Since the trial was resumed after their report was rendered, it is a fair presumption that the commission, or a majority of it, considered the defendant sane. I have heard it intimated, however, that the two lawyers in this case decided the defendant sane; that the doctor found him insane. As the report was not made public, so far as I know, this may be a surmise only. We all know by the verdict what the jury thought, and further, that the jury's verdict was confirmed by two qualified physicians after a careful study of the prisoner, extending over a month's time, during which they were in daily association with him. These physicians testified that

he was insane. Now, the question naturally arises: Who had the better opportunity to judge, the commission reporting after a few hours' investigation, or the two physicians, after a month of daily observation and study?"

The commission referred to by Dr. Langdon was not to determine the question of vital importance to the accused, that of his mental condition at the time the crime was committed, but for the purpose of determining whether he was sane or insane at the time of the trial, more than eight months subsequent to the date upon which the act for which he was being tried was committed. In other words, it was to determine whether at the time of the trial he was in such a state of mind as to enable him to understand the nature and character of such trial and to advise with his counsel, and therefore did not necessarily have a direct bearing upon the mental condition of the accused at the time he committed the act for which he was then on trial.

The eminent physicians who have suggested remedies for the defects arising out of the present manner of selecting medical experts in important trials, seem generally to have overlooked or viewed with light regard the constitutional rights of persons being tried for their lives, and they have seemed to think it a simple matter to put aside by legislative action an established order of court procedure which has existed for centuries, and which is the natural outgrowth of the Magna Charta of our democratic government.

Some writers upon medico-legal subjects have gone so far as to suggest that a "Board of Experts" should be elected by the people; others that they should be chosen by the courts or appointed by the governors of the various States, and that these elections, selections or appointments should be for life. Is it not evident that this order of selection of experts would, because of a large number of reasons, prove highly objectionable?

(1) If elected by the people their nomination and election would in numerous instances unavoidably be tainted by politics. Politics, with all its virtues, should not play so important a part in the "Temple of Justice" where human beings are under trial for their lives or property rights are being determined.

(2) The selection of expert witnesses, if made by the court, could not be made with full appreciation of the unrevealed facts

involved in the defendant's case, nor could the defendant's counsel consistently disclose such facts to expert witnesses in whose selection he had no part. The competence and equipment of such witnesses would not be assured by the fact that the court made the selection.

Dr. F. X. Dercum of Philadelphia, Pa., in the *New York Medical Journal* of July 25, 1908, says: "To me it seems incontrovertible that the appointment of an official expert by the courts would be a very serious menace to justice. Who is to select the experts? It takes an expert to decide who are experts. Shall the judge, who is a layman in medical matters, make the decision, or shall it be a civil service appointment; if so, who are the experts to examine the experts? Again, it is a matter of common experience that public appointments soon become the play and spoil of politicians, and the danger would be that sooner or later the expert would be a person of the second rank or no rank at all."

There is no substantial basis for assuming that governors are qualified to choose or select boards of expert witnesses more satisfactorily than they are now selected. Then where is the wisdom of such proposed statutes? The fact that experts shall be selected by the governor would not guarantee their equipment nor would it give assurance that they would not at any time be of such independence of thought or possess such individuality of mental make-up as would enable them to disagree.

The appointment of boards of experts for life, which has been advocated, does not promise that agreement in testimony which theorists claim is the ideal result to obtain. That the Supreme Court of the United States is a most dignified body must be admitted by everyone, but even here we find a wide diversity of opinion upon given sets of facts submitted to them for judicial action, and yet the tenure of office of justices of the Supreme Court of the United States is for life. In the famous "Dred Scott" case, the Supreme Court was divided by a difference of one vote and the opinion was given by Chief Justice Taney, who represented the majority and who, after disposing of one point of law, followed it with his famous "obiter dictum," and in it gave utterance to sentiments which operated to hasten the great crisis and operated strongly to involve this nation in a civil war. There still exists a marked difference of opinion among the intelligent

people of this country as to the justice and correctness of the opinion and the propriety of the utterance of the obiter dictum of the chief justice. The opinion of the minority has yet many firm supporters; but why should there have been a difference of opinion? The Supreme Court was composed of able men of judicial temperament trained in weighing facts. The same facts were submitted in writing to all the members, and in spite of the fact that they held a life tenure in office, they disagreed. This decision and numerous others where the court was divided almost equally have been from time to time handed down, but we still retain confidence in this great arm of the government and attribute their differences of opinion to independence of thought and the exhibition of individuality and personality such as characterize the acts of great men.

The Supreme Court was asked to determine the question of the constitutionality of the "Income Tax." It is a matter of history that it was decided by a majority of one. There must have been quite a difference of opinion on the part of these learned gentlemen, these trained legal minds, and yet for this difference of opinion we do not hear them being abused for their partisanship. We hear no one say, in view of the fact that their tenure of office is for life and that they hold a non-partisan position and are not expected under the constitution to play the rôle of advocates, they are dishonest and the Supreme Court should be abolished.

We are rather inclined to the opinion that in this instance there was again an exhibition of personality, an independence of thought, and while the same facts were presented to all of them, their processes of reasoning in the application of the principles of law differed. We regard them as honest men and great men. We look upon the Supreme Court of the United States as one of the magnificent institutions of this government, but its members, like the individual citizens of other avocations and in other professions, exhibit their strength of character in their intellectual individuality in arriving at conclusions as to the application of the principles of law.

When all men shall agree on scientific questions, when all men shall reason alike, the monotony of scientific work will mean intellectual stagnation. There could be no competition and nothing for which to strive. All the problems of human life and human

action would be placed upon a stationary and fixed basis and progress would be impossible. Personalities and individualities such as Cæsar, Frederick the Great, Napoleon, Galen, Hippocrates, Physick, Watson, Osler, Kraepelin, Washington, and Lincoln, and numerous others whose work adorns the pages of history, would occupy no distinctive place in the records of professional and scientific progress. These are men who thought independently and thus became giants in the spheres of their action. They differed from other men. Men of a lesser degree of that quality of mind recognized in the equipment of geniuses must proportionately exhibit the mental prerogatives of discrimination, individual judgment and the application of scientific principles in the solution of the problems presented to them.

