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A Rhetorical Analysis of Political and Legal Speeches of Robert B. Crosby

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A RHETORICAL ANALYSIS OF POLITICAL
AND LEGAL SPEECHES OF ROBERT B. CROSBY

by

Gilbert F. Nykodym, II

A THESIS

Presented to the Faculty of
The Graduate College in the University of Nebraska
In Partial Fulfillment of Requirements
For the Degree of Master of Arts
Department of Speech and Dramatic Art

Under the Supervision of Dr. Donald O. Olson

Lincoln, Nebraska

1968

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I wish to express special gratitude to former Governor Robert B. Crosby whose contribution to this study was immeasurable.

Most of all I would like to thank my parents, Mr. and Mrs. Gilbert Nykodym, Sr. of rural Norfolk, Nebraska, for their continued encouragement, support and fine example.

GFN

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CHAPTER I

INTRODUCTION

I first saw Robert Crosby as a lawyer defending Duane Pope in November 1965. I was intensely interested in the Pope trial for a number of reasons. I was interested because, first, as a law student I found the legal points of interest, second, one of my law professors, Wallace Rudolph, was serving as an assistant defense counsel in the trial and, third, having a bachelors degree in speech I wanted to see what part speaking played in this trial.

The trial of Duane Pope was a topic that came up quite frequently among the law students at the University of Nebraska College of Law. In one of my classes, Criminal Law and Procedure, Professor Charles Tenney on several occasions discussed the case of United States v. Duane Pope. Mr. Tenney also discussed the case with other students and me outside of class. It was not an unfamiliar scene to see twenty or thirty law students grouped around Professor Rudolph in the law library as he responded to questions that the students had about the Pope trial. Mr. Rudolph also spent an entire class period discussing the case when he was asked to visit Criminal Law class by Professor Tenney.

As I began graduate work in speech I took a course entitled

Rhetorical Criticism under Dr. Donald O. Olson. I chose to study the speaking of former Governor Robert Crosby as the final assignment in the course. After preliminary research it became evident that certain speeches of Bob Crosby's might merit study as a thesis project. In a course entitled Introduction to Graduate Studies I submitted an adendum of procedure on a thesis project with certain aspects of Robert Crosby's speaking as the subject. In the course Dr. Leroy Laase offered suggestions as to method, techniques and prodedures for procurement and use of materials to complete such a study.

Preliminary research had revealed that very little research had been published in regard to legal speaking. Likewise research did not seem to exist which dealt with both political and legal speaking done by the same speaker.

Crosby's defense of Duane Pope seemed to stand out as an example of his legal speaking. Likewise "Operation Honesty" stood out as an example of Crosby's political speaking. Taxes problems and Crosby's attempts to deal with those problems seemed to be one of the most important aspects of his public career.

After consulting with Dr. Donald O. Olson, the topic was decided upon: "A Rhetorical Analysis of Political and Legal Speeches of Robert B. Crosby.

PURPOSE

In analysing these two examples of Crosby's speeches and speaking, the following questions were considered:

1. What training and experience has Robert B. Crosby had in speech and speech making?
2. What were the characteristics of Crosby's deliberative or political speaking as exemplified by his "Operation Honesty" speech?
3. What were the characteristics of Crosby's forensic or legal speaking as exemplified by his summation in the United States v. Duane Pope?
4. What similarities and differences were revealed by an analysis of Crosby's deliverative and forensic speaking as exemplified by "Operation Honesty" and U.S. v. Duane Pope?

PROCEDURE

Survey of Related Literature

A survey was made of listings in Franklin S. Knower's "Graduate Theses--An Index of Graduate Work in Speech", Clyde Dow's "Abstracts of Theses in the Field of Speech", J. Jeffrey Auer's "Doctoral Dissertations in Speech: Work in Progress", Robert E. Dunham, L.S. Harms, and Richard B. Gregg's "Index and Table of Contents of SSJ, WSJ & CSSJ" and Franklin H. Knower's "Table of Contents and Index of QJS, SM & ST". Unindexed professional speech journals were checked to date. A survey was also made of "The Index to Legal Periodicals" which lists, "All leading articles, notes case comments and book reviews published in the publications indexed."¹

¹Price, Miles and Harry Bitner, Effective Legal Research (Boston: Little, Brown and Company, 1962), p. 277.

This is the most inclusive index to English language legal periodicals; it contains an index to some 160 of the principal American, British and British Commonwealth periodicals, many bar association publications and some judicial council reports are indexed.²

I found no published or unpublished material on any aspect of the speaking of Robert B. Crosby. A survey of the abstracts and titles did not reveal any published or unpublished material comparing the political and legal speaking of the same individual.

Books and studies on rhetoric and rhetorical analysis were consulted in order to see what approaches had been used in rhetorical analysis.

The Speaker

In attempting to answer the first question, and find out what training and experience Bob Crosby had in speech, I compiled biographical data which related to that question.

In order to establish what he had done during his younger years, I relied upon newspaper accounts, an interview with his father, who lives in North Platte, Nebraska, and went to Hastings College to examine the college publications for the years that Bob Crosby was in attendance.

Crosby's later life was researched by interviews, newspaper accounts and other sources. I interviewed Robert Crosby on several occasions. I also interviewed his wife and Arch Donovan, a news reporter and commentator who had seen Crosby speak on numerous occasions. Mr. Crosby permitted me to use four files of speech notes which he had

²Ibid.

accumulated over the years. The files dated from the late 1930's to the present. Mr. Crosby also opened his private papers, which were sealed until 1979 in the Archives of the Nebraska State Historical Society, to my research. Both his speech files and private papers were most helpful in writing about his speech making. The Reader's Guide to Periodical Literature revealed the national attention that his speech making had received. I asked Mr. Crosby to inform me whenever he spoke in the community so I might be able to see and hear him speak. In addition to hearing Crosby in the Pope trial in November of 1965, I heard Mr. Crosby address the Polemic Club on the subject of the Pope trial on May 23, 1967; the city of Plymouth, Nebraska on November 11, 1967 on Veteran Day; a meeting of the Round Table on the subject "The Wall of Separation, Church and State", December 4, 1967, and the Krutz Hearing before the Nebraska State Game Commission, April 11, 1968.

The Speeches

The speeches used in this study were "Operation Honesty" and his summation in the U.S. v. Duane Pope. "Operation Honesty" was given to a mass meeting of state employees on January 15, 1954. I was able to find the "Operation Honesty" address both on tape recording and in manuscript form. Mr. Crosby's summation to the jury in the Pope trial was taken from the official court record of the United States v. Duane Pope, CR 443L, U.S. District Court for the District of Nebraska.

The Background of the Speeches

In reconstructing the background of the "Operation Honesty" address I turned to newspaper accounts, national news media, the

Archives of the Nebraska State Historical Society and the other sources. I used a number of newspapers in order to minimize the possibility of political bias. The Archives of the Nebraska State Historical Society supplied telegrams to Governor Crosby at the time he made his "Operation Honesty" address, press releases on "Operation Honesty" and personal notes on the campaign. The Crosby's speech files contained information on "Operation Honesty". Mr. Crosby also permitted me to use his personal Appointment Book's for the years 1953 and 1954, the period of time that he was speaking on "Operation Honesty".

The background of the U.S. v. Duane Pope was researched through the use of newspaper accounts and a speech that Robert Crosby delivered on the subject of the Pope trial to the Polemics Club. Other sources that went into the writing of the background material on the Pope trial were no doubt my personal experiences, conversations and academic work with Professor Charles Tenney, Criminal Law Professor, and Professor Wallace Rudolph, assistant defense counsel in the United States v. Duane Pope.

Authenticity of the Texts

Mr. Crosby turned over to me numerous tapes of speeches that he made while he was Governor. I found a tape of "Operation Honesty" that followed word for word a manuscript of the speech which was discovered among the material that Governor Crosby turned over to me for research purposes. The speech had been taped and mailed to radio station KOLT of Scottsbluff, Nebraska. The tape had been returned to the Governor's office and he had placed it among his files. Brown mailing wrapper and

anceled postage were on the unopened tape box.

I established the authenticity of the closing argument of Counsel Crosby in the Pope trial by interviewing the official shorthand reporter to the United State District Court who served during the U.S. v. Pope trial. Mr. David H. Brown told me that he had been a court reporter for thirty-seven years. He stated that he used a tape recorder each day and checked it against the shorthand record for accuracy. He then reused the tape the next day. The current court reporter Joseph Pasqual also stated in an interview that he felt that an accurate word for word record was achieved.

