

SUGGESTIBILITY IN WITNESSES

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A MEETING of the Medico-Legal Society of Victoria was held at the Medical Society Hall, Albert Street, East Melbourne, on Saturday, March 30, 1940, at 8.30 p.m. His Honour Mr. Justice Lowe presided.

The Chairman: My first duty to-night is to apologize for the absence of our President, Dr. Kingsley Norris, who is absent on military service in preparation for service abroad.

I have pleasure in introducing the speaker of the evening, Dr. Anita M. Mühl, who is a member of the Society of Physicians of America, a Doctor of Medicine and a Doctor of Philosophy, who will address us this evening on the very interesting subject of "Suggestibility in Witnesses." Dr. Mühl has made a study of psychology, and, as I happen to know from another function which I have to exercise, she has been lecturing the University students on that subject. I gather that at one stage she thought of entering upon a law course, but the difficulties of such a course rather appalled her and ultimately she did not enter upon it: but at least she has had sufficient familiarity with the requirements of the law course to direct her mind to witnesses and the degree to which they are suggestible, and that is the subject upon which she is going to address us to-night.

Dr. Anita M. Mühl, who was received with applause, said: The subject to-night is a very interesting one, not only from the point of view of the legal profession, but also from the point of view of the medical profession, and is one about which I feel the medical profession who are dealing with patients and the legal profession should know a great deal.

Suggestibility may be defined as the readiness to accept suggestions which modify or change one's opinions or actions. Suggestion is a factor which floods daily life and it is rarely that we find anyone who is not influenced by

some form of suggestion. Politics, religion, nationalism, education, present in whatever form they elect intensive suggestion which often functions from the individual's earliest years. It is a rare person who is completely impervious to this form of suggestion. Advertising, propaganda, sarcasm, ridicule and wit (such as some of the magazines adopt) directed against definite policies are all activities which make use of the weapon of mass suggestion.

Suggestion is automatic or mechanical in its working and is often aroused by marginal rather than focal awareness. Suggestion may be defined then as a process of arousing in the mind an idea or tendency to action which is not based on rational acceptance but on automatic or mechanical acceptance, which is more apt to function at the sub-conscious than the conscious level.

There is a difference between normal and abnormal suggestibility. In abnormal suggestibility there is increased susceptibility both focal and marginal, and with this condition there is also lessened resistance to unconstructive suggestions in the conscious state. Erickson has shown by numerous experiments that this is not true of induced suggestions in the hypnotic state.¹ It is when a dissociated centre of consciousness is established which operates independently upon a pattern elaborated through auto-suggestion—intentional or unintentional—plus the increased susceptibility mentioned above that we may get into the realms of complete unreliability in a person who appears intelligent, normal and reliable. In fact, the complete calmness and conviction with which statements are made in this condition may make the statements seem unassailable.

There is another form of suggestibility which is known as counter suggestibility or negativism in which every suggestion is met with a counter-suggestion and the counter-suggestion is acted on. This is a normal reaction in the early years of the child's life and is generally considered

1. "An Experimental Investigation of the Possible Anti-Social Use of Hypnosis," by M. H. Erickson. (*Psychiatry: Journal of the Biology and Pathology of Interpersonal Relations*, Vol. 2, No. 3, August, 1939.)

to be a normal development in the attainment of independence. The negation or reversal of legal testimony is an entirely different matter but is one which is of extreme interest in the legal field.

The skilful attorney makes use of this condition of suggestibility and suggests, often indirectly to the witness, the particular point he wishes to bring out. Often detectives in their desire to help the witness arrive at a decision suggest certain possibilities, and a suggestible person will mentally grab at these stimuli and act on them promptly by producing the desired bit of evidence.

Muscio² made an investigation of the influence of the form of the question with regard to suggestibility. He showed moving pictures and asked questions presented in eight different ways. He found that the negative form of a question was more productive of suggestibility than the positive and that the indefinite article "a" aroused more suggestibility than the definite article "the." Although the negative form of a question is more suggestive, the positive form of a statement is much more suggestive than the negative. Muscio also mentions that a question which implies a personal relation of the observer is more apt to produce suggestion than a mere question of fact. Prideau³ says that suggestibility varies in different persons for the same stimulus; that it varies in the same person at different times and under different conditions; that it may have reference to a particular system of ideas and that a person may be suggestible toward one person and not toward another.

There is another type that needs consideration, and that is the one in which suggestion is soaked up in just the same way that ink is soaked up by blotting paper. It is in the individual who has no defence against either hetero-suggestion or auto-suggestion that we have to be on our guard. When suggestibility is exaggerated to such a degree

2. Muscio, B., "The Influence of the Form of a Question," *British Journal of Psychology*, pp. 351-389, Sept., 1916.

3. Prideau, E., "Suggestion and Suggestibility," *British Journal of Psychology*, 10, pp. 228-241, 1920.

then we speak of hyper-suggestibility or even mythomania. Although most people are suggestible up to a certain degree, it is very fortunate that extreme hyper-suggestibility is not so very common. However, it is met with and it is necessary to know about it so as to have some idea how to deal with it.

The following case is a good example of extreme suggestibility in a four-year-old girl who had developed a phobia over cutting out pictures, quite suddenly, announcing to her mother one day that she no longer could cut out pictures. The parents were distressed and puzzled, because for over a year the little girl had been very fond of cutting out pictures and had been very accurate in her work. The child was asked to help me cut out some pictures and she said she could not do it because she would spoil the pictures. I asked her how she had got that idea and she said her grandmother had told her that she was too little to use scissors and that she would spoil the nice pictures. After several repetitions of this suggestion the child was quite convinced she really could not accomplish the task.

The child was again given some pictures and told to cut them. She was assured it did not make any difference if she did spoil a few. She looked dubious, but tried one. In the middle of it she said, "There, you see, I am spoiling it." I said, "Oh yes, but I am sure the next one will be better." She wanted to be reassured that it made no difference if she did spoil it and then she tried her second one, which was better. She looked at it critically, and said emphatically, "It is better, but it is still wobbly." I said, "The next one will be almost perfect and after that they will be perfect." After the fourth picture there was no further difficulty.

When one is dealing with this kind of suggestibility in witnesses there is real trouble ahead and one must know how to deal with these cases in order to arrive at the truth.

The Watters case was one in which a witness, who was not recognized as being hyper-suggestible, nearly caused a man to hang. In fact her testimony, which was given with such calmness, did cause a sentence of death to be imposed.

At the time the witness made the first statement she was nine years old. Between the ages of nine and eleven, at which time she was turned over to me for examination, she made five statements. These occurred in May, 1926 (one on the 20th and one on the 24th), one in June, 1926, one in September, 1926 (trial testimony), one in January, 1928, and the one to me on February 13th and 14th in 1928. The discrepancies in these statements had not been noticed because in each single statement the story seemed to hang together perfectly and she spoke in such a calm, composed way that every one was misled.

The following is a brief summary of the case. George Watters, a negro, on the uncorroborated testimony of his nine-year-old daughter, Genevieve, and without any evidence of a body ever having been found, was convicted of murder in the first degree by a jury in the Superior Court of Sacramento County, and on September 21, 1926, was sentenced to be hanged. Watters appealed from the the judgment of conviction and from the order denying a new trial. In a decision which was concurred in by all the justices, the Supreme Court, on September 28, 1927, affirmed the judgment and order. Watters was re-sentenced and taken to San Quentin Prison. His execution was set for January 28, 1928. Five hours before the man was to hang the executive secretary to the Governor of California received some information which, when considered, caused the Governor, almost at the last moment, to grant a reprieve for two weeks, and again on February 2, 1928, for three weeks. The Governor had decided that perhaps the child on whose testimony the man was convicted was not a reliable witness and he wished to ascertain whether or not there was a reasonable doubt as to her story. As Psychiatrist to the State Department of Education, I was asked to investigate the case.

