

THAW TRIAL BEGINS; DEFENSE STILL HIDDEN

Jerome Utterly Fails to Force Counsel's Hand.

ALL THE WORLD WATCHING

Two Jurors Obtained— Judge Fitzgerald Says There's No "Unwritten Law" Here.

The trial of Harry Kendal Thaw for the murder of Stanford White, the architect, in Madison Square Garden, began yesterday, two members of the jury being chosen. Although the court sat for an hour later than usual and twenty talesmen were examined, it was impossible to get the District Attorney and the counsel for the defense to agree upon any more. A third was selected early in the day, but he informed the court that detention from business for an indefinite period would ruin him, and he was excused.

The jury is to be kept in seclusion until its members have rendered their verdict. At the recess in the middle of the day Justice Fitzgerald swore in two officers to take charge of the jurors and admonished most seriously those already in the box upon the importance of their duties and the care they should take not to have any communication with outsiders. To lock up a jury at the beginning of a trial is unusual. It was done at the second Molineux trial and perhaps once since, but even in cases which have excited as much interest as the Nan Patterson hearings the jurymen were allowed to return to their homes every night until all the evidence was in.

A Wall Around the Jury.

By those who have followed proceedings in the criminal courts for years it was taken to mean that the Judge realizes what strong influences might be set at work to affect the verdict in the case and has determined to allow no opportunity for any one to approach the jurymen. They will be lodged in the Broadway Central Hotel at the county's expense and will be constantly under the surveillance of the officers placed in charge of them. All their correspondence will be read by court officials before it is received or sent and no spoken communication will be allowed them with anybody until they have spoken the words which will free Harry K. Thaw or send him to the electric chair.

To the questions asked of the talesmen by the counsel on either side close attention was paid yesterday to see if they would give any indication of what line the defense would take. But it seemed as though Mr. Jerome was as much in the dark as anybody, and the lawyers for Thaw permitted no word to escape them which would betray their intentions. The District Attorney carefully guarded against the two obvious points which could be made against him.

"Unwritten Law," or Insanity.

Each talesman was asked if he would be content to abide by the law as the Judge declared it. With great care counsel elaborated this point. Once or twice he mentioned by name "the unwritten law"; more often he spoke of an ethical law, a supposed sense of equity or a higher law.

He took up the question of insanity. He read from a law book the legal definition of that state, and informed the talesmen that the law had declared that a man might only plead it as an excuse, if "at the time of an alleged criminal act he was laboring under such a defect of reason as either not to know the nature or quality of the act, or not to know that the act was wrong."

The defense put in objections to the questions on both these points, but they were overruled. When it came to their turn to cross-examine the talesmen, their examination was disappointing. It was confined to inquiry as to whether the talesmen had any connection with Stanford White or his firm, or were acquainted with De Lancey Nicoll and one or two other men. Compared with the District Attorney's, the examination was almost perfunctory, and not a word was said that lent any support to the emotional insanity theories.

Plea of Defense Undisclosed.

It is possible that the array of counsel whom Thaw has summoned to his aid have something they are withholding, which neither Mr. Jerome nor the public suspect. Toward the end of the afternoon Mr. Hartridge asked a talesman if he would allow the confinement the jury will be subjected to for several weeks to affect his judgment, and at once it was suggested that the defense will bring forth evidence which might split the jury in half and lead to a prolonged debate before an agreement was finally reached.

Whatever course the trial takes, it appeared yesterday that the District Attorney is not likely to take any undue advantage of his official position. As he examined the talesmen he was evidently anxious to obtain men who would try the case fairly and squarely. He explained to them carefully the attitude they must take with reference to insanity and the unwritten law, and he questioned them with a sincerity and earnestness which left no doubt that he was endeavoring merely to get them to express their minds fully and freely.

The Whole World Interested.

The police had a difficult task yesterday in handling the crowds who desired to attend the trial, but a strong force under Inspector McCluskey kept the building free from any semblance of disorder. As a matter of fact, there was no room in the courtroom for any but those who had urgent business there. Not only were 200 talesmen to be seated, as well as the law-years and intimate friends of the defendant, but there was a collection of reporters and newspaper artists such as has never come together before, even in New York.