Speech Analysis

The criteria known as the Canons of Rhetoric, were used for the speech analysis. In considering the canon of inventio, all three forms of proof or persuasion were considered; logical, emotional and ethical.

In examining the speeches for dispositio, organization and message were considered. The analysis of elocutio dealt with style.

The canon of actio, or delivery was used in an analysis of both speeches. "Operation Honesty" was analyzed on the bases of news reporters accounts and my observations after listening to the tapes. U.S. v. Pope was analyzed as a result of my observations of the Pope trial, news accounts and interviews with the jurors. I was able to interview eight of the twelve jurors. Some of the jurors refused to talk to me; one of them told me where I could go. Of those who did talk to me most of them asked that I would not quote them by name so I have not quoted any of the jurors by name in the analysis.

Since memio, or memory, has been until just recently a lost canon of rhetoric, it was not considered in the analysis.

Other aspects of analysis that might be mentioned are the use of the summation and the use of the terms deliberative and forensic. I felt that the summation would be the best part of the trial to analyze since, "...the closing argument of summation to the jury is the high point of the trial in so far as speaking is concerned."³ I used the word deliberative or political speaking since deliberative speeches are "...political speeches addressed to an assembly or to the public on questions of State..."⁴ I used the word forensic or legal speaking since forensic speeches are "...judicial speeches, used in prosecution and defense..."⁵

³Constans, H. Phillip and Dallas C. Dickey, "The Contemporary Rhetoric of the Law", Southern Speech Journal XIX (1954), p. 281

⁴Cooper, Lane (trans.), The Rhetoric of Aristotle, (New York: Appleton-Century-Crofts, Inc., 1932), p. 17

⁵Ibid.

CHAPTER II

THE SPEAKER'S BACKGROUND

Robert Crosby's roots ran deep into the history of Nebraska. Politics had long been a part of his family's life. John H. Powers, Crosby's great-grandfather, was the Populist candidate for Governor in 1890, and lost by a small margin. There is still some doubt if Powers really lost; Addison Sheldon of the State Historical Society felt that the homesteader candidate may have been "counted out."¹ The homesteader tradition was strong in the Crosby background. Adelbert Crosby married Lucy Powers and homesteaded in Lincoln County south of Sutherland. Crosby's maternal grandfather, James Berkey married Ann Olsen and homesteaded near Davenport, Nebraska.

Parental Influences

Bob's parents, Mainard E. Crosby and Cora May Berkey, both grew up on homesteads, both taught school in order to earn money to go to college, and both graduated from the University of Nebraska. They were married in 1909, moved to North Platte, where Bob was born in 1911. Mr. and Mrs. M.E. Crosby's church, civic and political activities are similar to their son Bob's later activities.

Cora May Crosby organized the first Camp Fire Girls Club in North Platte and served as executive secretary for many years. She

¹Omaha World-Herald, January 4, 1953.

helped organize the Twentieth Century Club, now the North Platte Federated Women's Club. Mrs. Crosby worked with the Church Missionary Society and taught Sunday School for 20 years. During World War I she was the chairman of the Volunteer Red Cross Service Committee, a job she held for 35 years.² Mrs. M. E. Crosby also was chairman for soliciting funds to complete the Salvation Army Citadel and served on the board for 20 years. When her children entered school Mrs. Crosby became a charter member of the Parent-Teacher Association and has served as its president. During this same period she was active in High-Y and Y-Teens. She also was active in the PEO Sisterhood, the Eastern Star and the Altrusa Club. Mrs. Crosby explained her activities, "I have always liked people and I have always enjoyed working with them."³ Cora May Crosby received awards from Hastings College for Meritorious Achievement and Service, she was named North Platte Mother of the Year in 1953 and Nebraska Mother of the Year in 1955.⁴ Many people were saddened by her death in 1964.⁵

Bob Crosby's father, Mainard E. Crosby, has practiced law in North Platte continuously for 60 years. He is past president of the Western Nebraska Bar Association and past vice president of the Nebraska State Bar Association. For more than 40 years he has been an elder in the Presbyterian Church. He served as president of the North Platte Rotary Club and is past master of the Platte Valley Lodge 32

²Omaha World-Herald, May 8, 1955.

³Ibid.

⁴Lincoln Sunday Journal and Star, September 6, 1959.

⁵North Platte Telegraph-Bulletin, April 2, 1964

and is past grand orator of the Nebraska Grand Lodge of Masons.⁶ Mr. Crosby served as County Attorney of Lincoln County and Mayor of North Platte. Mr. Crosby told how young Bob Crosby and his friends would come down to the courtroom to listen to his father try cases. He also related that Bob came to listen to the speeches that he gave in connection with the political offices that he held.⁷

Educational Influences

Bob Crosby's early education was received in North Platte. In North Platte High School he was a member of the debate and tennis teams and was on the student council.⁸ He was editor of the school year book and waged a vigorous campaign to have the name of the school annual changed.⁹ He graduated second in his class in 1927 and received an award for scholarship and citizenship.

In 1927 Bob Crosby attended Hastings College. The Hastings Collegian and The Bronco, the school paper and annual, reported Crosby's activities during his two years in Hastings. Robert Crosby was elected president of the freshman class.¹⁰ While at Hastings Crosby's major activities were the debate squad and the gospel team. Coach Baccus announced that: "On Thursday night Oct. 22, the question, 'Resolved that compulsory physical education at Hastings College should be abolished.'" would be debated at the old college chapel.¹¹ Robert

⁶Lincoln Sunday Journal and Star, September 6, 1959

⁷Interview, Mr. Mainard E. Crosby, April 10, 1968.

⁸Omaha World-Herald, January 4, 1953

⁹Interview, M.E. Crosby, April 10, 1968.

¹⁰The Hastings Collegian, September 17, 1927.

¹¹The Hastings Collegian, October 1, 1927.

Crosby was listed as one of the twenty-two that showed up for tryouts. Tryouts were also held on the national Pi Kappa Delta question: "Resolved, that the United States should cease to protect, by armed force, capital invested in foreign lands except after a formal declaration of war."¹² Only two freshmen were chosen for the debate team and Robert Crosby was one of them. In the 1928 Bronco Crosby is shown with the three man negative team.

Robert Crosby--Crosby, although only a freshman, made a good showing this year as a first speaker for the negative team. Hastings can expect big things from the lad from North Platte. Of the twelve decision debates that they participated in they won eleven and lost one. They also debated in three no decision debates.¹³

Young Crosby was also active in church activities. He was a member of the Gospel Team at Hastings College. The Gospel Team consisted of college men from Hastings College who traveled to near-by towns and took charge of church services in the absence of the minister. They divided the topic into equal parts and each man spoke on a different aspect of topic for that Sunday.

The first gospel team trip of this school year was made last Sunday by five college men. The fellows took charge of both the morning and evening services at the First Presbyterian Church of Minden in the absence of the regular pastor. Those who made the trip were: Seiriol Williams, Louis French, Herman Leser, Dan Weyer and Robert Crosby.

According to the fellows, both the services were successes in spite of the cold drizzel that persisted throughout the day. A fair sized crowd attended both meetings, and what was lacking in numbers was more than made up for by the fine response of those present.

The topic of the morning service was 'The Manhood of the Master'. All of the team took part and made short talks on various phases of the above topic.

¹²The Hastings Collegian, November 26, 1927.

¹³The Hastings College Annual, The Bronco, 1928, p.101.

The evening topic was 'The Upper Road of Vision'. All of the team spoke in the evening each one touching upon a different angle of the main topic.

The team itself was enthusiastic over the benefit that each member receives from such a trip. All in all, the trip was a successful one and was very much enjoyed by those who were members of the team.

The Gospel Team traveled to the First Presbyterian Church at Aurora and spoke on "The Upper Road of Vision".¹⁵ They also traveled to Holdrege using the topics, "Culture in Christian Life" and "Playing the Game".¹⁶

Crosby was named as a sports reporter for the Hastings Collegian for 1927-28. The Bronco pictured Crosby at the head of his class as the president and records:

The freshmen lost the first annual flag rush to the upper classmen. The sophomores won the olympics from them, but it snowed the next day, so that the victory had little effect on the length of time the freshmen were required to wear green caps and collars.¹⁷

Bob Crosby is also pictured with his fraternity, Gamma Gamma Gamma, a social organization and a literary society.¹⁸

Crosby continued his speaking with the Gospel Team his sophomore year. The Collegian notes:

The "Y" Gospel Team began its activities for the year last Sunday. Six men journeyed to Litchfield, where they conducted both morning and evening services, and the Christian Endeavor meetings of the First Presbyterian Church.