The criticisms upon the latitude given to expert witnesses have been numerous, but a satisfactory solution has not been suggested. Pointing out what seems to be defective or faulty in structure or cumbersome in action is not difficult, even if there be actual wrong. A logical, legal, reasonable and just remedy or correction is what is needed; to provide this requires more than a simple spirit of criticism.

Why are experts called to give testimony? It is generally conceded that the object of introducing expert testimony into court proceedings is to make clear scientific points relating to the question at issue and thus promote the best principles for the government of society in the just protection of life and property. The correct application of justice and equity to the principles of medicine is a vastly different process from that of making the principles of medicine meet the requirements of law; the one would mean the promotion of right by the orderly administration of law in accordance with the principles of a progressive science, while the other is too often the disarranging and misusing of legitimate and reliable scientific findings in order that they may be made to meet the demands of established legal precedents or harmonize with court rulings, many of which are relics of antiquity.

The art or science of medicine is progressive. It does not to-day depend on the dogmas and theories of the middle ages; it does not even hang to the theories of the last decade, but accepts that which is proven to be the soundest and best after it has been subjected to scientific scrutiny and careful analysis. In medicine no

great authority of the past is allowed to retard the investigations and progress of to-day or to interfere with the steady strides which are being made through scientific medical research in the interests of humanity.

The attacks made upon the worth of hypothetical evidence, the use of unlimited and extensive hypothetical questions, cannot be fairly charged up against the medical profession, and it is safe to say that much that has been said derogatory to hypothetical evidence and the value of hypothetical questions as they are used to-day has been said without due consideration or a proper understanding of the true reason for the introduction of such an order of giving testimony and the relative benefits arising out of it.

It is quite clear that the principle reason for introducing hypothetical questions in the trial of a cause before a court and jury is for the purpose of setting forth in a more or less abstract way scientific facts and conditions, identical with or similar to those which have been proven or are to be proven in the given cause at issue; and the extensive hypothetical question has been accepted for the reason that it is an expeditious manner of setting forth all the admissible parts of the testimony in a given cause so that the witness may form an opinion, not upon a part of the case, but upon a fair and reasonable presentation of the whole case; but it is to be much regretted that courts often allow hypothetical questions to be propounded which do not fairly present the whole case and even permit them when many of the cardinal or essential facts which have been proven are omitted.

While there is much to be said in behalf of the hypothetical question, there are undoubtedly serious objections to the manner in which it now is so frequently used. Personally I find hypothetical questions in many particulars objectionable in that they group together a number of hypotheses and force the witness to accept them all as proven facts and to reject all other manner of testimony not included in such hypothetical questions. This forces the witness to the formation of his opinion solely upon the assumed facts set forth in the question, and limits him in their use to such application and weight as are given them by the constructor of the question, even when it is clearly an unfair presentation of the evidence.

Frequently one hypothesis practically nullifies all the others

incorporated into the question. The hypothesis which has this power of nullifying may be based upon the testimony of a very ignorant witness, and the testimony may have been given while such witness was in a state of confusion due to the vigorous cross-examination he has been subjected to. The expert is not permitted to take this into consideration. He must assume that such facts are proven; how they are proven and the conditions under which they are proven is not to be allowed to play a part in the formation of his opinion. The objectionable features of such a restriction are from a scientific standpoint quite evident, but the rules or laws of evidence must obtain, though the heavens fall.

I am firmly of the belief that long hypothetical questions consisting of several thousands of words frequently do not tend to best advance the cause of justice. From my experience I am led to believe that, when such questions are so long and complex, instead of making a clear and concise presentation of expert opinion to the court and jury, they tend to bewilder and confuse rather than to elucidate and assist the jury to a better grasp of the situation.

It must be borne in mind that the slightest change in a hypothetical question will sometimes force the conscientious witness to a totally different conclusion and answer. In a somewhat celebrated murder trial in which I appeared as one of the expert witnesses, a hypothetical question was so framed as to lead a casual observer to believe that it embodied all the essential facts which had been presented upon the witness stand, but in one part of it it had this phrase: "and assume that at this time he was suffering from a disorder of the mind." Now, whatever might have constituted the other parts of this lengthy question, since a "disorder of the mind" is used to indicate mental unsoundness, mental derangement and insanity, it is clear that the witness, by the insertion of this one assumption, was left no choice as to a conclusion and was denied the right of discrimination and the opportunity of weighing the other parts of the question, and that all the remainder of the question was made practically immaterial and amounted to nothing more than a garbling of words to impress upon the jury the fairness of the counsel in the presentation of the case. In my opinion no court should allow an assumption or hypothesis which will nullify all other hypotheses and leave the

witness no discrimination and no opportunity to weigh other important hypotheses incorporated in the question.

The changing of one word or sentence in a hypothetical question will frequently disorganize the entire complex proposition. This is fully appreciated by well-trained and astute lawyers, but rarely does the general public or members of the medical profession inexperienced in court work give this item the consideration it deserves.

Macaulay, in his essay on Bacon, says of cross-examination methods: "We will not at present inquire whether the doctrine which is held on this subject by English lawyers, be or be not agreeable to reason and morality—whether it be right that a man should with a wig on his head and a band around his neck, do for a guinea what, without those appendages, he would think wicked and infamous to do for an empire—whether it be right, not merely believing but knowing a statement to be true, he should do all that can be done by sophistry, by rhetoric, by solemn asservation, by indignant exclamation, by gesture, by play of features, by terrifying one honest witness, by perplexing another—to cause a jury to think that statement false."