Watters lived with his wife and three children in a four-roomed bungalow in the city of Sacramento. The whole family slept in the back room adjoining the kitchen. The alleged murder of Myrtle Watters occurred on the morning

of January 28, 1926, around 7 o'clock, according to the story told by Genevieve for the first time nearly four months later in a town about 600 miles south of Sacramento. She said that her father shot her mother while she and her mother were dressing and the other two children slept, and that her father was undressed in bed when he fired the shot. According to Genevieve's first statement he carried the body into one of the front rooms, locking the door between himself and the children. She said she thought she heard sounds of chopping, sawing and cutting in the front room and her father went in and out. Finally he brought out a basin containing bloody water and some knives, including a meat cleaver, which were cleaned and put to soak. About 6 o'clock of the evening of the alleged crime she said she saw him carry two heavy sacks out doors past the kitchen windows to the back yard. She further stated that she and the other two children were kept in the kitchen and bedroom all day and were never permitted to go outside or to enter the front or spare room.

Except for the finding of knives and a cleaver in Watters' trunk in San Diego and a gun such as Genevieve stated was used to fire the shot, there was no corroboration whatever of Genevieve's testimony.

Watters told the arresting officers that his wife had left Sacramento on the afternoon of January 28 for San Diego in order to be with Watters' mother, who was ill. He said the reason he stayed was to sell the furniture, and *the weather being bad* (please keep this in mind), he decided to take the children down at the end of the month when he went, and not bother his wife with them.

It is important to keep all of the above statements in mind, because of the findings when all six statements were charted. After I was assigned to the case I spent two days examining Genevieve. First of all she was given mental tests to determine her intelligence, which was found to be normal on two very different tests. This puzzled the authorities later, because they could not see how such a normally intelligent child could make such grave mistakes. This

child presented a bright, alert appearance, answered questions pleasantly and politely, and took a very great interest in all of the proceedings. However, early in the history taking there were noticeable lapses of attention, for brief intervals only; her eyes would seem to film over for a second and she would seem far off, then with a perceptible determination her attention would return to the questioning and she would try to be very alert.

I first got her to tell the whole story, and then got her to act out the murder, which she did. She said her mother was sitting on the foot of George junior's couch, and that her mother and father were quarrelling. (Genevieve was about five feet away but did not know what they were quarrelling about and she insisted they were speaking in ordinary tones of voice). The father was sitting on his bed when he reached over, took his shot gun from the corner of the bed, reached to the foot of the bed and extracted a cartridge from his coat pocket, loaded the rifle and shot Myrtle, who got up from the couch, walked over to the bed, sat down and said, conversationally, "George, why did you do it," fell on her back and was dead. From here on there was a mass of contradictions of the other five statements and it became necessary to check on numerous points. Over fifty different items were selected and charted against the six different statements and it was soon evident that there was a great element of unreliability and suggestibility.

The most contradictory statements occurred with regard to:

1. The type of gun.
2. The noise the gun made.
3. The position of the gun.
4. The time at which the gunny sacks were taken from the front room.
5. What happened to the knives taken out of the front room.
6. What her father did immediately after the shooting.

7. What happened to George Jr., on whose cot his mother was sitting when she was supposed to have been shot.

8. What happened to the mattresses, pillows, sheets and rugs.

With regard to the kind of gun, at first she did not know what kind of gun it was; the next time she said it was not as big as a .33, but did not think it was a .22 (the detective suggested this at the second statement); in the third statement she made a .22 Winchester out of it following the suggestion in the previous examination, but when I asked her to pick out the kind of gun it was from a rack of rifles she could not do so. It was next arranged to fire a number of guns of different calibre in a room approximately the size of the bedroom in order to determine the actual volume of sound, which was a highly contradicted point. In the original statement, after being asked how big a noise the explosion made, she said it was a big noise; in the next statement it was a big noise, in the next one a loud noise, in the next statement it was not a very loud noise. In the sound test rifles of .33 and .22 calibre and automatic pistols of .25 and .22 calibre were fired. The noise made by these in the very small room was considerable. Genevieve was asked which of these noises most resembled the noise made by the gun the morning her mother was shot and she was emphatic that the noise she had heard was not anywhere near so loud. She was then asked, "How loud was it really, Genevieve?" and she answered, "Oh about the size of a little fire cracker" (indicating a small two-inch one).

Watters himself stated afterwards that there was no gun in the corner back of the bed, but that a 30-30 Winchester rifle hung in its holster over the bed, where it always was. He said further that there had been a little gun, a .22, which had been given to Myrtle by some people for whom she worked. He said the gun was in the corner of the bed early in 1925, but Genevieve took it one day and hit her step-brother, who was at home then, over the head with

it and cut him, so Watters took the gun and put it in the bottom of the trunk out on the back porch, and when he started to pack he found it there, so he just left it and packed on top of it. Watters said, "The gun was no good when she got it and I fixed it up. It didn't make much of a noise when it was shot." George Watters junior told exactly the same story as his father told me in prison. He said there was a 30-30 over the bed and nothing in the corner. He gave the same account of the small gun and added that originally his father had used it to shoot rats.

The next point, which was of the greatest interest, was with regard to the chopping up of the mother's body and what happened to it afterwards. She said she heard sounds of chopping all day. Asked if she had ever heard these sounds before, she admitted that her father made kitchen cabinets and sold them.

Asked what stories she had heard about people being murdered and cut up, she said, "Once I heard of a man who had a meat market and he killed his wife and took her to the market and ground her to hamburger and sold her and one lady found her ring in the hamburger and asked about it, and when they came out and questioned him he kind of stuttered and they found out he was guilty." She was then asked, "What else made you think of cutting a person up?" to which she replied, "I had read tales about people cutting up each other before." Asked what happened to the bodies that were cut up, she said, "They took the body and put it in sacks and threw it in the river." Genevieve had told the authorities that her father had cut up her mother's body and put the pieces in gunny sacks and carried it away.

One has to follow the plan of the house to understand the inconsistencies of the statements with regard to what happened to the gunny sacks. In her first unprompted statement to me there was no mention of sacks, though she had mentioned them in all of five previous statements. According to the statement made after prompting, "What about the sacks, Genevieve. Didn't you forget those?," there

were two sacks, which were taken into the spare room in the morning soon after the shooting and which were brought out about noon dripping with blood (after it had been suggested by me). The father removed them and once he walked around by the kitchen and the other time he walked around by the bedroom. Genevieve said she was in the kitchen all day with the door closed and she could not possibly have seen anyone passing the bedroom window. The final collection of inconsistencies with regard to the carrying out of the bags made it very necessary to test for suggestibility. She said they were:

1. Not taken out at all;
2. Taken out the same night;
3. Taken out the next day;
4. Taken out half an hour afterwards;
5. Taken out at six o'clock the same day;
6. Taken out at noon the same day;
7. Taken out at noon the next day.

And in every case they were dripping with blood!

By this time it was obvious that this was a case of pathological suggestibility and various tests were used to establish this fact. She was told to remember the address: 375 Oxford Street. Conversation ensued for five minutes and then she was asked to repeat the address.

Q. What was that address I gave you?

A. 375—I forget the street.

She was told that was not right and then she said the number was 307. The experimenter then said, "There were four figures in that number I gave you. You give the fourth one now. What was the fourth figure?" to which she replied, "3074." She was then told she would be given three names and she would choose the name of the street. She was given Medley, Overly and Weston. Asked what the street was, she said it was Weston. Asked to give the entire address she said it was 3074 Weston. The experimenter then said, "Are you really sure of that? I want you

to be really sure," to which she replied, "Western, Overly, and what was the other name?" She was told it was Medley, and she said emphatically, "Yes, that's it, 3074 Medley," and having reached this conclusion she stuck to it and refused to change. This was merely indirect suggestion. The next tests involved direct suggestion.