Tomorrow the team is going to Minden where they will sponsor all the services and meetings in the Presbyterian Church of that city.

¹⁴The Hastings Collegian, October 1, 1927.

¹⁵The Hastings Collegian, December 3, 1927.

¹⁶The Hastings Collegian, October 22, 1927.

¹⁷The Hastings College Annual, The Bronco, 1928, p. 61

¹⁸The Hastings College Annual, The Bronco, 1928, p. 127

The gospel team is an organization sponsored by the College YMCA. Its function is that of visiting various churches in smaller towns around Hastings and conducting the Sunday services.

Robert Crosby is the captain of this year's team and has made several advanced engagements.¹⁹

The Gospel Team also traveled to Stamford, Loup City,²⁰ Lebanon, and Doniphan.²¹ In addition to speaking on the Gospel Team and being its captain Bob Crosby was active in his fraternity.

Gamma Gamma Gamma

This organization held its regular meeting in the chapel on Wednesday evening. After a short discussion of matters of business, the topic of conversation became the initiation. This will be held at the first meeting after Christmas vacation.

Robert Crosby was appointed the initiation chairman. The meeting adjourned with the prospect of a fine initiation ceremony ahead.²²

In the 1929 Bronco, Crosby was pictured with his fraternity and it listed him as a sophomore.²³ Robert Crosby was also pictured with the sophomore class, listed were his home town North Platte and his fraternity, Gamma Gamma Gamma. Under each picture in the annual was a caption which described the picture of the person or described the person in everyday life. Under the picture of the well groomed Bob Crosby was the caption, 'Admire me girls'.²⁴ It was unclear whether the caption applies to collegian Crosby's social habits or his looks in the picture.

¹⁹The Hastings Collegian, October 13, 1928.

²⁰The Hastings Collegian, December 15, 1928.

²¹The Hastings Collegian, March 16, 1929

²²The Hastings Collegian, December 15, 1928.

²³The Hastings College Annual, The Bronco, 1929, p. 139

²⁴The Hastings College Annual, The Bronco, 1929, p. 40

Robert Crosby's first two years in college were rich in speech training and experience. He received training under debate Coach Baccus. Speaking experience was acquired from debating his freshman year, two years of preaching on the Gospel Team, and one year as Gospel Team Captain. The quality of his speaking was seen in his team's 11-1 record in decision debating.

In 1929, the times had changed. Bob transferred to the University of Minnesota; he carried a very heavy load in order to graduate in three rather than four semesters. He worked his way through school by waiting on tables and preparing breakfasts at the Faculty Club. In January 1931, at the age of 19, Bob received his A.B. cum laude in English and Philosophy from the University of Minnesota.²⁵

From January to September 1931, he worked for the Nebraska State Highway Department working with gravel and carrying chain.

He entered Harvard Law School in the fall of 1931. His first year's record earned him a scholarship but he was unable to accept it because the depression had struck deep into the economic life of Nebraska.

Again he became a laborer. He worked at the Day Milling Company at common labor, delivering coal, working in the flour mill and being a general handyman.²⁶

In 1933, he returned to Harvard Law School and was able to use the scholarship he had earned. He waited on tables at Harvard and managed a grain elevator at Sutherland during the summer. While at Harvard, he met Betty Ehler, daughter of a Nova Scotia sea captain. She had attended school in Cambridge, after finishing at Mount St.

²⁵Cander, Marjorie D., (ed.), Current Biography, (New York: H.W. Wilson Company, 1954), p. 219

²⁶Omaha World-Herald, January 4, 1953.

Bernard's Ladies College in Antigonish, Nova Scotia.²⁷ They were married on November 29, 1934, while Bob was in his last year at Harvard Law School.²⁸ In 1935, Bob Crosby graduated from Harvard in the top ten per cent of his class, with his LL.B. degree.

Political and Advocacy Influences

When Crosby returned to Nebraska, the state was in the depths of drouth and depression. After a few months in North Platte, he came to Omaha to look for work. He told attorney Henry Beal that he wanted to work for him. Beal responded that he did not need anyone. Young Crosby stated, "My father told me that if I went to work for you I'd learn a lot."²⁹ Beal pointed out that he could only pay \$75 a month and Crosby accepted. Beal gave him a file and Crosby started to work immediately. After two days he was still working on the case, Beal asked how it was coming, Crosby replied that they should ask for more money. Bob had discovered that the case violated the obscure common law rule against perpetuities. Beal asked for proof and his young employee stated that he had twenty books to back up his claim. Armed with Crosby's brief, Mr. Beal went to Alliance to try the case. The attorney for the opposition was State Senator Harry Gantz. The two lawyers were in court only eight minutes. Beal pointed out that the rule against perpetuities had been violated by the estate. Gantz stated, "I don't know what Mr. Beal is talking about but he can't be right".³⁰ The judge told Mr. Beal to go ahead and draw the decree. The decree

²⁷ Cander, Marjorie D., (ed.), Current Biography, (New York: H.W. Wilson Company, 1954), p. 220

²⁸ Omaha World-Herald, January 4, 1953.

²⁹ Omaha World-Herald, January 4, 1953.

³⁰ Interview, Robert B. Crosby, March 26, 1968.

gave Beal's client four thousand dollars more than Beal had originally sought.

Old friends, attorneys Gantz and Beal had lunch together. Gantz asked, "I still don't get it. I never heard of that legal principle you sprang on me", and Beal replied, "Don't feel too bad about it, Harry, I never heard of it, either. A young kid from Harvard in my office dug it up."³¹

Harry Beal's unwanted \$75 a month employee taught his employer a \$4,000 lesson.

Crosby recalled that it was Beal who gave him his first chance at political speaking. Mr. Crosby's first political speech was delivered in support of Alf Landon in the 1936 campaign to a Near North Side Omaha audience.³² Crosby's Republican politics was a sharp contrast to many of his Harvard colleagues. He told Dean Landis of the Harvard Law School, "I took my sheepskin out of the door and turned to the right instead of the left".³³

While in Omaha the Crosby's lived at 1921 Wirt Street. They did not own a car; they frequently went riding with the Beals. Bob joined the Barristers Club.³⁴ Their first child Robert Mainard Crosby was born in Omaha; later Susan Mary Crosby would complete their family.

After a member of Crosby's fathers law firm died in 1937 Bob Crosby and his family returned to North Platte. He practiced law with his fathers firm for three years. In 1940, Howard Clothier persuaded him to run for the Legislature.³⁵ He won the nomination in a five man

³¹Omaha World-Herald, January 4, 1953.

³²Interview, Mr. Robert B. Crosby, March 26, 1968.

³³Omaha World-Herald, January 4, 1953

³⁴Ibid.

³⁵Interview, Mrs. Robert B. Crosby, April 3, 1968.

race, and the election. He entered the Unicameral at the age of 29. It was not until after Crosby had filed that he realized that his wife could not vote for him; she was not a citizen of the United States. To avoid any possible political repercussions they quietly went about Betty's naturalization.³⁶

In 1942 Crosby was re-elected to the Unicameral. In this session he was chosen for the highest honor that his colleagues could bestow upon him. The post Speaker of the Legislature was open.³⁷ Several candidates campaigned so vigorously that the majority turned to Crosby in the scuffle. Robert Crosby at 31 was the youngest man ever to hold the post Speaker of the Unicameral.

In 1944, he waived his draft exempt status in the state legislature and was classified as 1-A. In April 1944, he received a commission as Lieutenant (jg) in the Navy and went to Harvard for a four month indoctrination class at the Harvard Business School. He ranked highest in the indoctrination class, graduating with "high distinction" and was assigned to San Francisco to do contract negotiations work.³⁸ Before he was discharged he filed for Lieutenant Governor. He stated,

I hope to defend and advance certain ideals of government which need more championing in this country. They are the ideals of forward looking republicanism. I fought for these ideals in the legislature. After an absence of two years I am eager for the opportunity to resume the task.³⁹

His qualifications in addition to those of government service were president of the Lincoln County Bar Association, director of the North Platte

³⁶Interview, Mrs. R.B. Crosby, April 3, 1968.

³⁷Interview, Robert B. Crosby, March 11, 1968.