Much has been said about the conflicting nature of expert testimony and the fact that experts on opposite sides of a given cause so frequently disagree as to diagnosis and classification, criminal responsibility, testamentary capacity, etc., has furnished a theme which has called forth in a few instances some able criticism and in many instances explosive outbursts which seem to have had origin in a lack of comprehension of the salient facts involved in this important proposition.

It is a regrettable fact that much of the adverse criticism on the part of physicians against expert testimony is the direct outcome of professional jealousy and a lack of expert knowledge of the very subject on which they arrogate to themselves the right to pass final judgment.

Dr. William A. White, of Washington, D. C., in the *New York Medical Journal* of July 25, 1908, in his article, "Expert Testimony and the Alienist," says: "Professional jealousy is not unknown even among the doctors, and the specialist who is not 'called' to give his opinion, and to receive large fees therefor, can well afford to decry the lack of morale in his more fortunate

brother. In fact, in so doing he is but obeying a physiological law, and, in the language of modern psychiatry, but developing a 'defense reaction,' so that he may spare himself the discomfort that comes from emotions that find no means of outlet. Less technically, he 'vents his spleen,' thus relieving the tension, so that he may proceed with the day's work in a spirit of calm. That a lack of adequate comprehension of the problems of expert testimony and criminal law is at the bottom of much of the controversy is shown by the nature of many of the remedies for the presumed evils of the system that are proposed by its critics. These remedies frequently show an entire lack of understanding of the fundamental principles of American criminal law, and are proposed with a nonchalance that shows plainly that the writers have no idea that to carry them out would involve a radical change in these principles."

Often popular opinion demands the life of a man when such a penalty is not in accordance with medical science or justice. Testimony in behalf of such a person is always unpopular and elicits much severe adverse criticism. Even our courts have been known to bow to public opinion when their judgment has been to the contrary.

It is granted that experts other than medical experts disagree upon propositions in which there has been equal and full presentation made of all the known features, phases and conditions of the issue. It must also be admitted that medical experts in the various branches of medicine disagree whether they be in court, in medical societies, medico-legal societies, or at the bedside of the sick.

Two or more medical experts may be called to see the same patient and examine such patient in the presence of each other, leave and go to a consultation room and disagree as to diagnosis, prognosis or treatment, or all three. This is too well known to call for an elaborate discussion. If the same experts were called to the witness stand, if they were honest in their opinions and convictions at the bedside, could they be more honest if they were on the witness stand? If they had conscientiously disagreed at the bedside would their coming into the court room be a reason for a harmonious agreement?

Consider the action and conflicting opinions of noted expert

engineers in reference to the Panama Canal, or the experts daily called in the valuation of property ; is it not known that they differ in their judgment, their valuations and their appraisements? Do lawyers agree on the application of the principles of law? If so, would there be any choice between lawyers when one was seeking advice out of court?

Again we will go back to the expert in medicine, and when I say expert in medicine I mean in any and all of the various branches of medicine and surgery. They visit a wealthy patient and hold a consultation; the fact that they differ in their opinion is not positive evidence that one is right and the other is wrong. They both may be wrong, but whether both be right or wrong in their opinions, either as to diagnosis, prognosis or treatment, it is not a recognized article in the code of ethics that either of them because of a difference of opinion shall deem it proper to decline to receive a fee in proportion to the professional services rendered and the financial ability of the patient.

A man who sees a case out of court and gives his honest opinion about it, although he may be in error, if he does not discover his error, will give the same opinion under oath, for expert testimony is necessarily largely opinion evidence, and more frequently based entirely upon assumptions grouped and presented by the examining counsel after his own manner and fancy.

The manner in which ordinary witnesses as well as experienced witnesses are badgered in court by pugnacious and aggressive lawyers, occasionally makes it necessary that a witness must either be combative or submissive. If he be submissive the public and the jury form a conclusion that he is poorly equipped, not competent and not qualified to testify in the capacity of an expert. Many members of his profession look upon him in scorn and he is humiliated in the eyes of the public. If, on the other hand, the expert witness stands firmly by his convictions, insists that his statements shall not be disturbed and misrepresented, and when there is an attempt made to force him into a false position, he frankly, openly and energetically combats it, there will always be found persons who will criticise him as being disposed to deliver a lecture, inclined to be an advocate or to show bias.

I contend that it is the duty of the expert witness to use every possible means at his command to properly understand the work

which is before him in any given cause with which he is associated, to set forth in plain English his opinions and to stand firmly upon his convictions, fearless of criticism and fearless of the often unfair, aggressive or pugnacious attacks of the examining counsel.

It is unfortunate that the qualifications of witnesses who go upon the stand for the purpose of giving expert testimony cannot be uniformly determined under a well-defined standard. This is now left to the court's discretion and too frequently incompetent persons and inexperienced and poorly equipped physicians are permitted to qualify as experts. Book experts or quotation experts should obviously have no place in the courts of law.

DISCUSSION.

DR. H. A. TOMLINSON.—I was one of a committee of five appointed at the meeting of this Association in St. Louis in 1904 to consider the question of the responsibility of the insane for criminal acts; and while each member of the committee presented his opinion in writing, there was such a divergence in the conclusions expressed, that no report was made at the next meeting by the Chairman, Dr. A. E. McDonald. I should like, therefore, as a contribution to this discussion, in connection with Dr. Chapin's paper, to read what I wrote at that time, as having a distinct bearing on this question.

"Are the insane responsible for criminal acts?" In the present state of medical opinion concerning what is constituted in insanity, a definite or a direct answer to this question is impossible.

It will be necessary first to have a consensus of opinion as to what is constituted in insanity, and what is connoted by the term responsibility.