Other trials and investigations have excited the utmost local interest. The Thaw case is being reported to the ends of the civilized globe. The eminence of the victim, the wealth of the prisoner, the dramatic circumstances of the crime, and the light it sheds not only on Broadway life, but on the doings of the fast set in every capital have caused special arrangements to be made for the press.

From the centre of the Criminal Courts Building two great cables come down to a table where a corps of telegraphers is installed. Some of the wires run straight to newspaper offices in the city, others connect with newspapers in Philadelphia.

and Pittsburg. Arrangements have even been made by which the stories written in court may be placed upon a wire connected with the Atlantic cable, so that they may be flashed without a moment's delay to London. The telephone has also been used, and one Pittsburg newspaper has engaged a direct wire.

In the courtroom two long tables have been set apart for the reporters of the afternoon papers, and a boy is delegated to carry copy, as fast as it is written, to the door. There are waiting a small army of copy boys, who hasten at top speed to the Subway and take the stories downtown. The reporters for morning newspapers are accommodated in the inclosure above the bar to the left of the Judge. Then along the side of the courtroom is another batch of special writers and artists.

Thaw and His Counsel.

Every inch of the rest of the room was filled yesterday by the talesmen. The lawyers for the defense have only a small table outside the bar on the right of the court. At one end sat Harry K. Thaw and on either side next him were A. Russell Peabody and Henry McPike. Next them were Daniel O'Reilly and Delphine M. Delmas. At the head of the table nearest the bar came Clifford W. Hart-ridge and John B. Gleason. To the last two fell most of the work yesterday. Mr. Hartridge examined the talesmen for the defense and Mr. Gleason was constantly on his feet making objections to Mr. Jerome's questions or listening, ready to intervene if he thought necessary.

Thaw himself took practically no part in the proceedings. He listened intently enough and occasionally whispered to the counsel near him or to Mr. Delmas, but there was none of that continuous interference which it had been said that he would insist upon.

As an officer of the court District Attorney Jerome and Assistant District Attorney Frank P. Garvan were accommodated within the bar. With them sat Mr. Justice Phippen of the Court of Appeals of Manitoba, who had dropped in to see the opening of the great trial. But there were also near them three other gentlemen whose presence was far more significant.

Alienists Watch Thaw.

Dr. Carlos R. Macdonald, Dr. Austin Flint, and Dr. Mabon, Superintendent of the State Insane Asylum on Ward's Island, are the alienists retained by the people and they were the only witnesses for the prosecution who were present. It appeared certain that they were asked to attend, and prominent seats were given them in order that they might observe Harry K. Thaw during the trial, so that they might be able to testify if the defense raises the plea of insanity.

It was 10 o'clock before the relatives of Thaw arrived. They came from the Hotel Lorraine in electric broughams and alighted at the White Street entrance of the Criminal Courts. They had not paid their customary visit to the Tombs, but waited to see the prisoner in court. A large crowd had assembled in the street, but the police knew by which way they would arrive, and a strong force was ready to keep the way clear. A. Russell Peabody and Dan O'Reilly were there to receive them and conducted them up the staircase to the Judge's chambers, through which they gained the court by a side entrance.

The seats right behind the prisoner's chair had been reserved for them. At the left of the line sat Mrs. George L. Carnegie, dressed in green and wearing suede gloves and black furs, with her face hidden by a heavy black veil. Next her was her sister, the Countess of Yarmouth, clad entirely in brown, with her features hidden by a thick brown veil.

Thaw's Mother Patient Under Strain.

In the middle was Thaw's mother, with his wife nestling beside her. There was something very pathetic about these two

women, who share the same sufferings, which only one has caused. Yet there was a marked contrast. Beneath the elder Mrs. Thaw's veil showed the gray hair and the deeply lined face of one who has lived many years and seen more than her share of grief. Yet it was a strong face and a patient one. As one looked at her one felt that she was not the woman to give way. In all her troubles and in this, the bitterest and most cruel of all, she would bear up bravely and play her part to the very end, however terrible the strain might be.