³⁸Lincoln Star, March 5, 1946.

³⁹Ibid.

Chamber of Commerce, chairman of the Lincoln County Civilian Defense Council, chairman of the Lincoln County Health Council and president of the Ad Club.⁴⁰ The pre-primary convention in March gave him the endorsement over Charles J. Warner and Roy Johnson, the incumbent, and he won the nomination and election.

While he was serving in the office of Lieutenant Governor, Crosby proposed that his office be abolished. He felt that the part time post was only a "spare tire" job.⁴¹ He pointed out that eleven states got along fine without a Lieutenant Governor. The Legislature might be embarrassed to undertake abolition of the office of their presiding officer without that officer's complete support, he emphasized. Crosby pointed out that the non-partisan Legislature did not take direction from a partisan Lieutenant Governor.⁴² Furthermore, Crosby stated that a Lieutenant Governor who wanted to get along in Lincoln is just a parliamentarian and nothing else. The speaker of the Unicameral could do the Lieutenant Governor's job, and another state officer, like the Secretary of State, could take the Governor's job in case of death or incapacity of the Governor. The bill introduced by State Senator C. Petrus Peterson was sent from committee to the floor and there it was killed.⁴³

Bob Crosby did not file for re-election in 1948. He served as assistant state chairman of the Republican Party in the fall campaign, under Bert Howard then under Joe Wishart.⁴⁴ In 1950, he served as

⁴⁰Ibid.

⁴¹Crosby, Robert B., "Why I want to Get Rid of My Job", State Government, July 1947, p. 193.

⁴²Crosby, Op. Cit., p. 194

⁴³Ibid.

⁴⁴Omaha World-Herald, January 4, 1953.

campaign manager for Governor Val Peterson, who was seeking re-election. From 1949-51, he served as chairman of the Nebraska Citizens Committee for the Hoover Commission Reports.⁴⁵

In June 1951, Robert Crosby announced that he would be a candidate for the Republican nomination for Governor of Nebraska.⁴⁶ Former Governor Dwight Griswold came out in support of Crosby for the nomination. Griswold stated, "He has had the required experience and he has both the strength of character and intelligence to make a fine candidate and a splendid Governor".⁴⁷ Griswold, a Gering banker was chief executive from 1941 to 1947. He later headed the Truman Doctrine mission to Greece. Griswold said, "There is no person in Nebraska who is a better student of our state government than Bob Crosby."⁴⁸ His candidacy became official when he paid his filing fee to the Lincoln County Clerk and mailed his filing papers to the Secretary of State in Lincoln.⁴⁹

One of his first statements was on education:

...we must improve the quality of education in many parts of our state, there is no doubt that this can be accomplished through the co-operative efforts of local school districts and our state government.⁵⁰

Crosby opened his headquarters in the Federal Securities Building and appointed Thomas Pansing, a former City Councilman, as Lancaster County campaign manager. He told reporters that his position in the race was

⁴⁵ Ibid.

⁴⁶ Lincoln Star, June 14, 1951.

⁴⁷ Lincoln Star, July 25, 1951

⁴⁸ Ibid.

⁴⁹ Omaha Sunday World-Herald, August 5, 1951.

⁵⁰ Omaha Sunday World-Herald, August 26, 1951.

"strong" on the bases of his outstate campaign.⁵¹ He spoke to the Cosmopolitan Club and the Knife & Fork Club on functions of state government. The appointment of Pansing was interesting since one of Crosby's opponents, Victor Anderson, was helped to the position of Lincoln Mayor by Pansing. Pansing commented, "I am very enthusiastic in my support of Bob Crosby, even though I'm still one of Vic's friends".⁵² Crosby's campaign, was based on eight major steps:

1. Strict limits on state spending during periods of heavy tax burdens for military costs, including sharp curtailment of unnecessary state services.
2. Emphasis on the cabinet system of administration, thus putting good business practices and good governmental experience into force. He would regularly meet with department heads to plan and coordinate activities.
3. Reorganization of the administrative branch to decrease costs and increase efficiency. He points out that the six code agencies of 1919 have been increased to 46.
4. Adopting of a two-year program for state highway construction based on established principles of highway programming to be submitted to the people at public hearings. Adoption of the program would prevent later changes due to political influences.
5. He would seek legislative action to bring uniform tax assessments and eliminate present injustices in assessment.
6. He promises leadership in development and promotion of the state's resources, emphasizing agricultural research and development of irrigation, flood control and soil conservation. He would encourage production of oil and natural gas and develop the tourist attractions of the state. Development of industry in the state, particularly those utilizing agricultural products, he says should be stimulated.
7. He advocates improved quality at all levels of education and advocates a state board of education.
8. Crosby advocates strengthening of laws on illegal traffic in narcotics with maximum penalties where minors are involved.⁵³

Robert Crosby won the GOP primary even beating Mayor Anderson in

⁵¹Lincoln Star, February 1, 1952.

⁵²Ibid.

⁵³Lincoln Star, March 31, 1952.

Lancaster County.⁵⁴ Speaking in Aurora, Nebraska Crosby summed up his outlook on the campaign rules:

When I filed for Governor I resolved that my candidacy would be entirely independent--that I would keep free from any obligations to any group or faction--that I would not promise any job or appointment, state or federal, to anyone. I am proud to report that I have not broken that resolution in any respect.

Neither have I made any commitments to any section of the state. I am neither a town nor a rural candidate. No section has any promise from me for a special road or any other special benefit. If elected I expect to represent all Nebraskans impartially.⁵⁵

In the November election Crosby went on to beat Walter Raecke of Central City. The campaign was very polite without a hint of personality attacks. They were both former Speakers of the Legislature and had shared an office during one session.⁵⁶

In North Platte, in his first formal appearance as Governor-elect, Crosby told his home town that his hands were free, that he had made no commitments to any man in Nebraska. He said, "...although the highway problem was the foremost campaign issue, no town held any promise from him for any particular road."⁵⁷ Next Crosby limited his public appearances until after June 1st in order to stay close to his office to get ready for the Legislative session. He point out that there would be a heavy burden of work to do in order to get ready for the Legislative session and that this was especially true of a Governor starting his first term. Among his considerations were 14 appointments to state jobs.⁵⁸

⁵⁴Omaha World-Herald, January 4, 1953.

⁵⁵Lincoln Sunday Journal and Star, October 26, 1952.

⁵⁶Omaha World-Herald, January 4, 1953.

⁵⁷Lincoln Star, November 14, 1952.

⁵⁸Lincoln Star, December 11, 1952.

In his Inaugural Message his thesis was, "...I regard the proper role of state government in 1953 as being one of restraint..."⁵⁹ The points of the message each dealt with restraint: administrative reorganization, spending of money, roads, education, property assessment, resources and public assistance.⁶⁰

In attempting to make "restraint in government" work Mr. Crosby admitted experiencing some difficulty. "The shoe began to pinch"⁶¹ when he tried to make it work. He said he, "...could not find one account number in the proposed state budget that could be cut without incurring the sincere criticism of some part of the Nebraska public."⁶² Crosby received support for program in numerous calls and letters. The support had been prompted by State Senator Terry Carpenter's repeated attacks on the Governor's "restraint" policy.⁶³ Taxes were one of the major problems of the Governor. This will be discussed in greater detail under the section on "Operation Honesty". He went before the Legislature to urge passage of LB272, the 50 per cent assessment measure and LB302 providing for annual assessment.⁶⁴ The "Nebraska tax mess" was made even worse by the Unicameral's rejection of both bills.⁶⁵ Bob Crosby pledged to do all in his power to equalize assessments for taxation in counties. "It is tremendously important that counties bring

⁵⁹ Inaugural Message of Robert B. Crosby, January 8, 1953.

⁶⁰ Ibid.

⁶¹ Lincoln Star, February 5, 1953.

⁶² Ibid.

⁶³ Omaha Sunday World-Herald, March 8, 1953.

⁶⁴ Lincoln Sunday Journal and Star, March 22, 1953.