If the terms insanity and responsibility are used etymologically, insanity in itself is not a reason for not punishing the individual guilty of a criminal act; especially if it be an act of violence to the person, either with homicidal intent, or to satisfy sexual desire; because the impulse toward such acts is an inherent tendency in human nature! Criminal acts toward property may be in themselves the evidence of insanity, especially when they are wanton and apparently purposeless; and yet such acts are instinctive and habitual with the child and the defective. The presumption is, therefore, that criminal acts done by one to whom such conduct should be naturally abhorrent, indicate that he is deficient in self-control, whether the act results from impulse or follows deliberation. The lack of self-control implies mental incapacity; that is, a reversion to the primitive tendencies of the human animal.

The question is then, what degree of incapacity or loss of power to control the conduct that is manifested in criminal acts makes the individual irresponsible? That is, makes him unable to respond to those conditions

in his environment that affect the welfare of others, so that no harm shall come to them directly by personal injury, or indirectly by loss of property. If a man is insane, presumably he is not able to adapt those activities that are manifested in conduct to his environment; yet, men have been insane all of their lives without doing criminal acts! Again, men may be temporarily unable to appreciate their relations to those about them, and to control the activities that are manifested in conduct, so as not to interfere with the welfare of others. In other words, their response to the conditions in the environment is untoward to their neighbor. The nature of this disability is not influenced by its cause, as in alcoholism and narcotism; so that the fact that the man might have avoided the cause of his condition in no way modifies that condition; because the inhibition of control only released an inherent tendency.

Therefore, responsibility, that is the ability to respond, must be determined with relation to the individual, and cannot be the subject of a general rule; because no two individuals are alike, nor will they respond in the same way to the conditions in the environment. The determining factor as to the presence or absence of the ability to respond, is the capacity of the individual to control the activities that are manifested in conduct, so as to not interfere formally or grossly with the welfare of others. The only guide we have to determine this inability is the degree of defect present in the mental make-up of the individual, or the extent of the reduction in mental capacity associated with his insanity.

With regard to the expert witness, I believe there would be no trouble if we were content to be medical men, and did not try to be lawyers also. That is, if we refused to act as coach for counsel, and appeared as witnesses only—testifying from our special knowledge without regard to the effect of our testimony on either side of the case. But then, if we did take this stand, we would not be called as witnesses except by the State, and not often then.

DR. H. R. STEDMAN.—Although there is no one subject that has been so long and so vehemently discussed by doctors, lawyers and people in general and no public measure directly or indirectly affecting the insane in which reform has been so loudly demanded as that of medical expert testimony in this country, little or nothing has been accomplished. Dr. Chapin's forcible and thoughtful paper makes this plainer than ever. Practical and promising suggestions are made, but nothing comes of them. For example, the proposed employment of experts appointed by the court as aids to the judge in ascertaining the truth, has many advantages. It is by far the surest way in which to secure unbiased expert opinion and at the same time does not interfere with the employment of experts in the usual way by the prosecution and defence, although the testimony of the court expert would carry more weight with judge or jury, who would probably regard it as entirely disinterested. Strenuous efforts have been made to secure legislation to this end, notably in New York and Massachusetts, but thus

far without effect. The past year, you may remember, a committee of the State Bar Association of New York, after conference with committees from the State Medical Associations, reported in favor of a bill providing that certain justices of the Supreme Court should designate a limited number of physicians, who could be called upon by the court, or by any party, to a civil or criminal action to testify in cases necessitating the employment of experts, but without limiting the right of parties to call other expert witnesses as heretofore. This bill passed the Assembly, but was defeated in the Senate. The expectation is that it will become a law next winter. I am sure we all devoutly hope so. It would be the first encouraging step toward real reform in this direction that has yet been taken. A great many alienists, to my knowledge, have been interested—not a few actively—in the solution of this question by some such means, but everywhere they are met by determined opposition to legislative action, chiefly of lawyers, and a few physicians to whom the accurate determination of the mental condition of the accused is secondary to the success of the particular side of the case upon which they are engaged and they are naturally not at all concerned in upholding the reputation of the expert and the dignity of the medical profession. Court experts in mental cases have long been utilized in Germany and with the best results in the way of speedy settlement of such questions. As a consequence, the sensational, long-drawn-out murder trial, with its array of medical experts on either side whose conflicting testimony makes them the butt of public ridicule, is almost unknown in that country. In certain especially obscure or important cases, where the sanity of the accused is involved, it is there a common practice for the judge to send him to a hospital for the insane for observation pending the determination of his insanity, and it is this object that I had foremost in mind when I arose, to again advocate before this Association the general adoption throughout the country of hospital-observation in such cases. If in any way the real facts of a person's mental condition can be learned, it should surely be when all his words and acts are exposed for months to the daily scrutiny of physicians and nurses trained in observation of mental manifestations. I hardly need remind you that such a law has long been in active operation in the State of Maine, where such observation is compulsory, and also in New Hampshire, Vermont and Massachusetts, where it is permissive. In Massachusetts we have just extended its application to persons who are under complaint as well as under indictment.

DR. O. R. LONG.—I desire to say a few words on this subject. I should, perhaps, introduce myself. Although I have met with you for the past twenty-five years, I have rarely risen on any occasion, except, perhaps, to make a motion to adjourn. This has been largely due to the fact that my work has been entirely along a special line, being Superintendent of the State Asylum for Dangerous and Criminal Insane.

Dr. Chapin's paper raises the question, "What is Insanity?" and upon

this subject we should agree among ourselves; that is, as a society, we should agree upon a classification, and also as to what constitutes an "expert," and agree upon the question finally alluded to by the doctor, whether a man has the right to come upon the witness stand and coin some new classification. We must admit that if this practice is allowed, it is likely to result in making the profession the butt of ridicule on the part of newspaper reporters and the laity. I do not think it would be presumptuous on the part of the Association to suggest to the courts the best method of selecting experts, as well as defining the term "expert."