Genevieve was shown a dagger and told to remember the coloured jewels set in it. In five minutes she was told to draw the dagger and place the colours correctly where the jewels were. She put in three colours, red, blue and green. She was questioned with regard to the yellow jewels and then corrected the drawing to include these. There were only red, blue and green jewels in the dagger, and no yellow ones.

She was shown the picture of a Dutch Interior in which a child is standing, the lady sitting on a chair beside a table on which is a jug, a loaf of bread, with two slices cut, and a plate. In the upper right hand corner is a shelf with jugs, teapot and plates. She was told she could look at the picture for five minutes and after that she was to remember everything in the picture. She concentrated, and at the end of five minutes Genevieve was asked to enumerate everything in the picture, which she did correctly. Following this the ensuing conversation took place:

Q. On which side was the clock in this picture?

A. I did not see any clock.

Q. But where was the clock?

A. On the shelf on the wall.

Q. And what kind of a clock was it? Was it a big clock or an alarm clock?

A. A little clock with a bell on top of it.

Q. And where was the knife in the picture?

A. On the table by the window.

In the second picture there is a canoe in which are two people paddling at each end of the canoe and two passengers. The same technique was used and again she was able to

give the details of the picture correctly. Then suggestions were made:

Q. Do you remember the picture with the canoe? What kind of guns did they have? Were they hip pocket guns or rifles?

A. I did not see any guns.

Q. Didn't you see the guns in the boat? Do you remember where they were?

A. They were up in back of the first man in the boat.

Q. And were they long?

A. Yes.

Q. Close your eyes and get a picture and recall how many there were.

A. Two of them.

With regard to the clock and knife in the Dutch home, they were pure fabrications, as were also the guns in the canoe picture. The interesting thing is that she not only would take the idea suggested but would embroider it beautifully.

The brother, two years younger than Genevieve, was quite unsuggestible. The same tests were used on him. In the Dutch scene he said simply, "I am sorry, but if a knife was on the table I do not remember it." He gave the same response to the suggestion about the clock and again to the suggestion about the gun in the canoe scene. He was not aggressive about it, but he would not say that there was something he did when he did not remember having seen it. The third child of the Watters was a little girl who was just as suggestible as her sister.

Watters, in San Quentin Prison, gave a straightforward account of the day's events, and he could not be shaken either by indirect or direct suggestion. When asked what he thought about Genevieve's behaviour, he said, "She's just like her mother—easy led," and that is quite a good definition for suggestibility, too!

On the face of it, the most glaring inconsistency which Genevieve was guilty of, but which was not recognized, was

with regard to what George Jr., the little brother, did when the mother was shot. The mother was supposed to be sitting on the edge of the cot on which the boy was sleeping when she was shot. Genevieve said that George Jr. slept until noon without waking up; that he was up and dressed in twenty minutes and was in the kitchen; that he didn't wake up until the mother had been taken into the next room; that he woke up and went into the kitchen at once, and in the final statement she again insisted firmly that he had slept until noon!

George Jr. said that he got up as usual that morning; that his mother gave them breakfast; that she left the house around noon and that he never saw her again. With regard to the much disputed gun, the boy said that there had been no gun in the corner by the bed and had not been there for a long time.

A group, consisting of the Executive Secretary of the Governor, a detective and the judge who sentenced Watters, had tried to break down George Junior's statement about the gun. All they got for their repeated suggestions that the gun was in the corner behind the bed was a polite and dignified, "If it was there, I did not see it." He always conceded he might be wrong, but he could not be induced to say he saw a thing he did not see. His memory for details was very good and he had a good memory for past events.

In order to establish the sequence of events which led to the story which Genevieve told and which definitely shows how suggestibility worked in her case, we must go back and again look at some of the events which were responsible for this condition. In the first place, both Genevieve's father, her mother's brother and her grandmother said that she had always been imaginative as a small child and that she would come in from play and tell the most exciting stories of what had happened to her, all narrated with a wealth of detail which made it most convincing. Finally, Watters began checking up on these statements and found them pure fabrications, usually of a harmless nature, but occasionally causing severe trouble. Beginning with the

age of eight, Genevieve heard some startling stories about women who were murdered and whose bodies were cut up. Then, when Genevieve was nine, her mother disappeared on January 28, 1926, from Sacramento, and Genevieve did not hear from her again. She went to San Diego on February 1 and lived a quiet life at her grandmother's home for four months without showing any anxiety or any fear of her father. Toward the latter part of May she told her step-sister that her mother had been murdered and the step-sister took her to the authorities, where she told the first story with details. She had at this time been going to a religious revival meeting, which stirred her up emotionally. Her father had aroused her animosity by not allowing her to go out at nights, as she wanted to do. The newspapers were supplying lurid details of a sensational murder trial—a murder which had been committed in January. In checking the weather reports for the latter part of January (Watters had stated that, the weather being bad, he decided to keep the children and take them down later when he went, so as not to bother his wife with them), I had gone to the State Library in Sacramento to look over the newspapers from January 28 to February 1. I found the confirmation of the existing bad weather, but what was much more important was the headline which appeared in a Sacramento morning paper on January 29 in large black type—"Woman's Body Found Murdered, Chopped to Pieces."

The publicity given this trial at the time she told the story was the stimulus necessary to crystallize the drama in her own mind. The disappearance of her mother, the sawing and chopping sounds, the selling of old furniture, the gun (the only one she had ever heard fired at any time), the butcher's knives which were part of her father's equipment as a cook, the stories about murdered women and the memory of the headlines in the paper the morning following the departure of her mother, were all made into one picture and she evolved the story of the murder from this. And having told it, she believed it and would not believe anything else.

Menninger⁴ calls this form of behaviour mythmania, and describes it as recalling things that are not so. He says it is a kind of memory distortion in which the subject believes his own lies. The point is that Genevieve did remember things that had happened, but it was the way she interpreted them and put them together that produced the final myth. This was not conscious lying, nor do I consider it unconscious lying—it was merely the response to repeated suggestion in a person highly susceptible and conditioned to respond to auto-suggestion as well as hetero-suggestion. The emotional reinforcement only accentuated the readiness with which the suggestions were mechanically accepted and acted on.

I mentioned counter-suggestion, which is another name for negativism. This is not so important from the standpoint of the present discussion, but a reversal or negation of legal testimony is an entirely different form of suggestibility which is important for the legal profession. This occurs when it is necessary to admit in public humiliating and guilt-forming situations in which the victims publicly denounce the aggressors, throwing all the blame on to them. This happens in the cases of sex assault on young children where conduct has been contributory up to a certain degree. These children often tell a very straight story in the beginning, and after the trial is over they begin to change gradually until they deny the whole situation and in many cases even reverse the whole line of presentation of evidence. This is very much like the phenomenon of repression, but in addition to repressing or forgetting the unwelcome situation they build up unconsciously a reversal of the situation so that they either exonerate the offenders or deny the situation altogether. In this case the situation is originally apprehended correctly, but conscious awareness can accept the intolerable situation and the suggestions come from the self both from the conscious and unconscious activity to produce the new statement. This may be very confusing at times, and while it is a distorted form of suggestibility still it

4. Menninger, K. A., "The Human Mind" (Alfred A. Knopf), p. 24.

must be kept in mind as a possibility. Erickson⁵, who has reported several of these cases, says that this type of reversal is observed most frequently in those cases in which the witnesses have been injured in such a way that an element of horror, repugnance or a traumatic shock occurs. Although these witnesses have every reason apparently for being entirely truthful, the need to shift responsibility for the realities of the situation when the self-blame element is recognized, makes it necessary to revamp the entire episode so as to eliminate all personal element of guilt. Thus the dynamism expresses itself as follows: Expression of resentment and implication of offender; repeated recital of episode; cross-questioning with regard to participation implying guilt; sentence of the offender; subconscious rationalization following suggestion to self that testimony be reversed, thus enabling the individual not only to reverse the information but to deny the whole original situation, thus eliminating the conscious awareness of guilt. These cases of reversal of testimony are often those associated with sex crimes, and it is well to remember that such problems of testimony may arise in such situations.