⁶⁵ Omaha Sunday World-Herald, April 5, 1953.

up valuations on personal property when it is low". It is an opportunity for the boards. Many must bring it up in order not to put an unfair burden on real estate," the Governor said.⁶⁶

Some of Governor Crosby's Legislative proposals were rejected, but the lawmakers upheld seven of his eight vetoes. Except for Senator Terry Carpenter of Scottsbluff, the Governor did not come in for much outspoken legislative criticism.⁶⁷ Considering the additional 22 million dollars spent for new highway construction, the budget remained about the same, \$194,776,039 as compared with \$173,383,571 in the last budget.⁶⁸ According to Crosby unnecessary state institutions have been eliminated, the rise in the number of state employees has been checked and a savings of \$500,000 effected plus a savings of \$500,000 effected through transfer of responsibility for medical relief to the county.⁶⁹ In education, legislation dealing with certification standards and redistricting had been passed. The Governor's Lay Leadership Conference on Education was established. Nebraska launched its largest highway construction project in history.⁷⁰ Crosby's policy of restraint, where he urged agencies to save a 5 per cent cushion from their budgets, seemed to be catching. Sixteen out of forty-four agencies estimated that they would spend less than the amount appropriated for them.⁷¹

⁶⁶Lincoln Star, May 26, 1953.

⁶⁷Omaha Sunday World-Herald, July 5, 1953.

⁶⁸Lincoln Star, June 23, 1953.

⁶⁹Lincoln Star, May 20, 1954.

⁷⁰Ibid.

⁷¹Lincoln Sunday Journal and Star, October 3, 1954.

Governor Crosby felt that a special session was necessary and called one to deal with revenue and taxation.⁷² At adjournment he stated, "I think the five proposals constitute a sound program to be submitted to the people".⁷³

He discussed the proposals which were to be placed on the November ballot. They were:

LB1 provides that the Legislature can create a tax commission to replace the present equalization board which consists of officials elected to perform other duties.

LB2 would permit the Legislature to provide that county assessors be appointed rather than elected and also make possible a county equalization board instead of using the present county board of commissioners.

LB3 which would permit changes in assessment of household goods or total elimination of the tax.

LB4 removes the restriction requiring actual valuation of property assessment purposes and would permit use of average annual inventories.

LB5 which provides that if a sales or income tax is adopted to replace state property tax, the state property tax would be automatically abolished.⁷⁴

After he had worked with the tax problem, he had to deal with a Senate vacancy. Senator Dwight Griswold died in April 1954 which gave rise to speculation that Crosby might have himself appointed.⁷⁵

Governor Crosby soon laid this speculation to rest as he stated:

I shall not resign my present office and very shortly I shall announce the appointment of a qualified person for Senator Griswold's post in the Senate.

I do not think that it is too soon to lay at rest one piece of speculation that has bothered me. It is true many of my friends have urged me to resign and permit the immediate appointment of myself to succeed Senator Griswold. It is an attractive proposal

⁷²Lincoln Star, April 13, 1954.

⁷³Lincoln Star, May 8, 1954.

⁷⁴Ibid.

⁷⁵Lincoln Star, April 14, 1954.

and I am human.

However, matters of great importance to Nebraska are just halfway through their course. Just ahead is a special session of the Legislature called by me to consider tax matters. It is imperative that adequate proposals be submitted to the people for mending the tax provisions of the state constitution.

The Highway Department is just entering the greatest period of construction in Nebraska history, the Governor's Lay Leadership Conference is but halfway through its work. I am just laying groundwork for dealing with human relations. Important matters of resources are ahead.

The work and planning which have been carried on for over a year are about to bear fruit. I do not think that in this situation I should back away. I do not think that Senator Griswold would have done so.

Therefore I shall not resign my present office and very shortly I shall announce the appointment of a qualified person for Senator Griswold's post in the Senate.⁷⁶

Crosby's announcement revived the Senate guessing game. Among those mentioned most often were Dave Martin, GOP State Chairman; Julius Cronin, president of the State Bar Association; Howard Buffett, former Congressman from Omaha; Mrs. Eva Bowring, vice-chairman of GOP Central Committee; Representative Carl Curtis; Fred Seaton; Max Denney, administrative assistant to the Governor; Brig. General Warren Wood, friend of Senator Griswold; Mayor Glenn Cunningham of Omaha; National Committeeman Abel Shotwell and Clarence Davis of Lincoln.⁷⁷

Crosby soon silenced speculation by the appointment of Mrs. Eva Bowring of western Nebraska to the U.S. Senate to fill the post until the November election. Then Senator Hugh Butler also died in office. Crosby appointed Sam Reynolds of Omaha to serve in Butler's place until November.

Robert Crosby announced his own candidacy for the Senate post

⁷⁶Lincoln Star, April 15, 1954.

⁷⁷Lincoln Star, April 15, 1954.

at a 10 A.M., April 15th news conference and completed the filing with the Secretary of State immediately thereafter.⁷⁸ He stated that this would be the best way to finish his tasks as Governor. He felt:

I cannot in good conscience turn away from these responsibilities that remain in my term of office.

Beginning next year I would be proud to serve my state in the Senate following the fine traditions of the Nebraska Senators who have preceded me.⁷⁹

Many men shared Crosby's Senatorial ambitions they included Walter Nielsen, Omaha lawyer; Robert Crosby, Governor; Terry Carpenter, State Senator; David Martin, GOP State Chairman; Carl Curtis, Representative in Congress; James Harrison, retired military officer from Omaha and John Overgaard of Lincoln.⁸⁰ Crosby used television to bring his message to the people. In a show "What's Your Question?" in Omaha and Lincoln he answered questions telephoned in by listeners.⁸¹ Some of his campaigning included a speech to the state American Legion Convention in Omaha, a reception at the Fontenelle Hotel with U.S. Senators Eve Bowring and Sam Reynolds, Fairbury Kiwanis Club, County fairs in Geneva and Nelsen. He appeared at the Omaha League of Women Voters "Carnival of Candidates", and gave speeches in Grand Island, Norfolk, Wayne, Tekamah, Fremont and Wahoo.⁸²

In the August 10th primary, with one-third of the returns counted, Governor Robert Crosby conceded defeat. He telegraphed Carl T. Curtis, "Congratulations on your splendid victory. You have my full

⁷⁸Lincoln Star, April 16, 1954.

⁷⁹Ibid.

⁸⁰Omaha Sunday World-Herald, July 25, 1954.

⁸¹Lincoln Sunday Journal and Star, August 1, 1954.

⁸²Ibid.

and whole-hearted support for a Republican victory in November".⁸³
 Crosby was unable to break the jinx that forbids Nebraska Governors the trip immediately from the State House to the U.S. Senate. Governors Val Peterson, Roy Cochran and Frank Morrison among many others were unable to make the step from Governor to Senator. A final count of the votes showed Carl Curtis the winner with 62,355; Crosby second with 41,719; Terry "Terrible Terry" Carpenter 29,985 and Dave Martin 17,921.⁸⁴

Crosby went back to work after the election and advised his supporters to "forget it". When asked of future plans he said, "I am going to try and be the best Governor within my power. There are a lot of things that still remain to be done and I hope some problems can be solved before I leave office."⁸⁵

Some observations can be made on the Crosby defeat. It appeared that the Nebraska voters took their anger out on Crosby as a result of their frustration over the tax mess in Nebraska.⁸⁶ A number of State Senators who expected to be blown out of their seats by voters anger were surprised by the lack of criticism. One State Senator expressed what he thought was the feeling among his fellow Senators, "With Crosby gone, the heat is off".⁸⁷ It appeared that once the voters had taken care of Crosby they were no longer angry. One commentator stated: "Just as in Biblical times among the Hebrew tribes, Crosby seems

⁸³Lincoln Star, August 11, 1954.

⁸⁴Lincoln Star, August 12, 1954.

⁸⁵Lincoln Star, August 12, 1954.

⁸⁶Lincoln Sunday Journal and Star, October 24, 1954.

⁸⁷Ibid.

To have been the 'scapegoat' in this affair for the sins and errors of the whole people."⁸⁸

Shortly before he left office Crosby announced that he would practice law in Lincoln on leaving office. He became the senior member of the firm Crosby, Pansing and Guenzel. Robert Guenzel was practicing law in Lincoln and served part time on the University of Nebraska faculty. Thomas Pansing had practiced law and was serving as State Director of Insurance. The firm's offices were located in the Federal Securities Building. Adris Hunt became a secretary for the law firm; she had served the Governor in his North Platte law office and as his executive secretary.⁸⁹

Mr. Crosby had purchased a home in Lincoln; he stated that he regretted that his plans could not include returning to North Platte, but among the impelling reasons for the decision to stay in Lincoln was his children's schooling.⁹⁰ His son Bob was a freshman at the University of Nebraska and his daughter was a freshman in high school. He also stated that he had seriously considered several offers of federal employment. "But it would take a considerable inducement to persuade me to leave Nebraska," he commented.⁹¹

Before Bob Crosby left office he set a record for Senatorial appointments. He was the first Governor in modern times ever to appoint three members to the U.S. Senate.⁹² He appointed Eva Bowring to succeed

⁸⁸ Ibid.