The question of responsibility, where the mental responsibility of the person charged with crime is involved, Michigan laws permits the judge, in his discretion, to summon experts for his own enlightenment, and requires that the consent of the court must be obtained before any person can appear as an expert. I have had considerable experience along this line, and have noted that the law is not as efficient as might appear at first glance. Often it works out something like this:

The court will summon an expert from a distance; often a man of long asylum experience, well qualified and unprejudiced. The defence is permitted to put against him on the stand a physician who practices in the vicinity where the jury lives, as well as the criminal. Usually this is a physician who has had no experience in the treatment or observation of the insane, yet his testimony will, in the minds of the jury, be considered of more value than that of the expert from a distance. The jury will reason, perhaps, that the witness has been the family physician or acquaintance of the person charged with the crime, has known him for a long period, therefore, his testimony as to his mental responsibility should be better than that of the physician who is an entire stranger. I have been upon the witness stand when the arguments of the attorney were upon these lines.

As an illustration of the workings of the Michigan law, I will refer to a case which occurred in our State recently:

The charge was murder; the defence was insanity. The court summoned two asylum superintendents as experts in the case. They came as unbiased witnesses of the court; they both testified that the man was irresponsible for the act. The prosecuting attorney immediately put on for rebuttal testimony physicians practicing in the city where the trial was held. The result was a disagreement of the jury. One year after, the case was re-tried; the two asylum superintendents, who testified by request of the court in the first trial, were summoned by the defence, and immediately testified that the party charged with the crime was irresponsible. The court at this trial summoned two other asylum superintendents as experts, and these two gave a directly opposite opinion. I was consulted at the last trial; the man was convicted. I am not attempting any defence of my testimony, but am showing that, notwithstanding the physicians summoned as experts at the second trial were all asylum superintendents, they were evenly divided upon the question of whether the accused was sane or insane. I recognize this is probably an extraordinary

occurrence, yet it shows that the appointment of experts by the court does not always bring about the same results.

I wish to say one word further regarding Michigan's law; that it is one of the few States that has provided an institution for the criminal insane. The law specifies that any person charged with certain crimes, who is insane when called to trial, may be committed to the criminal asylum until restored to reason, and then returned to the custody of the court, where he may be tried for the original crime or discharged, as the court may see fit. If the defence be insanity at the time the crime was committed, and he is acquitted upon these grounds, the court is required to summon experts to determine if the insanity in any way continues, and if found that it does, instead of being allowed to go at large, he is committed to the criminal asylum.

DR. SANGER BROWN.—I just want to make a small contribution to this discussion, and in the line of some experience I recently had, which has seemed to me to work exceptionally well.

I am not well versed in the laws of the different States on this subject, but I know in Illinois, where I reside, and in Iowa, we have a law, and I think it a law of recent enactment, which permits an expert to sit through the trial and hear all the evidence, and then sum up the different witnesses' testimony and express his opinion to the jury as to whether the case is insane or not and why.

In a recent case for murder which I attended, being summoned by the State, I sat through for seven days a trial where insanity was set up as a defence against a charge of arson, in which the whole community, pretty much, with the exception of the State's attorney and one or two of his assistants, were in favor of the defendant. She appeared in court with her three little children and made a very strong sensation, that is, impressed the whole community with the fact that she ought not be convicted. The newspapers took it up and did not comment favorably on my attendance, I being from some distance. The lawyer who defended her was post-master of the country town, and had the local profession testify in her favor, so that if I had been denied the privilege of taking up the evidence witness by witness and analyzing it in my own way before the jury the defendant undoubtedly would have been acquitted. But after a few hours of patient explanation I was able to turn the tide and the defendant was promptly convicted.

DR. C. B. BURR.—I encountered an interesting departure from ordinary precedents in the medical jurisprudence of insanity, some two or three years ago in one of the northern counties of Michigan. I was summoned to give testimony in a case of insanity. It was so plain that he who ran might read, but there was quite an effort made, notwithstanding the young man's condition, to prevent his commitment to an asylum. A jury was demanded and after it was impaneled—an extraordinarily fine jury it was

too—the prosecuting attorney sprung a complete surprise. He said: “Gentlemen of the jury, this court is organized under the proceedings which govern in the condemnation of land. You are the sole judges as to the admissibility of evidence. The judge of probate will swear the witnesses, but you will pass upon the testimony.” Testimony was given in respect to the young man’s conduct. Objection being raised, the lawyers would discuss the matter of its admissibility and finally refer it to the jury. The foreman, responding for the jury, would say something like this: “If I fail to voice the opinion of my colleagues, I hope I shall be interrupted, but in the absence of such interruption I shall assume that their sentiments agree with my own. Personally, I believe it would be well to hear the testimony.” Testimony was introduced in respect to some postal cards the young man had written to the physician. The physician—himself a witness—was asked what the writing was. He replied that it was very obscene. “What were the exact words?” “I do not remember, I destroyed the cards. They were extremely obscene.” The boy’s counsel demanded again and again the *exact words*. Finally the foreman of the jury arose, raised his hand and said: “I object to this myself. The doctor has testified that the writing was very obscene and this is quite enough for the jury.” Testimony on the question of heredity was presented. The boy’s counsel objected. It was debated and finally referred. The foreman said: “I am a layman and do not pretend to understand these things, but had supposed in insanity, as in physical diseases, the question of heredity was of considerable importance. We are fair-minded men and will discriminate. We want to arrive at the exact truth. I think the jury will hear what the witness has to say.” The upshot of the matter was that the *whole truth* was brought out and the boy was committed to the asylum.

DR. T. J. W. BURGESS.—The question seems to me to be a very simple one. What does the public want in all these trials? They want justice, or as nearly that as they can get it. If they cannot get the absolute justice which they want, how are they going to get as close to it as possible? Are they going to get it by allowing each side to call expert testimony? Not at all. An expert may take up a case purposing to give an absolutely impartial opinion, but sooner or later the desire to win, inherent in us all, comes into play and he becomes more or less biased. I know this is the case with myself and I think it is so with the rest of mankind.