Evelyn Nesbit Thaw seemed strangely small beside her—just a little bit of a thing who seemed as if she could never be the cause of all this trouble. She was dressed in blue, with a black hat trimmed with violets, and through her white veil her face was seen strangely white and drawn. Throughout the hearing she kept her veil down and spoke little. Once or twice she smiled at some remark or incident, but it was a sad little smile. She had lost all her animation. The regularity of her features which made her the delight of the artist remains, but the coloring is gone, and the seven weary months of suspense have taken away forever the childish look which used to be one of her chief attractions.

Next her was her friend and companion, May Mackenzie, with whom she took refuge on the night of the shooting, and who has lived with her ever since at the Hotel Lorraine. She was dressed in purple and wore a purple veil. In front of the women sat George L. Carnegie and Edward Thaw.

To Testify Against the Prisoner.

The only friends of the White family in court were far less conspicuously placed. At the very back sat Howard Nesbit, who has come from Pittsburg to testify against his sister's husband, in case the District Attorney desires to put in evidence in rebuttal as to the relations of the murdered architect and the Nesbit family, and Charles Harnett, private secretary to Mr. White.

Meanwhile Thaw had been brought across to the pen of the court. He had arisen early, taken a cold water shower and rub-down, and after a hearty breakfast, sent in specially from Delmonico's, was eager for the time to appear in court. Clifford W. Hartridge, his principal counsel, visited him at 9 o'clock for a last conference. At 10:15 o'clock Deputy Sheriff's Bell and Delehanty came for him, and without handcuffs he was led across the Bridge of Signs and along the corridor of the court building to await in the prisoner's pen the summons to the bar.

Until Justice Fitzgerald arrived the Thaw relatives sat in their seats without exchanging a word. As a matter of fact, a strange quiet came over the crowded courtroom as the hour of the trial drew near. The confusion of finding seats was over, the talesmen had been admitted, and as the people settled down they realized how deep was the import of the occasion which had brought them there. Talesmen were ushered into the jurybox, the reporters were busy writing their stories, and the Thaw family looked straight in front of them as though they were in church waiting for the service to begin.

The Court Enters.

The court officer's rap broke the quiet, and all arose to their feet. The Thaws did not yet understand court procedure and remained seated, but when they saw Justice Fitzgerald appear on the bench they, too, stood up and waited until he had bowed to the gathering. All this was dignified, but a discordant note was struck when the Clerk of the court shouted out to the talesmen:

"Please answer your names loudly so as to get them on the record."

Among those called was C. H. Nesbitt, a manufacturer of 211 West 142d Street. Mrs. William Thaw bent over to Evelyn Nesbit Thaw and asked if he was a relative of hers.

As soon as this formality was over Mr. Jerome read the indictment of Harry K. Thaw of murder in the first degree and said:

"I move the trial of the defendant on this indictment, and that he be arraigned at the bar to answer thereto." Imme-

diately Clerk Penny arose and called in a loud voice:

"Harry K. Thaw to the bar!"

A court attendant was standing in front of a little door in the west wall of the courtroom. The door opened on a corridor attendant swung the door to and fro for a few inches nervously. The Captain of the court, a gray mustached and excitable officer, had cleared an aisle between the many talesmen crowding the benches and floor space in the rear of the room.

"Harry K. Thaw to the Bar!"

With the cry "Harry K. Thaw to the bar!" the man at the door flung it wide and Thaw, followed closely by a prison attendant, strode with long steps through the narrow, cleared way to the table about which his counsel sat. He was dressed in a dark suit, and wore a white shirt, his collar was a comfortable bit of linen ware, not too high and not low enough to show sufficient of his lean and rather long throat to accentuate his haggard face.

As he reached the chair at the corner of the table nearest the door by which he had entered he took a light overcoat from his arm and dropped it over the back of the chair reserved for him, pulled back the chair, and sat down.

The prisoner's mother, his wife, his sister the Countess of Yarmouth, his sister Mrs. George Wauder Carnegie, his brother Edward Thaw, and his brother-in-law, George Ladies Carnegie, sat within reach of his hand. He turned to the party and smiled, but did not greet any of them.