⁸⁹ Lincoln Star, December 29, 1954.

⁹⁰ Lincoln Star, December 15, 1954.

⁹¹ Lincoln Star, December 29, 1954.

⁹² Omaha Sunday World-Herald, December 19, 1954.

the late Senator Dwight Griswold and Sam Reynolds to succeed the late Senator Hugh Butler. He then appointed Carl Curtis to the Senate to serve from his appointment until his regular term began.⁹³

After Mr. Crosby left office his major efforts have been his practice of law, addresses to various civic and political groups, representing various groups as a lobbyist in the Unicameral and work in support of the Republican Party.

An important part of his practice of law was the defense of Duane Pope on charges growing out of Pope's robbery of a Big Springs, Nebraska bank, the killing of three people, and the wounding of a fourth. This will be discussed in detail in the chapter on the explanation of the Pope trial.

A look at some of the speeches in the years since Crosby's retirement from public office revealed numerous speeches on varied topics. In 1955 he addressed the Nebraska Association of Soil Conservation Districts in Hastings on conservation.⁹⁴ In 1956, he addressed the Women's Division of the Chamber of Commerce on the value of freedom to new citizens.⁹⁵ In 1960, he addressed the people of Nebraska on television and Republican Founders Day audience in Lincoln on "Why most people feel that Senator Terry Carpenter is not qualified to be Governor of our state."⁹⁶ In 1961, he addressed the Omaha Chamber of Commerce Highway Committee on road building and the gas tax.⁹⁷ This is only a

⁹³Ibid.

⁹⁴Lincoln Star, November 10, 1955.

⁹⁵Lincoln Star, May 24, 1956.

⁹⁶Lincoln Star, April 16, 1960.

⁹⁷Lincoln Star, February 11, 1961.

sample of the large number of addresses Governor Crosby has made since he left office, addresses covering many aspects of public and civic interest.

Crosby continued to influence the course of Nebraska as a lobbyist in the Unicameral. His first work was for the watershed law revision bill, re-enactment of the sixth cent of gasoline tax and increase license fees for trucks.⁹⁸ A newspaper headline read, "Crosby Scores as Lobbyist; Outdoes Influence Mark as Governor."⁹⁹ The commentator felt Crosby's influence came as a result of his non-partisan position. The reporter noted that Bob Crosby's successor, Victor Anderson, made no attempts to launch any legislative programs and his relationship with the Legislature was the best that had existed between a Governor and a Legislature in a long time.¹⁰⁰

Bob Crosby was listed as one of the busiest lobbyist during the 1955 session; he represented: the Better Nebraska Association, the Rock Hill Oil Company, Salt-Water Watershed Association, Better Education Committee and the Nebraska Rural Power Association.¹⁰¹ In 1967, a partial list of organizations represented by Robert Crosby or represented by his law firm were: Bellevue School District, Better Nebraska Association, City of Sidney, Lincoln Center Association, Nebraska Consolidated Communications Corporation, Associated Natural Gas Companies, Police Officers Association of Nebraska, Salt Valley Watershed District, and First Federal

⁹⁸Lincoln Sunday Journal and Star, June 26, 1955.

⁹⁹Ibid.

¹⁰⁰Ibid.

¹⁰¹Omaha Sunday World-Herald, July 24, 1955.

Savings and Loan.¹⁰²

Robert Crosby has continued to actively support the Republican Party. He has served as Precinct Committeeman, County Chairman, Assistant State Chairman and in other posts. In November 1955, he was a candidate for delegate-at-large to the Republican National Convention in San Francisco. He again dispelled rumors of re-entry into political life. He declared:

I will not be a candidate for any public office in 1956. I am looking forward to a long period of years of enjoying life as a private citizen. I have had time to do lots of things I never had time for before, time to go hunting with my son and time to teach my daughter to play tennis.

I also have renewed my skill at putting up storm windows and mowing the lawn.¹⁰³

In the May 1956 primary election he compiled the highest number of votes as a delegate-at-large. At the 1956 National GOP Convention he served on the platform committee and helped draft the 30-page document. He felt the platform would help Nebraska go forward in agriculture and water resources development.¹⁰⁴

In 1960, Bob Crosby traveled to the GOP National Convention. He served as a member of the labor and commerce subcommittees of the platform committee. He endorsed the civil rights position urged upon the Republican National Convention by Vice President Richard Nixon.¹⁰⁵ In 1964, Robert Crosby again represented Nebraska at the National GOP Convention in San Francisco. He addressed the National Convention over nation wide television. He spoke in favor of the adoption of the civil

¹⁰² Registered Lobbyists, 1967 Legislature, Hugo Surb Clerk.

¹⁰³ Lincoln Star, November 10, 1955.

¹⁰⁴ Lincoln Star, August 22, 1956.

¹⁰⁵ Lincoln Star, July 27, 1960.

rights plank as drafted. He said that the plank was, "...a dignified, solid affirmation of the highest concepts of human equality, and I am going to be proud to take it back home."¹⁰⁶ He emphasized that the plank was perfectly acceptable until someone chose to make it a test of strength of presidential candidates. "We wouldn't be quarreling about the civil rights plank except...it is a part of politics--a contest for the presidential nomination, and there has to be an issue," he stated.¹⁰⁷

He continued to serve the community in civic positions. In 1955, he headed the Nebraska State Heart Fund.¹⁰⁸ In 1965, Mr. Crosby was named General Chairman of the \$1,750,000 United Hospital Campaign which was to provide funds for new buildings for St. Elizabeth's Hospital, Lincoln General Hospital and make possible the completion of Bryan Memorial Hospital.¹⁰⁹ Campaign Chairman Crosby stated,

The drive will be a change for every interested person to help provide the hospitals which will serve us, our children and our grandchildren.

We will need facilities for more than 3,100 patients by the year 1970. The campaign will insure that each and every one of these people will gain every benefit of modern medical science.¹¹⁰

As Mr. Crosby neared the conclusion of his service as General Chairman he was asked to defend Duane Earl Pope. His defence of Pope will be discussed in the chapter on background of the speeches.

¹⁰⁶ Proceedings of the Twenty-Eighth Republican National Convention, (San Francisco, 1964), Republican National Committee, p. 233.

¹⁰⁷ Ibid.

¹⁰⁸ Lincoln Star, November 10, 1955.

¹⁰⁹ Lincoln Star, February 4, 1965.

¹¹⁰ Ibid.

One of the ways to view Robert B. Crosby as a speaker would be to ask his opinion of his own speech making and check his statements against other sources. Mr. Crosby turned over to me four personal files of speech notes that dated from the 1930's and he opened the archives of the Nebraska State Historical Society to me for research purposes. As he turned the files over to me, he stated:

I think that you understand that during over thirty years of making speeches, several thousand speeches, I suppose, I never reduced a speech to manuscript form unless I had to.

Even when I appeared on national television at the 1964 convention, I did not refer to the notes that I had made.

Very early I learned that my best success with an audience occurred when I did not take my notes out of my pocket. This does not mean that I did not work on the speech in advance. In fact, preparing a speech has always been for me a time-consuming and hard task. As I made the notes, I found that the words -- or delivery -- was being reviewed in my mind.

It is fair to say, I think, that speeches were my chief asset as a politician. I did not have money to spend for advertising, except for uncertain political contributions, and speeches were an occasion for a press release.¹¹¹

In the wealth of speech notes that covered a thirty year period I discovered a vast number of speech outlines but only three or four manuscripts. The outlines were word or clause outlines where a word or a clause would bring back an entire paragraph of words to the speakers recollection. In checking speech outlines against tape recordings of the same speech, the words on the outline seemed to serve the function of a reminder to the speaker. For example, the words "tell joke" would be enough for him to remember the joke that he had intended for that audience.

In the archives of the Nebraska State Historical Society and in Mr. Crosby's personal files, there were a vast number of press releases

¹¹¹ Interview, Mr. Robert B. Crosby, November 6, 1967.

about his speeches, numbering several hundred. Every time he spoke he would draft a press release to be given to a large number of newspapers. Speeches and press releases were used for political campaigning rather than other methods of reaching the public. Checking newspapers of the periods during a campaign, I found a lack of paid political advertisements but many times that same newspaper would carry a news story on a Crosby speech in some part of the state.