My own idea is that the federal government in your country, the Dominion government in ours, should appoint three or five experts in all cases of doubtful sanity and let these men decide the point. Have no expert testimony called for either side. Whether you call three men, or five men, let the majority of the three or five, right or wrong, decide it. In that way, I think, you are going to come nearer to justice than in any other way, and justice is what the public wants.

DR. E. N. BRUSH.—I think Dr. Burgess has stated the truth when he says experts are very often prejudiced by the fact that they are called by one side in a controversy. It is very hard work to be called by the prosecution and not wish its contention to prevail, and *vice versa*. I doubt very much whether the calling of experts by the court would solve the problem, at least, it would not in the United States, because a person on trial has the right to summon anyone he pleases who has any light to throw on the subject. At the same time courts all over the country have also the right to summon independently any witness that the court believes can throw any light on the subject which will aid the court in giving an opinion, or a jury to reach a verdict. This is done frequently.

Over thirty years ago, as a medical student, I attended a trial for malpractice in which expert testimony was given on both sides of the case, but at which the court summoned upon its own motion three physicians to whom it gave instructions to examine the plaintiff and testify to his actual condition and upon their testimony the verdict of the jury was based.

One of the most interesting trials I ever attended was a case involving the question of insanity after conviction and sentence of death in which the court appointed as referees Drs. Chapin, Dana and Allan McLane Hamilton to sit with the court, and listen to the testimony and examine witnesses. The United States district attorney propounded to us the usual preliminary questions, and then turned us over to these medical men. It was a searching examination, but it was fair, and the questions were intelligent. If questions were asked we could not answer we had not the least hesitation in saying so, because we knew the medical men would understand, when we said we did not know, that we could not be presumed to be able to understand all questions.

The great difficulty in securing experts who will impress the jury as impartial is, that being called by one side or the other, they often appear to find it necessary in giving their testimony to evade a direct answer which may be favorable to the opposite side and they will argue with the court and with the attorney on one side or the other and make themselves appear to be partisans, when they are really trying to be as impartial as they can, but are afraid they may give the impression of being uncertain, of having no positive opinion. Then they fear they will incur a certain amount of disgrace if they say, "I don't know."

The difficulty is, as Dr. Burgess has pointed out, the danger of partisanship. In giving testimony, I have no hesitancy in saying that I do not know; it is my duty to do so if that be the case. I have never felt that it was incumbent upon me to argue with a lawyer. The expert witness who becomes so interested in the outcome of a case as to be anxious for his "side" to win, or who feels that he has been overcome in the contest, if the verdict is against the side which called him, is a partisan and cannot, no matter how honest he may be, avoid the appearance of being a partisan, to the discredit of his credibility, and of expert testimony in general. So also with the witness who sits with the counsel and acts as a medical

coach. I have never hesitated to suggest questions to be propounded to witnesses, medical or lay, the answers to which might help me in forming an opinion, but such a course even I recognize as suggestive to the court and jury of partisanship. To suggest catch questions or questions intended to confuse or discredit a witness is certainly open to such suggestion and more often has that result than any other.

In regard to the hypothetical question I do not believe that it is of any real value. The hypothesis of one side is as a rule so drawn as to demand an answer favorable to its contention. The question of the other side demands a diametrically opposite answer and the opinion of the witness testifying as an expert is thus made to appear to the jury as of little or no consequence.

Some time ago I was given a hypothetical question, and told to exclude from my answer any knowledge I had from my personal examination of the prisoner. I said: "I cannot do so, and I will not answer the question unless I can use what knowledge I have of the case." The court sustained me. It is impossible for a witness to exclude from his mind, in giving his answer, part of his knowledge of the case.

DR. BURGESS.—Dr. Evans is quite right in saying that by the constitution a man on trial has a right to defend himself in any way he chooses, but cannot the constitution of the United States be amended? I know our Canadian constitution could be if we set about it.

DR. BRUSH.—Some of us think it can be and some think it cannot be.

DR. C. K. MILLS.—This is a very old question. I have been doing so-called expert work for many years. I have heard time and again different methods advanced for curing the evil. Several of those who have already taken part in the discussion have given some of the real reasons why we cannot improve much on present methods.

In the first place, our constitution and that of England require that every one on trial should be allowed every possible legal means of defence. No matter how many experts are appointed by the court the defence will also have the right to call experts. The fault is not in the constitution, not in our forms, but it chiefly resides in the conduct of individuals. There is sometimes an absence of the principle of fairness in the methods of investigation and trial, although this is not always or even usually the case. Recently in a case in which I was a witness there were eight experts on each side. The same opportunities were not allowed to the so-called expert witnesses on the two sides to examine the accused. For instance, it was insisted that the experts for the commonwealth should be present when the witnesses for the defence made their examination. On the other hand, the experts for the commonwealth were allowed to examine any number of times, with or without the presence of the experts for the defence.

The appointment of court experts will not solve the difficulties. Great abuses may come from the appointment of so-called State experts. Personal and even political influences might play some part in their appointment. So it seems to me the present method is all right if it is carried out properly in particular cases.

There is much to be approved in prolonged hospital observation, and any law that allows such observation to be made equally by men selected for the defence, the prosecution and the court should result in some good. It may also be of some use at times to allow the defence and prosecution to choose a third party or parties as arbiter or arbiters. In one such case, however, in which I was chosen for this purpose the result was not altogether satisfactory to parties.

DR. H. W. MITCHELL.—I wish to call the attention of the Association to a method which has done much in one State to eliminate partisanship from medical testimony in the cases of alleged criminals who plead insanity in defence.

For several years it has been the custom of the Maine criminal courts to take advantage of the observation law, which provides that in the case of a person pleading insanity as a defence to crime, that person may be committed to one of the two insane hospitals of the State for prolonged observation and report to the court as to mental condition. The period of observation can be extended at the pleasure of the hospital superintendent. He is required to report to the court at each criminal term whether or not it is necessary to detain patient longer for observation.