In conclusion, may I again remind you that suggestibility plays a large role in testimony; that the ethical legal man must know of the possibility of the condition of hyper-suggestibility in order to defend himself and his client against the less ethical members of his profession, and that it is most necessary for all judges to take this condition into consideration. Let me stress once more that the condition of hyper-suggestibility may exist in a person who seems quiet, non-imaginative, who has good intelligence, and who behaves well. In children especially, simply because of the exaggerated suggestibility, there is generally an excellent record for good conduct and obedience in school.

DISCUSSION

The Chairman: After listening to Dr. Mühl's very stimulating address I have considerable sympathy with

5. Erickson, M. H., "Negation or Reversal of Legal Testimony" (Archives of Neurology and Psychology, September, 1938, Vol. 40, pp. 548-553).

Pilate. You will recollect Bacon's quip: "'What is truth?' said jesting Pilate, and stayed not for an answer." The subject is now open for discussion and I will ask Judge Stretton to open.

His Honour Judge Stretton: I feel extreme diffidence to-night in speaking on this subject in the presence of the learned lecturer, who appears to have learnt to walk surely and with certainty through that dark continent which is the human mind; and I feel a little misgiving in that I was unfortunate in the sense of having had a conversation with her before this lecture commenced, because I am persuaded now that no doubt she saw my mind, as a famous Adelaide K.C. might say, "in all its repellent nudity." The subject which Dr. Mühl has opened for us is indeed a fascinating one and must be of great importance in the two professions which compound this Society. It is a strange thought to me that in one profession, the medical profession, the power of suggestion should be so very strong and valuable and in my profession it should be such a very dangerous faculty. In my short and very limited experience of medical matters, it appears to me that the good salesman, if I may use that term, can frequently talk his patient into getting better. Occasionally, in the jurisdiction which I now occupy, we come across cases where the doctor reports that as the result if what one would assume to be a purely physical injury, the patient is suffering a psychological impediment to recovery and that once his troubles are brushed away and he gets out of the hands of the doctor and passes successfully through the hands of the lawyers and collects his compensation, he will soon get better. I have no doubt that in the old days the patient in that case would have been accused of malingering, but it does seem to be very well established that in the most unlooked-for quarters the patient has a psychological impediment to recovery which can be removed by the doctor in a series of what, I think, the tabloid press would call "Tonic Talks." In our own profession it is indeed a danger and has been recognized as such by the law, not, perhaps, with the scientific knowledge of our learned lecturer, but by the haphazard method of judging by results; and so it is that in the law the testimony of women and young children in many cases is treated with very great caution unless it can be corroborated. I have had one or two startling experiences of suggestibility of persons in whom, as Dr. Mühl has pointed out, one would never look for such a thing. One incident I may tell you shortly, as showing the extreme danger attendant upon a vast quantity of human testimony

which purports to depose to observed acts or facts is this: It was while I was still at the Bar. A friend and I had been playing tennis on a very hot day, and during the afternoon we thought it would be better to go for a swim, and we decided to visit Mr. Barry at his house on Elwood Beach and to dress and undress there. At about half past four or five we returned from our bathe, and whilst we were having a chat the evening newspaper came in with the account of an accident that had happened on the esplanade at Elwood at 11 o'clock that morning. An oil waggon had got out of control and crashed into a waggonette with some picknickers in it, had killed a woman and careered across the street and snapped off a telegraph pole. We were very interested in this occurrence; we read the news of it and we saw pictures of the oil waggon, the broken telegraph pole and the badly damaged waggonette. The incident then closed as far as any of us knew. I should tell you here that the man with whom I went swimming that day is a man whose whole living appears to be the encouragement in himself of the art of under-statement, and I would always have thought a man of glacial intelligence not usually affected by emotion. About two months later I was briefed on behalf of the oil company to go to the Morgue and to appear at the inquest on the woman who had been killed. I happened to mention it to my friend as a coincidence, and he said "Yes; I will never forget that scene, to see that poor woman lying there under the wreck, and this post, and the blood and everything. It was the most sickening sight I ever saw." I said to him "You did not see that," and we argued it out, and it became apparent to me that there came a look into his eyes as of one who regards an old friend as having deserted the realms of reason for pure unhealthy fancy. We argued at some length, and I said, "Do you remember the route by which we went to Barry's house?" and I pointed out that we had gone across country and we had not been on the esplanade. I said, "Do you remember what time we were swimming? Was not it late in the afternoon? This accident happened at 11 o'clock in the morning." He admitted all those facts, but he did not concede the final point that he had not seen the accident, and we parted: I, in some concern about him, and he, no doubt, much more greatly concerned about me. In the morning, when I met him, he said, "You are right, I did not see it; but had I been put into the witness box I would have sworn to it in detail. I even know the colour of the oil tank and I can see that broken telegraph pole yet, and I will never forget that poor woman."

And he confessed he had not seen it at all. Now, had he gone into the witness box as the only witness and by some mischance had not been cross-examined, or if the facts had not been so open to cross-examination as they happened to be in that case, his evidence, I should think, would have been received by any judge or any twelve men on a jury who might have heard it, and he would have done that with the deepest conviction, and with his always awakened sense of honour he would have been believed. Those things make one very afraid of what may happen in our courts; and it appears to me that in many of our courts, especially in the Criminal Court, we do not bear sufficiently in mind the possible fallibility of witnesses. I suppose there is no remedy for it while witnesses are suggestible in that way and while human observation is so inaccurate, as it no doubt always will be, and I suppose we must take the risk of occasional injustices. I can see no other way in which the matter may be dealt with.

Dr. Albiston: I feel a certain responsibility has devolved upon me to speak from my small knowledge of the subject of to-night's lecture in which we are interested, but I, perhaps, would have been more comfortable in speaking to-night if I had not been so suggestible myself.

This subject of suggestibility is a very interesting one. but it is not a subject with which I am very familiar because I have not spent very much time in law courts listening to witnesses, although I have always thought it would be a very good pastime for psychologists to attend the courts and study that particular subject. The only case that comes to my mind with which I was personally involved was a case similar to the one that Dr. Mühl has illustrated as being important in this regard, and that was the case in which an elderly gentleman had been accused of an indecent assault on two school children of about the age of seven, and he was charged with that offence. I attended the police court before a magistrate and these children gave testimony. I was asked to see the accused person with a view to determining his mental state or observing anything at all which would help the case for the defence. In my examination I came to the conclusion that he was quite a sane man, but the vital fact in the matter was that he, as the result of an operation which he had undergone some years previously, was quite impotent. It transpired that the two children had been frequently in his shop on the way from school and happened to receive an occasional halfpenny from him to buy sweets, and an older