Arch Donovan, veteran news reporter and commentator for the Lincoln Star who wrote many articles and reports on Bob Crosby, stated, "Bob was one of the most conversational speakers I have ever heard. Yet his speeches never lacked vitality. He emphasized his major points with enough power that he got them across."¹¹² Donovan remarked, "Bob was a good Governor and a good man but he was just too honest to be in politics."¹¹³

¹¹²Interview, Arch Donovan, April 1, 1968.

¹¹³Interview, Arch Donovan, April 1, 1968.

CHAPTER III

BACKGROUND OF THE SPEECHES

Before an analysis of the speeches can be meaningful, sufficient background must be given in order to understand the context of the speeches. The purpose of this chapter is to give background material on "Operation Honesty" and on the United States v. Duane Pope.

DELIBERATIVE SPEECH--"OPERATION HONESTY"

Robert B. Crosby was inaugurated Governor of Nebraska on January 8, 1953. He remarked, "If I could have stopped the clock on that day things would have been fine."¹ On January 9th, the following day, with the oath of office still ringing in his ears, the Nebraska Supreme Court dumped the Nebraska tax problem into the new Governors lap.

A farmer named Laflin who owned a farm in Johnson County noticed that his farm land in Johnson County was assessed at a figure much closer to actual value than farm land was in other counties. He and the other land owners were paying more than their share of property tax to the State government.² Laflin appeared before the State Board of Equalization in July 1952 and asked for relief for the Johnson County farm owners. The State Board refused to grant relief. Laflin went to the Supreme Court and the Supreme Court found that the Johnson County farm owners should be granted relief. The Court's opinion stated that: (1) the state Constitution required

¹North Platte Telegraph Bulletin, October 12, 1953.

²North Platte Telegraph Bulletin, October 13, 1953.

all tangible property to be taxed uniformly and (2) the laws of Nebraska required all tangible property to be assessed at its actual value.³ The State Board of Equalization did nothing. Mr. Laflin again returned to the Nebraska Supreme Court; he asked that the State Board of Equalization be cited for contempt of Court. The Governor as Chairman and four other constitutional officers constituted the State Board of Equalization.⁴ The Supreme Court issued a citation to each member of the State Board of Equalization requiring each member to show cause why he should not be adjudged in contempt of court and treated accordingly. Friends of the Governor joked that they would bring him cigarettes during his stay in the Lancaster County jail.⁵ The State Board of Equalization then reduced the assessed value of Johnson County land to the state average.⁶

Gross inequities had arisen over the years. Inequities existed from county to county; inequities existed from farm to city. Farm land in Pawnee County was assessed at 56% of going market value, while farm land in Lincoln County was assessed at 29% of going market value. City property in Saline County was assessed at 37% of actual value, while city property in Lincoln County was assessed at 14% of actual value.⁷ The idea was to keep values low and levies high; this enabled the taxpayer to pay less in county and state property taxes.⁸ Inequities ex-

³Ibid.

⁴Ibid.

⁵Ibid.

⁶North Platte Telegraph Bulletin, October 14, 1953.

⁷North Platte Telegraph Bulletin, October 15, 1953.

⁸North Platte Telegraph Bulletin, October 16, 1953.

isted among classes of tangible property. On a statewide average farm real estate was estimated by the Tax Commissioner to be about 35% of actual value, town real estate about 22%, cattle about 75%, automobiles about 75%, business merchandise about 29%, household goods and equipment about 17%.⁹

Legislation known as the 50% law was passed and signed by the Governor. The 50% law provided that tangible property was to be assessed at 50% of actual value.¹⁰

This attempted solution to the Nebraska tax dilemma also seemed doomed to failure. Only twenty-three counties fully complied with the law.¹¹ The State Board of Equalization then forced equalization between counties and kinds of property: farm lands, town real estate, business inventories, household goods and personal equipment.¹²

The 50% law did not prevent a shift in tax burden from personal property to real estate. This unfair shift gave rise to "Operation Honesty," Governor Robert Crosby's attempt to have personal property taxes pay its' fair share of the tax burden.

"Operation Honesty" informally was proposed on November 20th to about 100 representatives of statewide organizations.¹³ Crosby asked for "...something that has never been tried before in this state, obeying the Constitution and statutes."¹⁴ He asked that citizens ac-

⁹North Platte Telegraph Bulletin, October 17, 1953.

¹⁰Ibid.

¹¹North Platte Telegraph Bulletin, October 19, 1953.

¹²Ibid.

¹³Lincoln Star, November 21, 1953.

¹⁴Ibid.

tively co-operate in reporting all of their personal property for taxation. He suggested that the organizations:

1. Appoint steering committees to actively engage in the operation.
2. Give the committee authority to commit the organization to the operation and to contact individual members to assure their co-operation.
3. Personal calls by the committee to explain "Operation Honesty" and to fight for its success.
4. The Governor and the Tax Commissioner will provide specific information to the organizations that pertains to their members.
5. Co-ordination of group activities so as to prevent overlapping of effort.
6. Speakers bureaus to be prepared to make public appearances in behalf of the operation.
7. Contact other local organizations to obtain participation.
8. Have committees contact local officials to get participation where necessary and to congratulate those who have begun work on their own initiative.¹⁵

Governor Crosby described "Operation Honesty" as a dressed up name for a simple thing--"enforcement of the law."¹⁶ He was hailed as a "modern Diogenes." In an address before the Nebraska Society of Certified Public Accountants in Lincoln, he was presented with a lantern with a sign reading "a modern lamp for a modern Diogenes."¹⁷ Diogenes was a Greek philosopher who went around with a lighted lantern at midday searching for honest men. "Operation Honesty" had its opponents in the persons of Lancaster County Attorney Frederick "Fritz" Wagener, Commissioner Chris Kuhner and State Senator Terry "Terrible Terry" Carpenter. Chris Kuhner said "Crosby is a fine fellow and as honest as the day is long but that speech reads like a fairy tale."¹⁸ Two months later Commissioner

¹⁵Ibid.

¹⁶Lincoln Star, January 13, 1954.

¹⁷Lincoln Star, December 11, 1953.

¹⁸Lincoln Star, November 21, 1953.

Kuhner was still unchanged in his opinion and stated, "'Operation Honesty' still reads like a first-class fairy tale."¹⁹ Fritz Wagener stated that he was not opposed to the purpose or idealism of "Operation Honesty" but was opposed to the method used in advancing it.²⁰ Robert Crosby responded, "It is quite apparent that Terry Carpenter has picked up a disciple."²¹ Later Crosby debated County Attorney Frederick at an American Legion forum.²²

On January 15, 1954, Robert Crosby formally launched his "Operation Honesty" in a speech in the Senate Chamber to a mass meeting of state employees. The crowd overflowed the legislative chamber and many stood in the rotunda. He emphasized the need for equalization between personal property tax and tax on real estate. He stated that if everyone made honest personal property returns, taxes on real property could be reduced by 25%.²³ He requested that employees sign pledges to "...make a full report of all my personal property for tax purposes" and wear a badge with the words "Operation Honesty" on it.²⁴ Crosby's speech was taped and sent to radio stations across the state. He received support from the entire Nebraska Congressional Delegation. Senators Hugh Butler, Dwight Griswold, Congressmen A.L. Miller, Roman Hruska, Carl T. Curtis and R.D. Harrison sent telegrams of encouragement and congratulations.²⁵

¹⁹Lincoln Star, January 14, 1954.

²⁰Ibid.

²¹Lincoln Star, January 15, 1954.

²²Lincoln Star, February 9, 1954.

²³Lincoln Star, January 16, 1954.

²⁴Ibid.

²⁵MSS 2326, Archives Nebraska State Historical Society, Crosby Collection.