As Thaw settled himself in his chair he clasped his lean, white hands together over a handkerchief and lowered his eyelids. He had, evidently, decided to use a part of the morning in carefully studying the surroundings, carefully locating Judge, talesmen, reporters, artists, prosecuting attorneys, and others, through the narrow slit between his lashes as he sat immovable and pale.

The windows of the courtroom, being all to the north, so that all there was no blinding glare of the bright sunlight that marked the day. The high-ceiled room was diffused with the light without any of the glare, and every stripe or strand in every garment, every feather in the hats of the women, and every line in the faces of even the talesmen, was clearly defined. Thaw's rather broad shoulders and his pallid face made the centre of the gathering. A stranger would have picked him out easily as the man on trial for murder.

The First Talesman Sworn.

Without further ado, Justice Fitzgerald instructed the Clerk to call the first of the talesmen. Charles W. Bryden, a civil engineer, of 3,609 Broadway, answered to his name. He was sworn and took his seat in the witness stand to which he was called by his witness on the jury.

After declaring, in answer to questions from Mr. Jerome, that he had read the newspaper accounts of the killing of Stanford White and had formed an opinion, but such an opinion as could be easily placed aside in lieu of legitimate evidence and counsel, the talesman was asked by Mr. Jerome to smoke out the defense.

The District Attorney tried Thaw's counsel first on the question of the insanity plea, especially the plea of emotional insanity.

He read to Bryden the law in regard to insanity as an excuse for the crime of murder, and laid emphasis on the part of the statute which says that a plea of insanity as an excuse for murder is only to be accepted when the condition of the man accused was such at the time that he did not know the nature or quality of the act he was performing and did not know that his act would result in death.

"Would you take the instructions of the court on that law and not seek to modify it in any way of your own accord?" Mr. Jerome asked the talesman.

There was no excitement shown in the camp of Thaw's counsel. An objection was noted quietly, and when the objection was overruled, an exception was as quietly taken.

Again the District Attorney sought after the secret which no one save Thaw and his intimate family connections and his lawyers know—the plan of defense.

Defense's Hand Undisclosed.

"The juror is a final court of fact," said Mr. Jerome to Mr. Bryden, who is an educated man and followed the hypothetical questions closely and evidently with complete understanding. The juror must accept implicitly the law. I do not mean the moral law or any other kind of law, but I mean the law of the State of New York. In the literature and the law of to-day we hear much of an unwritten law, a supposedly higher law. Would an appeal to you along such lines influence your careful weighing of the evidence in this case as it should be weighed according to the law of the State of New York?"

Again there was quiet objection, which was overruled, and again a quiet exception.

On the other hand, when this talesman and the subsequent talesmen were examined by Mr. Hartridge or by Mr. Gleason, no question was asked which might in any way give a clue to the District Attorney or to the scores of newspaper men as to what was to be the line of defense. One question was hammered by Mr. Hartridge at many of the talesmen after the recess hour.

"Do you believe," he asked one after another, "that being locked up as a juror on this case and kept away from your family and your business for three weeks or more will make it possible for you to carefully weigh this evidence and give the truest possible verdict?"

Mr. Jerome kept hammering at every talesman the two questions bearing on the possible emotional insanity defense or the "unwritten law" defense. He also asked each talesman if he knew any of the Thaws, any of their lawyers, any of their relatives, any Pittsburg people, or any of the alienists that have been employed by the Thaws.

Deming B. Smith the First Juror.

When the second talesman, Deming B. Smith, a retired manufacturer, of 253 West Eleventh Street, was called the first juror was obtained. Mr. Smith evidently finds enjoyment in a juror's work. A man of intelligence, apparently, he answered all questions promptly and briefly, and showed that he knew how to consider evidence in criminal cases. When he was accepted by both sides there was a buzz of excitement from the crowded courtroom. Thaw immediately relaxed. The day of the actual fight for his life seemed nearer at hand. As the Bible was handed Deming on which to take his oath for the proper conduct of a juror, Thaw was ordered by Clerk Penny to stand up and face the juror. Mr. Smith was told to face the prisoner.