child was in the shop one day. She was a very intelligent child, and she had got hold of those two children and had put into their heads the whole story of what she was imagining that she would like to have had occur in that shop. They went into a lot of details as to the occurrence and they described something which evidently they had never seen. I did not get as far as giving evidence on his behalf in the higher court because the judge and counsel saw through the state of affairs and the case was dismissed. I remember being struck also many years ago with a study of criminology by H. B. Irving, and I think there were several cases mentioned in that book with which no doubt you are all familiar, but the one that impressed me most was that of the Lyons murder. A passenger in the Lyons coach was asked to present himself for testimony, and he happened to meet a friend who had been in Paris and had been in Paris for some time, and he asked his friend to accompany him and vouch for or identify him, and this man gladly did so, and he went along and passed through a room in which there were some women who had travelled on the Lyons coach and had been in the vicinity at the time. These women immediately identified the friend and said, "That is the man," and identified him as the man who had committed the murder. This man was eventually hanged. That was a very terrible case and I should think in that case suggestibility was one of the factors that caused his death. Dr. Mühl mentioned hypnotic subjects and referred to a condition of affairs which does not occur ordinarily in everyday life from the point of view of suggestibility. I quite agree with that. The popular conception that an easily led person is very suggestible is by no means correct. A person who is influenced by hypnotic suggestion is generally one who has sufficient strength of mind to say "I will submit to your treatment." Such people are by no means intellectual and by no means disposed, as popularly supposed, to become the victims entirely of suggestibility. In my experience some of the cases which I have treated by hypnosis have been asked to submit themselves to hypnosis again but have refused, and the refusal has been in every case because there was no reason why they should submit themselves to hypnosis.

There is also another interesting point, and that is the consistency of the little girl in Dr. Mühl's case, that is, the consistency with which she stuck to her assertions once she had made them. That also does not obtain with people who have been hypnotized. One can hypnotize a person and may

suggest to him that he hears various things and sees various things under hypnosis and he will hear and see those things; and you may hold up a piece of blank paper to him and say "This is a photograph" and he will say "Yes"; and if you tell him that when he wakes up he will remember having seen that photograph, when you see him again he will give you a description of it. If you get a subject like that, and when under hypnosis you tell him that when he wakes up he will not have any control over what his right hand does, then when you ask him did he see the photograph on that piece of paper he will say "Yes," but as to control of the right hand he will say "No," which demonstrates that he knows quite well some things that are going on. I have no doubt that under certain circumstances he will be induced to admit things that have not occurred when they are not based on fact and truth.

I do not know that that would obtain in the case of a witness who had been, by auto-suggestion or hypnosis, caused to make a statement of fact. I do not know whether you might, by insisting on contrary suggestion, get them to admit finally that they had made it up, whereas in other cases you may.

Mr. Sproule, K.C.: This matter is of absorbing interest to me because I have to spend my life calling witnesses to give evidence against people who are supposed to be in a more or less degree liable to conviction on the evidence of those witnesses, and it is rather interesting to get these examples of suggestibility in connection with what people call miscarriages of justice. I suppose very few people in this room would say that a miscarriage of justice means anything but the conviction of innocent persons; but when a guilty person is set free the term "miscarriage of justice" is not a matter of common acceptance at all. I suppose there are very few people here who know of instances of people being convicted who they think did not commit the offences.

No doubt suggestibility is fraught with tremendous dangers, and one of the dangers of suggestibility (I do not know whether it has occurred to Dr. Mühl or anybody here) is this: that if you get suggestible persons telling a truthful story, such as Genevieve describing the contents of the picture with perfect accuracy and perfect truth, and, if anything hung on her description of the picture she has sworn to it with perfect accuracy and perfect truth, and then on interrogation by Dr. Mühl, by the suggestion of a few questions, she says "There was the clock there and there was the knife there" and is then got to describe the knife and

so on, it would be difficult to get any jury to condemn that girl as an abandoned liar and utterly unreliable, when her testimony was in certain respects both accurate and truthful. If she were called for the prosecution it would be suggested that she was not telling the truth and the prisoner would get off; but if she had been called on behalf of her father she would have been torn to pieces by experienced counsel and the father, who was depending for his life on her evidence, would have been undoubtedly hanged unless saved by other evidence. It sometimes happens that a young person will give evidence, and, being of a susceptible nature, is a perfect gift to any cross-examining counsel with an engaging manner and a plausible way of putting the position: "Did not this happen?" "Do not you remember this happening?"—and will say "Yes." She has no memory. She is suggestible and her evidence may be perfectly truthful, but because of suggestibility she is an unreliable witness. There is danger in it, and I see very frequently a witness's evidence destroyed just because of suggestibility, and yet the witness is probably telling the truth.

There is, of course, another feature in regard to suggestibility in witnesses, and that is the desire to please, the desire to meet somebody apparently in a position of authority or some older person, and you do, if you have the confidence of young people, see them almost trying to guess what answer you want, and anxious to give it; and I have always realized the danger of conferences before a trial with young children. They think they recognize what you want them to say. They may think the questioner has a right to his replies and at the conference, having committed themselves, they feel that in court they must now say the same thing. I should think it is very advisable for persons who are in a position to do as much damage as the prosecutor could do by suggesting ideas in the minds of children to avoid conferences with young people. Of course, that desire to please is an unconscious desire to give an answer for no other reason than that they ought to do; it is due to suggestibility rather than dishonesty. Every judge must have had the experience of a witness who thinks that the best thing to do is to agree with anything the judge suggests, and that is the best way to advance his case. Such people would not take suggestions from their own counsel, perhaps, or from the cross-examining counsel, but if it falls from the judge they feel they are doing the right thing if they do what the judge wants.

I remember a case before the late Judge Box. It was an affiliation case, and the lady told a story of happenings after a church service in which the defendant took part. The defendant denied her account. He said they walked home together after the service and they only discussed the sermon, and the subject of the sermon was "Love made manifest." He said he talked to her of high moral subjects and the Judge said, "I suppose you told her that she must be good?" "Yes." "And I suppose you told her this——," and the judge went on for about five minutes suggesting the conversation of a very high moral standard, and the defendant replied, "Yes; I told her that." Then Judge Box sat back and said, "Is there anybody else in Court who can suggest anything more of an improving nature that he might have said?" The witness then realized where he had been led. I do not know whether that is suggestibility of the same type that our lecturer was speaking of, but I am sure that as long as we have to rely on witnesses we will have the risk of suggestibility. I do not know if it is confined to young people only. Dr. Albiston stressed the way in which young Genevieve stuck to her statements, but that was not so; Genevieve did not, whereas her brother George did. Young Genevieve having made a statement, when spoken to in a proper manner, came right away from it. For instance, there was no knife in the picture and yet she described the knife; there was no clock in the picture and yet she described the clock with the bell on top of it, and so on. Each story hung together, but eventually, when spoken to, she departed from her statement.

Mr. R. R. Sholl: Might I say first that, like all others present, I greatly enjoyed the lecture, but I would like through you, Sir, to ask our learned lecturer if she will answer a question when she comes to the reply to the discussion and kindly tell us where was Mrs. Watters and what really happened to her, because we would all like to know how much of Genevieve's story was imagination. From the remarks of my friend, Mr. Sproule, I have been reminded of one aspect of to-night's discussion which, in the practice of the profession of a barrister, is, I think, of some importance, and that is the question of the suggestibility of all witnesses in connection with so-called conferences before trial. I personally hold very strong views about that. The English practice seems to me to represent the sounder attitude. The English Bar Council has laid it down that it is