Having spent some two or three years in the Massachusetts Hospital for Insane Criminals, I know from experience the extreme difficulty that exists in making a diagnosis of insanity in these cases, and also the frequency with which the problem is complicated by malingering, which can be detected only by prolonged observation and careful study. Under the provisions of this law, every facility is given physicians for making careful study of the case and forming a reasonably accurate opinion as to the person's responsibility, which can be given without any partisanship, as the law requires that reports should be made to the court, and it frequently happens that the hospital superintendent goes to court without knowing which side will summons him as a witness.

There has been, to the best of my knowledge, no difficulty in securing reasonably satisfactory justice in a quiet and non-spectacular manner, with persons of moderate means who have been disposed of under this law. Whether or not the law would work equally satisfactorily in the case of a rich criminal, who might secure many medical experts, remains to be tested.

DR. C. G. HILL.—I quite agree with Dr. Mills in regarding the old system as probably about the best we can devise, all things considered. I admit there is much adverse criticism of our present method and many

suggestions for its change, but these come chiefly from the legal profession and a few medical men. If we dare to depart from the law-made insanity as interpreted by the courts, and base our opinions on the insanity as we see it in our institutions and study it at the bedside our motives are impugned and we are soundly abused by the lawyers, the press and the public, constituting themselves experts on matters of which they know very little. Dr. Burr's experience with a jury brings out a very strong point. I have great faith in a jury. They may not be experts in psychopathy, but they bring to bear on the case good common-sense and come a little nearer the truth in their conclusions than can be reached by any other method yet devised. Though hedged about with rulings, admissibility of evidence and all kinds of technicalities, with court-appointed experts thrown in, the average juror is the judge of the law and the evidence, and down at the bottom of his heart he weighs many things not admitted by the court, and brings in the verdict accordingly. The experts appointed by the court would not be infallible by any means, nor unprejudiced, as few men are so judicially constituted as not to lean a little to the power that appointed them. In a celebrated trial in this country some years ago the government called practically every expert of prominence in the United States, and the defence was only able to command a few obscure men. The jury promptly convicted the prisoner and he went to the gallows, the plea of insanity having been completely snowed under, but the post-mortem showed a defective brain and subsequent reflection has led to the universal diagnosis that the man was a typical paranoiac. Let the jury be the judge of the evidence, the good old cross-roads common-sense jury, that will weigh the evidence from its own standpoint, will place its own standard on the experts as well as the other witnesses, and we will come pretty near the truth. In order to be unanimous, though they may have to "toss up a penny" or play a game of "seven-up," they will average about as near the equity of the case before them as the most learned expert the court might appoint.

DR. E. E. SOUTHARD.—As pathologist, I should like to know what lesions indicating paranoia were found in the patient mentioned by Dr. Hill.

Aside from this detail, as psychologist I was much interested in Dr. Evans' paper and particularly in the penultimate paragraph. As I understand it the basis of his contention is that diagnosis is difficult or impossible. Even in questions of law, Dr. Evans notes, the Supreme Court of the United States may be unable to pass judgment without disagreement, four men against three in certain instances. The point is, however, that, disagreement or no disagreement, the Supreme Court does eventually come to a decision and a decision which is unbiased. Similarly in questions of insanity, although we cannot require absolute agreement on the part of experts, we can and should require the best diagnosis obtainable.

Dr. Evans appears to whitewash the situation and to believe that no improvement can be made in our present procedures. On the contrary,

however, I believe that the present state of medical expert testimony in this country deserves to be severely criticised and I welcome the abundance of criticism evoked by the papers of to-day. Dr. Evans appears to think that experts cannot arrive at sound conclusions. As Dr. Hill has mentioned autopsies as confirmatory of diagnoses, I should like to call attention to some facts which I have collected at the Danvers Hospital. I do not wish to say that our results are better than those obtained in other hospitals; but the Danvers Hospital data are in good shape for obtaining an idea of the probable accuracy of diagnosis as made in a democratic fashion by several men.

I have correlated the autopsy findings with the clinical diagnoses in a long series of cases at the Danvers Hospital. The cases have been diagnosed by good men, several of them members of this Association. Their diagnoses have been recorded in books at the time of examination. I have used for the correlation these recorded diagnoses and have not employed the revised post-mortem clinical diagnoses or the diagnoses of the annual reports, so that I believe the diagnoses which I have considered represent the practical difficulties which confront the diagnostician.

The results show that in general paresis there is a probable error in diagnosis of about one in ten. In the case of senile dementia there is a somewhat larger error. If the cases of general paresis and of organic brain disease be lumped together for diagnostic purposes, as in the admirable statistics of Dr. Abbot, the error is reduced below 1 per cent.

The results in manic depressive insanity and in dementia præcox have not been formulated. Doubtless the results would not be so striking as in the organic group. Still I maintain that with hospital observation under the best circumstances a very high degree of accuracy in diagnosis can be obtained. I heartily agree with many of the gentlemen who have spoken here, insisting on the value of hospital observation for the medico-legal diagnosis of insanity. I should like to inquire whether anyone present has really any important point to make against hospital observation as the best method for determining the insanity of persons accused of crime.

DR. E. N. BRUSH.—I am in favor of hospital observation, and it is not by any means necessary to have law in the matter in all cases. I had an illustration of that only recently. A man had committed a crime against the United States government and it was agreed by his attorney and the United States prosecuting attorney that he come to the hospital and have his condition investigated and remain there long enough to have a diagnosis made and his attorney and he agreed to abide by the report. He is now serving a term in the penitentiary as the result of the report. It saved a necessarily long and tedious trial and I think that justice was in this way but served.