Thaw stood erect, squaring his shoulders and looking straight with his almost colorless eyes into the rather kindly eyes of the first man selected to weigh his fate. Thaw stood with unmoved glance for fully a minute, and then sat down, his spirits evidently much higher. He tucked a handkerchief now wet with the moisture of his almost bloodless hands and rested his right palm behind his right ear, using it to assist him in hearing all that went on. Then he began to turn first to one and then the other of his counsel, whispering to each with animation and evidently great interest. He whispered for a long time to Delphine M. Delmas, who is expected to play his cause for him. Then he turned to Mr. Peabody of his counsel, who sat on his left, and chatted with him in whispers for as long a time.

The seeking out of the jury, the constant driving of searching questions from both sides, got on the nerves of every one in the room save Thaw's. The prisoner's mother scanned each face that appeared above the witness stand. There was eagerness in her eyes, and her smooth and calm features from time to time tightened and showed the strain she was laboring under.

A Talesman Anxious to Serve.

John C. Graul, a picture dealer of 434 Fourth Avenue, relieved the tension. He had curly hair and was evidently eager to become a juror.

"Have you formed or expressed an opinion of the guilt or innocence of the accused?" Mr. Jerome asked him.

"I have expressed an opinion," he replied, "but I have not formed one."

This was greeted with a titter, and Thaw's pale face broke into a smile. His wife and May McKenzie laughed, but his mother and the Countess of Yarmouth showed no mirth.

Mr. Jerome and Mr. Hartridge both asked that the talesman be excused.

Frank P. Hill, a baker living at 1,991 Seventh Avenue, was the second talesman to be accepted as a juror. He said that he was born in Richmond and admitted that he read about the Thaw case.

He seemed to be a man of strong mind, clear in his answers, and was accepted by both sides. Unfortunately, after waiting all day in the jury box with Smith he told the court that if the case was to continue any great length of time he would have his bakery business completely wrecked. It would be impossible for him to continue in business. For this reason the court, with the consent of both sides, excused him from duty.

Morbid Crowd Eager to See.

No other talesman was found acceptable before recess at 1 o'clock. When recess was taken Thaw was hurried back to the Tombs. He exchanged no

word with any of his wife's party. The women then faced a trying ordeal. The floors surrounding the great quadrangle of the building were packed and jammed with men and women eager to get a glimpse of Evelyn Nesbit. As soon as the reporters, artists, talesmen, and lawyers had left the courtroom policemen tackled the morbid crowd outside the room and drove them back, clawing and protesting, clearing a passage to the elevator and closing one of the flights of stairs near by to prevent a flank movement from the crowd.

"There she is!" came the cry in the shrill voice of an excited woman. The mob surged forward, was beaten back, and then, in a wild stampede, dashed for the open flights of stairs to get to the basement. As the party of women, with Edward Thaw and Mr. Carnegie, reached the basement, down swooped the mob. At a side entrance in the shadow of the bridge which connects the Criminal Courts Building with the Tombs an electric brougham was waiting. Mrs. Thaw, Evelyn Nesbit Thaw, and May McKenzie started for the vehicle. Another crowd was before them. A photographer had climbed on a barrel on the other side of the brougham and had his camera balanced on its top. The women covered their faces and made a rush for the brougham. Behind them came the stampede of people from within. Many women were swept down the stone steps to the street, their feet never touching the steps. The Countess of Yarmouth, Mrs. Carnegie, Mr. Carnegie, and Edward Thaw followed as a second electric brougham pulled up. They were being fairly trod upon by the mob when they were surrounded by police and pushed into the brougham.

After luncheon Mrs. Thaw, her daughter-in-law, and Miss McKenzie entered the courtroom together. The rest of the party followed in a few moments.

Charles Fecke the Second Juror.