contrary to professional etiquette for counsel to have a conference with witnesses before trial, excepting the parties or expert witnesses, who are there to instruct them in all those numerous scientific matters of which counsel is by nature and training abysmally ignorant. In this country the practice, I think I am right in saying, is almost universally different from that; and, having attended conferences with witnesses both as a clerk years ago and also as junior counsel in later years, I must say quite honestly that it is my firm conviction that there is many a witness who is taken through a statement in conference in counsel's chambers and who, by listening to the discussion of the matter with other witnesses, or by having questions addressed to him either in the positive, or what I understand now to be the more dangerous negative form, is led when he comes to give his testimony in the witness box to modify and sometimes to reverse his testimony, but more frequently to omit matters which he has mentioned in conference or which either the solicitor or another witness or even counsel has received with some appearance of dissatisfaction or even incredulity. I think that is a definite aspect of the matter which calls for some consideration. So far as my own practice has gone, I have endeavoured to avoid conferences with witnesses as far as possible, but with experts it cannot be helped; but I must say that even amongst the judiciary there is not the same attitude towards conferences with witnesses that there is in England, and I have been asked by a member of the Victorian Supreme Court, when a witness has shown an obvious tendency to wander, whether the witness has not been precognized, which appears to be a judicial term denoting the exposure of a witness to conditions of possible suggestibility. I cannot help feeling that this is a matter on which a lead from the Bench or Committee of Counsel might be very desirable, and I for one would be very interested to hear our medical friends, and perhaps our lecturer in reply, discuss the question whether ordinary witnesses are not just as susceptible to suggestion by a debate in which the history of the trial is subject to the preliminary examination as are young persons of whose testimony we have heard to-night. One cannot help being struck with the fact that the pathological subject has figured so largely in the discussion here to-night. I should like to ask whether our lecturer can tell us whether the fact that in the examples the suggestible subject is female is due to accurate scientific observation, or is merely due to the fact that in some sort of way we have got an impression

in our minds that the greater imagination and the more lurid picture and the less reliability is universally to be traced to the female witness. If I may revert for one moment to the matter of conferences with witnesses, it seems to me to be a most important thing from the point of view of the judiciary that the examination which they conduct and which is designed to get at the truth should not be interfered with by anything which extends in the least degree beyond the proper functions of advocacy. It is an interesting question whether the true function of an advocate is to see that only the truth reaches the tribunal, or if it is his function to see that only so much of the truth as suits the client reaches the tribunal, or whether it is his function to see that anything which the client alleges is the truth should only reach the tribunal. That is, however, a matter which the cynicism of counsel may be left to deal with. I think the conference before trial has largely come into vogue in Victoria through ineptitude of solicitors' clerks. I think there is a great deal of ineptitude in the preparation of briefs, and the type of solicitors' clerks capable of examining a witness and getting his statement for counsel has died out. I do not know if solicitors can do anything about it, but I feel that it is a matter to which one may draw attention because, no doubt, we could evolve some improvements in our methods of the ascertainment of the truth.

Dr. Ostermeyer: After listening to Mr. Sproule and Mr. Sholl in regard to these questions of preliminary conferences, I think they have brought out what is an essential feature of all suggestibility. Apart from the witnesses, counsel suggests a good deal to a jury in his summing up; there is any amount of suggestibility and appeal when addressing the jury, but that does not concern the actual giving of testimony. In fact, the final testimony in many cases is simply the act of counsel after a conference in chambers. If a witness were asked, "Write down what you know in regard to certain things," that would be a different story, but it is the combined answering and questioning which gives rise to suggestions. We are all suggestible in various degrees according to our capacities, and the suggestion that takes place varies with the different circumstances in each case and with each person. We all have first-hand knowledge that such things take place because we have found witnesses using words that they never used before in their lives but have picked up in the course of interviews and conferences.

The question of suggestibility in connection with the law was dealt with in an article by Mr. Barry entitled *The Problem of Human Testimony* in 11 *Australian Law Journal*, and in the last issue of the *Journal of Philosophy and Psychology* there was an article by Professor Paton entitled *Psychology in Relation to the Law*, and that mentions some extraordinary examples, and what he says about suggestibility is quite staggering. Munsterberg published a work in 1914 entitled *Psychology, General and Applied*. He has one chapter on legal psychology, and on memory and suggestibility in witnesses. He went into the matter very fully 25 years ago. In many cases people were subjected to actual experiments. The Law Students' Society had a kidnapping case reproduced at the University, and there were 300 members present. Those 300 members were asked to record their impressions, and the discrepancies amongst those 300 people were of a most amazing description. Munsterberg had a similar experiment carried out in regard to suggestibility in which the whole thing was acted like a play, and he appealed to the audience and said, "I will ask you all to write an account of what you have seen." Forty of those persons present did so, and 50 per cent. of them gave absolutely wrong interpretations. To barristers and psychologists suggestibility is a practical problem of very great importance, and the amount of truth that comes out in the witness box is not 100 per cent. suggestibility.

Mr. F. W. Eggleston: I think Dr. Mühl, if I may be allowed to say so, has rendered the Society a very great service in raising this question of suggestibility and the greater question of the psychological side of human testimony as it applies to the trial of cases, and all her examples have shown to what extent the evidence may be falsified and how it can be corrected by a proper psychological examination; but I would like to suggest that what Dr. Mühl is referring to as psychological suggestibility is not the sort of thing that is suggested by counsel who says to a witness or to a party, "If you say that you will blow your case up," and the witness says, "I will not say that." That is not suggestibility—that is pure lying. I believe that suggestibility is not nearly so common as it is said to be. It is quite clear that psychologists who have to examine a large number of cases in which psychological considerations occur find suggestion very frequent, but in my practice in the law I have found very little of it, and I suggest that very often it is the immature man that is suggestible, and that the mature

man, if he falsifies his evidence, does it from other motives and it is not merely suggestibility but lying. It is well known that primitive races are very suggestible, and in trial cases a witness will say whatever is suggested to him, and the judges in those cases in which native witnesses are involved have to be very careful that the evidence is not really suggested to the witness, and that the witness does not accept it just because his mind is immature; and the fact that Dr. Mühl has mainly referred to children to-night, I think, supports my view. In my practice I have not found very much suggestibility in witnesses, and I venture to say that if suggestion is done it is more often and more likely to be done in the solicitor's office than anywhere else. It may be done in conference, but when you have arrived at the stage of conference it is just a question of the barrister putting to the parties and the witnesses, "Well, if that evidence is given it will knock the case to pieces. Had not we better omit it, or had not we better get other evidence from somebody else?"; and I rather think that Mr. Sholl is wrong when he says that the fault lies in the imperfect way in which the evidence is prepared in the brief. However, my own experience and the experience I have had of other men's work is that the brief when it gets to counsel does represent what the witness actually said. There may be some suggestion from the solicitor, he may be pointing out inconsistencies in the man's evidence or inconsistencies between one witness and another. In the preparation of cases there will always be inconsistencies, but it is the barrister trying to fix the evidence into a particular compass that causes the barrister to re-write the brief as he reads it.

There is also suggestibility by other phases of activity, political, commercial, and so on, but I deprecate very much indeed the idea of mass suggestion. It is quite a common phrase to hear of mass suggestion and mass psychology. My experience in politics is that it was frightfully difficult to get any mass movement at all from the electors. The very fact that you have compulsory voting introduced in order to get from the electors an expression of opinion suggests that mass suggestion is rather a myth, and the small effect newspapers have on public opinion is also evidence of that.

In commerce, of course, a salesman is an expert at suggestion, and he is very often successful. That is because there is an urge on the suggestee to buy something, and if that urge is a very powerful one and can be successfully stimulated, it is successful. I think that Dr. Mühl is quite right in saying that there are very many peculiarly con-

stituted people who are very suggestible, but I rather think the cases are very rare, and that is where the danger lies. You cannot distinguish so as to say which witness is suggestible, and in the rare occasions in which witnesses are susceptible they are liable to be overlooked because their evidence is so like that of other witnesses that you do not know where the suggestion comes in. Dr. Mühl has rendered a very great service to this Society in raising these psychological questions because, as I said in an address I gave here some time ago, lawyers have rather tended to regard psychology as not common sense, and have only recently felt inclined to give some, and then not full, weight to psychological considerations.