I think in regard to this matter of expert testimony we are taking ourselves a little too seriously perhaps and not considering the other side of the case. Experts have been made to appear ridiculous before the courts

and the public, not so much because of the fault of the experts, but because of the way in which the trial has been conducted by the attorneys, and Dr. Mills has called attention to this.

In regard to a notorious trial, it has recently come out that one of the chief attorneys for the defence spent, according to his own statement, large sums to keep certain testimony in the background so that the man would not be sent to an asylum, but should be found insane at the time of the commitment of the act, but not before that time or when on trial.

I have known of other similar cases in which all the testimony in the case was not desired to be brought into public light, in which the experts were kept in the dark as to matters, upon which, if they had only had the information, they might have given more satisfactory testimony, both to themselves and to the cause of justice.

DR. B. D. EVANS.—The discussion has so fully covered the ground which the papers, both Dr. Chapin's and mine, were intended to cover, that it leaves very little for me to say, except that I am practically in accord with most everything that has been said. A number of the gentlemen have expressed ideas and plans of remedies which are impracticable and which cannot be carried into effect, and some have suggested methods which are impossible under the constitution of the United States. I have no doubt that if we could change the constitution at will, that it would be changed a good many times every year. Fortunately for this great government, it cannot be so easily tampered with. There may be some little inconvenience suffered in the courts and by private individuals as well, but for the good of the whole people it is a pretty safe old document that I think will stand the test of years to come.

In reference to the admission of court physicians, whose report shall govern the verdict, it would be far from ideal or acceptable to the laity or courts of law, and it would mean that the physicians would try the case. No court would approve of such a procedure, and no legislature with good lawyers in it would pass a law which would leave the entire guilt or innocence of a person being tried in the hands of a board of physicians. Of course, if you and I and your brother were the three physicians, it might seem all right, but tell that to the public and the courts, and the scheme will be promptly rejected.

I have a very decided feeling about the manner in which we seek to adjust unsatisfactory conditions of this sort. There are few physicians who have had any experience in the courts in important cases, but have had their opinions severely criticised by people of ability and by physicians of equal ability. Now, as we take up the matter of the discussion of this subject, we shall discuss in the hearing of the public and the press the main proposition or the question of the reasons for disagreement among experts, as if we, the speakers, have all along been right and the fact that there is so frequently a difference of opinion has been due to the errors and unwisdom of those who have been so unfortunate as to disagree with

us; we go so far as to say that it is a disgrace and a stigma on the profession. This order of criticism indicates that we are arrogating to ourselves all the purity of purpose, perfection of training and proficiency in equipment. Such a course of reasoning and such an order of criticism settles nothing and does harm rather than good. As I set forth in my paper, I maintain that men of equal ability with the same set of facts before them will often reach different conclusions, and that largely explains the matter.

Much has been said of the court selecting the experts. In two murder trials I was selected by a justice of the Supreme Court of the State of New Jersey, who was afterward chief justice, and is now chancellor of the State, to appear for the defense and for the prosecution; that is, I was the sole medical expert witness in the case, and was examined and cross-examined by the counsel of both sides, and I regret to say to you, that contrary to my judgment, there was a conviction in both cases; one man was sentenced to death and one given an indeterminate sentence. The man sentenced to death I believe was unjustly so sentenced. I gave as clear testimony as I knew how to give. I did not intend to give such testimony as would enable the jury to hang the man, but they brought in a verdict of murder in the first degree, and I had to work very hard to have his sentence commuted by the Court of Pardons.

The having of one expert witness and allowing him to be examined by both sides, is calculated—when one lawyer is much abler than the one on the other side—to result in a miscarriage of justice.

The “three physician” idea that Dr. Burgess spoke of, is one I espoused years ago and wrote a paper endorsing it and read it before the State Medical Society of New Jersey, but after a more thorough reading upon the legal and social aspect of the subject, I submitted it to numerous lawyers; they said that my scheme was good, and I think it was good, and I think Dr. Burgess’ scheme is good, I believe in it—but what is the use of talking about something we cannot do? I think the suggestion that it would be ideal for us to always agree is a good one, but how in the name of heaven can we do it, and as thinking and reasoning men retain and exhibit any individuality or any independence of thought?

The matter of a change in the constitution of the United States has been discussed as far as time will permit, and since we possess no power to change it, we may better leave that part of the question for further consideration.

I desire to say a word relative to the matter of subjecting an accused person to the examination of physicians representing the State or the prosecution. I have been advised on this subject by a number of able constitutional lawyers, and their opinion is to the effect that an accused person has certain rights under the constitution which cannot be violated, if his counsel properly protect him, and that he may not be subjected against his will to the examination and scrutiny of anybody that may be selected, either by the court or any other authority, and if that be correct, then we

cannot have our troubles righted in this direction under our present constitutional regulations and the rulings of the higher courts and such contentions are futile.

One of gentlemen has spoken of the readiness with which the members of the medical staff of a hospital for the insane agree on diagnosis after holding a newly admitted patient under observation for a few days. We all know how they agree; but we understand that we have got it coming to us when we have to make up our statistics and classifications for the annual reports. We know, as a rule, that we have a number of cases at the end of the year which are difficult to classify. One member of the staff will want to put a particular case here, and another there, until the superintendent tires of the discussion and determines the matter. There is no serious confusion then; you are not in court and you are not forced to hasty action. You are just trying to do your duty and make the best possible classification in the official document, but you have your troubles, perplexities and differences of opinion, just the same. I have had it, I know, and I am willing to admit it.

When we have trouble in court, as Dr. Brush has very aptly said, if we have to hesitate, do so, but when you don't know, say so promptly. I may say that in court this has always been my rule, and I have found it a good one. I think the jury has more respect for a man who says he does not know than for the other man who tries to avoid the issue. The straightforward way is the only correct way.

It has been a matter of very great pleasure and gratification to me that the papers have had such an extended and intelligent criticism and discussion.