Soon after the examination of the talesmen was resumed a juror was found to take the place that Hill, the baker, would make vacant. He was Charles Fecke, a business man, living at 601 West 135th Street. He was distinctly a triumph for the defense, for he declared that in a case of life or death he would not give a verdict of guilty until every doubt of the guilt of the accused had been dissipated. He was not satisfied with "every reasonable doubt" when a man's life was at stake. He wanted every trace of doubt or possible doubt removed. He was evidently sincere in his answers, and was sworn in as a juror.

During the afternoon Mr. Jerome used up four of his thirty peremptory challenges in removing men who would otherwise have been put on the jury. The defense used two of its. One of the men turned down by the District Attorney was Samuel K. Wilmurt, a broker in the iron trade. He was questioned closely as to his business connections with Pittsburg people. He said that he had talked with a man who was at the performance of "Mamzelle Champaigne," the night that Thaw killed Stanford White.

Thaw became intensely interested. He leaned far over as if in anticipation of a relation of what the talesman's friend had told. His hand was spread out behind his ear and his eyes were bright.

Wilmurt said that his friend had told him the details of Thaw's death at the hands of White, after Thaw had left the place where White had been killed. Mr. Jerome peremptorily challenged the juror.

Morgan M. O'Brien was challenged peremptorily by Mr. Hartridge. He is an architect. George C. Budlong, another architect, was excused on challenge of the defense. He said that a boy he had undertaken to raise had found employment with McKim, Mead & White. He denied knowing White personally, but admitted that his charge knew him and greatly admired him.

Two of the talesmen knew one or more of the alienists employed by the prosecution and these were objected to by Thaw's counsel.

No Unwritten Law, Says Court.

Keeping at the talesmen with the question of the effect of the unwritten law appeal that might be made, Mr. Jerome asked Walter McDougall of 3 West Eighty-seventh Street if he would take such a plea into consideration whether there was such a law.

"There can be no question whether there is such a law," said Judge Fitzgerald. "There is only one law, the law of the State of New York."

The usual hour for adjournment of the court is 4 o'clock, but yesterday the court made no sign of ending the day's work at that hour, and 5 o'clock found the work of examination of the talesmen still on, the electric lights glowing and every one weary from the hours of waiting in a thoroughly vitiated atmosphere.

Despite the fact that no man examined was permitted to escape any of the many questions of both sides twenty of the 200 talesmen were examined, the twenty giving a crop of three jurors, one of whom, Charles F. Baker, was excused at the end of the day.

Neither side had left unprobed a single juror. Mr. Jerome's questioning, aside from ascertaining the attitude of possible jurors in the matter of emotional insanity and unwritten law pleas, went into the business career of each man, dug into all channels that might connect him with Thaw, his family, his friends, and Pittsburg as a community. He asked all of them if any one had spoken with them about the case since being put on the panel.

A Searching Inquiry.

On the other hand, Thaw's counsel wanted to know of each talesman whether he knew the District Attorney or any one connected with his office; if he knew any of the alienists employed by the prosecution, or had ever had anything to do with Stanford White, his counsel, his firm, or his associates. In behalf of Thaw the talesmen were also asked if they knew Abe Hummel or De Lancey Nicoll. Mr. Jerome frequently asked talesmen if they knew Truxton Beale or McCaleb, men supposed to have been in intimate terms of friendship with Thaw before the tragedy.

Thaw's Party Remains Behind.

As soon as the court rose Thaw's relatives were conducted to the Judge's chambers. They remained there until the court had been cleared, and were then taken to the prisoner's pen. All day they had been sitting behind Thaw, but had not spoken a single word to him. Only a moment or two was permitted them, and they returned to the Judge's chambers.

A great crowd was in the building, waiting to see the women depart. The curious were not allowed on the main floor, but they lined every inch of the galleries on the floor above. They could only hope to see the hats of the women, but they waited patiently for hours.

A quarter of an hour after the Judge had left the bench the Thaws set off home. Sgt. Henry T. Murray drew the police lines around the staircase to the basement, and conducted by the counsel for the defense, with policemen before them and policemen behind them, they made their way out. Another crowd was outside, but the police were in strong force, and without crowding the women were able to get into their electric broughams. They refused to make any statements as to the day's proceedings.