Mr. Vroland: As a younger member of the branch of the legal profession by whose goodwill counsel survive, I would like to say a few words on the subject of the lecture. In the first instance there is the question of what is the duty of a solicitor in dealing with his own client and the witnesses brought forward by his own client. As I see it, the position is this: when one's client comes for advice as to what his legal position is on the facts, one must impress upon his client the need for the truth. When dealing with the witnesses you do so to enable you to assess the degree to which you can prove the facts which your client alleges and the solicitor has a very live duty not to use any persuasive effort nor to do anything which will tend to make a witness depart from what the witness obviously believes to be true. At a very early stage it is our duty to cross-examine our own witness carefully and as the result of that cross-examination we may find inconsistencies which, if disclosed, may indicate a different set of facts, but which if not disclosed would have launched your client in unsuccessful litigation. There is the secret of the matter. It appears from the lecture to-night to be a very sound case to justify the rule in British courts permitting all witnesses to be thoroughly cross-examined. I know some of our medical friends resent the extent to which they have been submitted to cross-examination, but I think it should be conceded that the cross-examination meted out to an expert witness should be very different from that which is meted out to a witness of the facts. I think there is a great amount of truth in what Mr. Eggleston said, that the great body of witnesses are not suggestible to any great extent. Some of them are, but most of them are not, and it is the duty of the solicitor in taking their statements to see that he does not use

unfair and dishonest methods in obtaining statements from witnesses.

Dr. Springthorpe: There has been, I think, a certain amount of confusion of mind on the part of some of the speakers following the opening address, which has been partly cleared up by the last two speakers, and what I am going to say will only more or less support Mr. Eggleston's view of the matter. The term "suggestion," I think, has been used or thought of somewhat loosely to-night by some of the speakers, and I do not want to be asked to give a definition of "suggestion"; but one of the important aspects of suggestion as I imagine the lecturer has been dealing with it is that it is an entirely unconscious process on the part of the susceptible individual. Selling refrigerators to people who may not want them, or selling new motor cars to ambitious young medical men is not really suggestion in the sense that I think we ought to speak of it to-night. That is based on other emotions such as to appear in a new motor car and other factors which are quite different. I think that has been now made quite clear by Mr. Eggleston's remarks, but it is a very important distinction. The question of persuading witnesses in conference to fit in certain things or to tone down their evidence is not suggestibility in the sense in which the lecturer has been dealing with the matter, and to be quite frank, it may amount to blatant lies. I would think, and I imagine the lecturer would agree with me, that the real type of suggestibility is what might be called pathological. Hyper-suggestibility is rather a rare phenomenon, or, at all events, rare to the extent of causing very serious trouble in evidence in legal matters, and I think it is quite true to say that it is more common in young people and immature people such as natives and primitive races who have not been so educated; and I would think, with Mr. Eggleston, that with adults in a more or less civilized community or a community at all events that is educated along certain lines and is familiar with legal procedure to a certain point, it would be very rare, and the degree to which hyper-suggestibility would really cause falsification of evidence is very slight. Furthermore, in any cases which do occur thorough cross-examination would bring out the fundamental point that has been mentioned, that these hyper-suggestible people will vary their evidence, and that is the crux of the matter. They do not stick to the story and they are not consistent, and I should imagine that in ordinary legal procedure a competent judge would be quite

capable of detecting the fact that the witness was in the particular instance hyper-suggestible and under various circumstances was in actual fact varying his or her evidence on the purely unconscious functioning of some heterosuggestion.

There is one other point, and that is the suppression of certain evidence or certain memories on the basis of a quite unconscious reaction to humiliating and guilt-forming situations. This is a well-known psychological phenomenon, but the identical process can occur with a conscious basis. It is well-known by psychologists and lawyers. I have in mind a patient who, at the age of about 14 years, was the victim of an attempted criminal assault, and this girl subsequently stated quite categorically on all occasions that she would be quite unable to recognize her assailant, and on the basis of that the case had to be dropped, whereas in point of fact, now that she is 23 or 24 years of age, she admits that she knew perfectly well that she could have recognized the assailant. There was nothing unconscious about it, but she had such a fear of appearing before a judge in a court that she was quite prepared to lie and to stick to it in order to get out of what was likely to be a very unpleasant experience. I congratulate Dr. Mühl on this very interesting paper, and I think it is very necessary to have psychological processes constantly before a society of this kind in order to apply our minds both medically and legally to such problems in future.

Mr. Barry: I am moved to rise and say something to-night to direct attention to some things that have been overlooked. The first is that Dr. Mühl is the first member of the opposite sex who has ever given an address to the Medico-Legal Society. I think we are fortunate to have her here for reasons which are quite apparent. With regard to the discussion, Mr. Sproule, with a plaintiveness that we notice rarely in him, has referred to the fact that very few people consider the failure to convict a guilty man as a miscarriage of justice. I suggest that that feeling is founded in a proper realization of the fact that the acquittal of a guilty man does nothing like the injury to the confidence in the administration of justice that the conviction of an innocent man does, and that while it may be worth remarking, as he has remarked upon it, the seeming paradox illustrates a very sound instinct in the community.

Dr. Springthorpe has adverted to one matter that I think is very often overlooked by lawyers. They are very familiar with the atmosphere of courts and they tend to overlook

this, that the formal atmosphere of a court is, perhaps, the last atmosphere which can be imagined for eliciting the truth. To a person who is unaccustomed to going into the formal surroundings of the courts and who is asked to go before a judge who wears a curious contraption on his head and a black robe around his body, and to submit himself to questions by gentlemen who are arrayed in similar archaic garments, the atmosphere is hardly calculated to encourage him to express adequately what he has to say. He is further embarrassed by not being allowed to tell his own story in his own way. He is asked his name and occupation and then he is interrogated, and if he diverges in any way from the specific answer to the question he is asked, the court and counsel become impatient, with the result that the witness's confidence is destroyed. It very often happens that a witness is forced to be sure by the form of a suggestive question upon matters in regard to which he has no certainty at all.

A reflection that occurs to me is that it was unfortunate from the point of view of the man who suffered two reprieves, and apparently detention in *durance vile* for some considerable time, that the form of investigation employed by Dr. Mühl after conviction was not employed before he was charged. That brings us to the very wide question as to whether our methods of criminal investigation are completely satisfactory. The most dramatic and interesting features, because fraught with the gravest consequences to the people concerned, are to be found in criminal trials, and I suggest that it is there that suggestibility plays its largest part. The police, having decided (and this is in no way an attack upon the police, but it is a comment on what is an obvious human tendency) that a certain person is guilty, are given the task of preparing the case, and they go about it in the fashion that we all go about preparing material to support a particular belief. The consequence is that when one is fortunate enough, as we are now becoming fortunate enough, to get the statement made originally to the police and compare it with the later testimony given by the witness, it is often possible to demonstrate that the witness is completely unreliable. It has been decided by the Privy Council in *Mahadeo's* case that where a witness has made a statement and the defence calls for it, the statement should be made available to the defence. In a murder trial in which I was concerned some years ago, that was of considerable assistance because the defence was able to get the original police statements and

compare the statements originally made at a time when no one had been arrested with testimony subsequently given when the accused were on trial, and it was demonstrable from the marked discrepancies in the statements and the very marked additions that were made to them later on that the process of investigation by the police, understandable though it may be, certainly left a great deal to be desired. The constructive thought that is to be founded on to-night's lecture is that it would be of considerable assistance if in cases of that kind described by Dr. Mühl to-night it were possible to get some psychiatrist to test the person bringing the accusation. If, having passed through the hands of a reliable psychiatrist who is not in any way interested in establishing any particular result, the witness was able to satisfy the responsible authorities that there was no question of suggestibility which would invalidate her testimony, then I think that those of us who have occasion to deal with that most troublesome of all cases, those involving sexual offences which are not corroborated by satisfactory evidence, would feel more satisfied than we sometimes do when a conviction is recorded.

The President: Before calling for a vote of thanks to the lecturer, I will take this opportunity to add one or two observations to the discussion, which are prompted by something which fell from Mr. Sholl. He wondered how it was that in Victoria counsel see witnesses in conference before a case is taken into court, while that is not the practice in England. It may interest him to know that the late Judge Box told me that the practice originated here owing to the lack in the early days of solicitors and solicitors' clerks competent in the preparation of briefs. I do not for a moment suggest that that incompetency has been carried on to the present day, because my own experience at the Bar was that briefs were very well prepared; but the practice, once it originated, has continued. I think there is a great deal to be said in favour of the view which Mr. Sholl has stated, that counsel is very much freer and less embarrassed when he has not had conferences with witnesses before going into court.

From my own experience I agree with Mr. Eggleston as to there being a distinction between suggestibility and lying. I can quote two instances of that sort. The first was a case in which a witness was to be called to depose to certain incidents of a kind that if they had happened might well have been regarded in the light of evidence. I said to him at the conference, "Do you keep a diary?"

He said, "Yes, I do." I said, "Have you any record of these incidents you are telling me of?" He said, "No." I then asked him some other questions and passed on to another aspect of the case. Later when that witness was called he was asked in cross-examination whether he had a diary entry of this particular fact. He said "Yes," and he produced his diary and he showed the entry. That entry, of course, had been manufactured between the time when he was at my chambers and when he had gone into the witness box. It was a very embarrassing moment. It was a trial before a jury. The witness was not a party in the case. When the jury was considering its verdict I spoke to the presiding judge and asked him what I should do. He said, "Do nothing."

Another instance is that of the last criminal case I had. A man was arraigned for manslaughter. He had been riding a motor bicycle with his lights out and had run down a push cyclist. His case when he went before the coroner was that he had a light on his motor bicycle when he had started out on the road, but owing to the bumpy nature of the road over which he had passed the light had been extinguished, and he was not aware that it had gone out, and while he was riding in that condition he had unfortunately run down the cyclist without seeing him. I had a conference with him before the trial and he repeated the story to me. The solicitor said to me before the conference was finished, "I would like to speak to you with the client out of the room." I sent him out and the solicitor told me then that the story which the client had told me was quite false and that the fact was that the client had a policeman friend who had suggested to him that a very likely story which might get him off would be that his light had been lighted when he started and had gone out by reason of the bumps on the road. So I had him brought back and I asked him again how it happened and he told the same story that he had told before the coroner. I said to him, "If you were put into the witness box on oath, what would you say?" He said, "I would say the same again." I then repeated to him what his solicitor had said. He replied, "That is quite true. I had no light and the policeman suggested that I should say I had a light on, and that is what I am going to say." I said to him, "Then you must take your brief elsewhere." The case came on for trial and I went into court and heard a very well-known counsel make an eloquent address to the jury based on the unfortunate experience of

this man who, without any culpability on his part, had run down a push cyclist and killed him.

Those are two instances which could be stigmatized as lying and not suggestibility at all.

Mr. Dean: The more eloquent members of our gathering to-night having concluded the discussion, it remains for me to move and for Dr. Maudsley to second a vote of thanks to our learned lecturer, Dr. Mühl. The best compliment or the best evidence that her lecture has been appreciated is that it has stimulated a very interesting discussion. We who are engaged in the everyday practice of the law are aware in a general sort of way that up at the University they teach higher mathematics, philosophy and somewhat "up in the air" subjects, and we sometimes forget that those subjects, and particularly psychology, have direct application to those matters which are engaging our daily attention. We are indebted to Dr. Mühl for reminding us of that fact, and by presenting to us some thoughts on the way in which the scientific study of these problems of the human intellect and mind can be brought to bear upon our everyday work in court. I shall not at this stage comment on any of the remarks which have been made by the various speakers. I want, however, to say that it appears to me that the subject as treated by Dr. Mühl and largely discussed is one element of a very large problem, namely, the general suggestibility of all sorts of people whether witnesses or not; because, after all, witnesses who give evidence in our courts are not a select body of people set apart from the rest of the community; they are the ordinary everyday people. Also in the course of a trial the suggestibility which, according to the lecturer and the discussion, influences witnesses is, of course, apparent in many other ways. The whole conduct of a trial is an adventure in susceptibility. If the trial is before a judge, then from the time the trial opens till it closes everybody who is engaged either as a witness or as an advocate is endeavouring in some way to take advantage of the possible susceptibility of the trial judge, and we constantly speculate on the success or failure which we may have in that direction. However, we never learn, but we ought to know now, that our trial judges are pretty tough, and that they are pretty skilled in detecting all the tricks of the trade in which we engage, and they are pretty alert in detecting in cross-examination what credit can be placed upon a witness.

I wish to conclude by thanking the lecturer on behalf of

the Society for the very interesting and instructive lecture which she has given to us and for the stimulating discussion which she has caused, and to assure her that we have thoroughly enjoyed it. I have pleasure in moving a hearty vote of thanks to Dr. Mühl.

Dr. Maudsley: I have pleasure in seconding the vote of thanks. Apart from hyper-suggestibility which Dr. Mühl so very ably described, we have all to realize that every individual is suggestible under different circumstances, and under different conditions, perhaps whether we are feeling well or not and we are in different degrees of health and so on. It is sometimes rather difficult to realize that a person who is suggestible at one time is not always suggestible. It depends very much upon the relationship between the suggestor and the suggestee. I remember one rather amusing case where a man who sustained a very mild injury and contracted an hysterical gait was paid compensation. There was a great deal of consultation between solicitors and counsel, and in the end the case was settled out of court on a certain basis, but the patient had heard some doctor say that the patient would be perfectly well as soon as the case was settled up. Well, the patient went to the insurance office, where he received an envelope containing a cheque, and he walked down the steps in a perfectly normal manner. Of course, he was cured, but that is not an example of suggestibility; that man was a genuine case of hysteria, but he was convinced that when the whole thing was settled up he would be well, and when he received his cheque in his hand he became well.

I think the whole of the circumstances surrounding the particular case that Dr. Mühl described were very interesting, and the discussion that it has called forth to-night has been very stimulating and interesting.

The vote of thanks was carried with acclamation.

The President: Dr. Mühl, I have pleasure in conveying to you the vote of thanks of this meeting.

Dr. Mühl: I thank you very much for your most interesting discussion. I wish I could reply to everything that was said, but the time is late. I should have mentioned that the case of Genevieve was pure hetero-suggestion, that is to say that she picked up everything from the outside; she picked up everything that anybody suggested to her. You will remember that at the beginning I mentioned there were certain types of hyper-suggestibility in which people picked up suggestions as blotting paper soaks up ink. She picked up everything that people said, so it was not one

case of suggestion, but anything that added to the thing that she was building up unconsciously she adopted. It is a matter that would take up a long time and result in a most interesting discussion, but which I think there is no time to discuss to-night.

In answer to Mr. Sholl as to what happened to Myrtle Watters, it would take up the whole of the evening to deal with this case, but there were certain things that made us feel that she had simply disappeared when she got to Los Angeles. I had a very interesting piece of information about the first time she disappeared. She had done it before. We received information that there were a number of dope runners in the family. Her brother was a dope runner, and she was so near the border of Mexico that she got mixed up with one of the international dope gangs with which we have great difficulty in the southern part of California. It is interesting to remember that Watters' first wife also disappeared 23 years before. I would like to locate Myrtle, and I am still looking for her.