Governor Crosby's appointment books show about forty-five speeches on the subject of "Operation Honesty". Many other speeches were recorded in his daily schedule books but their subject is not indicated. He addressed the following groups on "Operation Honesty":

Commercial Club of Pawnee City, December 3, 1953
 Nebraska Society of Certified Public Accountants, Lincoln, December 9, 1953
 Omaha Woman's Club, January 4, 1954
 Delta Beta Phi Law Fraternity, January 6, 1954
 Cosmopolitan Club, Lincoln, January 11, 1954
 Crete "Coon Feed", January 12, 1954
 Address to State Employees, January 15, 1954
 Exchange Club, Lincoln, January 18, 1954
 Nebraska State Education Association, Kearney, January 19, 1954
 Lyons Chamber of Commerce, January 21, 1954
 Nebraska Crop Improvement Association, Lincoln, January 25, 1954
 Inter-City Rotary Meeting, Ansley, January 28, 1954
 Board of Realtors, Lincoln, February 3, 1954
 Combined Meeting of Clubs, Cambridge, February 5, 1954
 Knights of Columbus, Lincoln, February 7, 1954
 debate Fritz Wagener, American Legion, Lincoln, February 8, 1954
 American Legion Panel, Lincoln, February 9, 1954
 Nebraska Seedsman's Association, Lincoln, February 10, 1954
 Northeast Nebraska Press Association, Norfolk, February 13, 1954
 St. Ceciliast's Church Men's Meeting, Hastings, February 14, 1954
 Lexington Chamber of Commerce, Grand Island, February 15, 1954
 Junior Chamber of Commerce, Auburn, February 17, 1954
 Concord Club & County Assessors Ass'n, Omaha, February 18, 1954
 St. Paul Chamber of Commerce, February 19, 1954
 Lincoln Woman's Republican Club, February 20, 1954
 American Legion Mid-Winter Conference, Grand Island, February 21, 1954
 Farmers-Merchants Meeting, Red Cloud, February 22, 1954
 Lincoln Traffic Club Banquet, February 23, 1954
 Annual Meeting of Nebraska Co-operative Council, Gran Island, February 24, 1954
 National Machine Accountants Association, Omaha, February 25, 1954
 O'Neil Chamber of Commerce & mass meeting, Ainsworth, March 2, 1954
 Tekamah Chamber of Commerce, March 3, 1954
 Education Association of the Public Schools, Kearney, March 4, 1954
 Omaha Bar Association, March 16, 1954
 York Chamber of Commerce, March 17, 1954
 176th District of Rotary, Kearney, March 22, 1954
 Nebraska Plumbing and Heating Association, March 23, 1954
 Northeast Nebraska County Officials Association, Fremont, March 24, 1954

public meeting, DeWitt, March 25, 1954
 Rotary International, Grand Island, March 29, 1954
 Nebraska City Rotary Club, March 31, 1954
 League of Women Voters, Omaha, April 1, 1954²⁶

Time magazine reported that Mr. Crosby made 79 hour-long speeches, traveled 9,000 miles and distributed 30,000 buttons and pledge cards.²⁷ In the week ending March 15, 1954, Time stated, "...he had flown 1,284 miles to make nine speeches, and had collapsed with indigestion and fatigue, Bob Crosby was working on a fatiguing assignment: to collect taxes without adequate enforcement machinery."²⁸ In an article entitled, "Diogenes on the Trail", Time repeated the image of Diogenes with his lantern searching for honest men. Crosby is pictured with his airplane labeled "Operation Honesty" and the caption, "Buttons in his pockets, a lantern in his hand."²⁹

FORENSIC SPEECH--U.S. v. DUANE POPE

On June 4, 1965 a young, poised, well-dressed, polite man held up the Farmers State Bank in Big Springs, Nebraska and killed three bank employees. Late in the morning he walked into the bank and asked for a loan. He produced a .22-caliber pistol, ordered the four bank employees to lie face down on the bank floor and he shot all four of them, once in the neck and once in the back. Those killed were bank president Andreas Kjeldgaard, and cashiers, Glen Hendrickson, 59, and Mrs. Louis Ann Hothan, 35, widow and mother of two. Frank Kjeldgaard, 25, nephew of the bank president was critically wounded.³⁰ An official of the

²⁶Governor Crosby's Appointment Book, 1953.
 Governor Crosby's Appointment Book, 1954

²⁷Time, LXX (March 15, 1954), p. 23.

²⁸Ibid.

²⁹Ibid.

³⁰Omaha World-Herald, June 5, 1965.

American Bankers Association of New York said, "It was one of the most ruthless bank robberies on record."³¹

A massive air and ground search was launched across the rolling, range and dryland wheat country surrounding Big Springs and in neighboring Colorado and Wyoming. The get-away car was soon discovered as a 1965 light-green Chevrolet rented from a Salina, Kansas rent-a-car establishment. The bank robber had used his own name in renting the car.³² He was identified as Duane Earl Pope of Roxbury, Kansas. The 120 residents of Roxbury refused to believe that Pope was guilty. Fellow students and teachers agreed, "He was one of the nicest boys who ever attended school here."³³ Dr. Bittinger, president of McPherson College, who handed Duane his Bachelor's Degree in Industrial Arts one week earlier, said, "Students liked Duane so well he was elected co-captain of the football team. He was a well disciplined student, clean and neat-appearing."³⁴ Max Warner, who graduated from McPherson College with Pope, said, "He is not the type of guy to get mixed up in this type of thing."³⁵

Duane Pope surrendered to the FBI in Kansas City on June 11, 1965. Pope had surrendered after he had read of the plea of his college president Dr. Bittinger in a Las Vegas paper.³⁶ "I'm tired of running," said Pope.³⁷ FBI Agent Karl Dissly said that Pope went from Wichita to Dallas,

³¹Lincoln Star, June 5, 1965.

³²Omaha World-Herald, June 7, 1965.

³³Ibid.

³⁴Ibid.

³⁵Ibid.

³⁶Omaha World-Herald, June 12, 1965.

³⁷Ibid.

San Diego, Tijuana, Mexico and then to Las Vegas where he had read the newspaper report of his former college president's plea to surrender. He was taken before the U.S. Commissioner in Kansas City after he had signed a confession for the FBI. On the following day he signed a second confession for the FBI. On the next day Kansas City counsel was appointed for the defendant, and on June 18, 1965, Duane Pope was returned to Nebraska.

Feeling in Nebraska ran high. The County Attorney in the county in which Big Springs is located filed first degree murder charges. The County Attorney and the County Sheriff, carrying a warrant for the Duane Pope's arrest, were in attendance in Lincoln at the U.S. District Court Trial. On June 25, at 8:30 in the morning as Robert Crosby was leaving for a Court appearance in David City, Nebraska, Mr. Crosby received a telephone call from U.S. District Judge Robert Van Pelt. Judge Van Pelt explained that Duane Pope would appear in his Court that morning. Judge Van Pelt asked Crosby for permission to appoint him as Chief Defense Counsel, if the U.S. District Attorney announced that he would seek the death penalty.³⁸ Judge Van Pelt said that he would visit with the Dean of the Nebraska University Law College and would assign a member of the law faculty to assist Crosby. Judge Van Pelt further referred to the national notoriety attached to the criminal case, the importance of convincing the public that the defendant was afforded adequate legal representation, and the desirability of assigning as Chief Counsel a lawyer with a western Nebraska background, the crime having been committed in western Nebraska.³⁹

³⁸Speech, Robert Crosby, Polemics Club, May 23, 1967.

³⁹Ibid.

That morning, while Crosby was in David City, the defendant Pope was brought before Judge Van Pelt in the U.S. District Court Room in Lincoln, Nebraska. Judge Van Pelt announced the appointment of Crosby as Chief Counsel, and Professor Wallace Rudolph as associate counsel. Professor Rudolph, a Professor of law at the University of Nebraska College of Law, was a graduate of the University of Chicago Law School, and had devoted considerable time and study to the relationship between psychiatry and the law and to the field of constitutional law.⁴⁰

On the afternoon of the same day, June 25, Bob Crosby returned to Lincoln, hastily adjusted his schedule, conferred with Judge Van Pelt, Penitentiary Warden Sigler, Professor Rudolph, and went to the Penitentiary for his first conference with the defendant. Pope had been indicted by a Grand Jury on 6 counts for bank robbery and murder under 18 U.S.C.A. 2113. Three of the counts were capital offenses.⁴¹ Some people chose to resent Mr. Crosby's acceptance of the appointment as Chief Defense Counsel. He received a number of abusive letters. His wife received anonymous telephone calls, both abusive and threatening.

Crosby and Rudolph successfully resisted the effort of the U.S. District Attorney to have the place of the trial at North Platte, close to the scene of the crime at Big Springs. The trial was held in Lincoln. At once Mr. Crosby and Professor Rudolph set to work. Professor Rudolph undertook most of the legal research while Mr. Crosby handled trial preparations, pleadings and arguments.⁴²

⁴⁰Ibid.

⁴¹Ibid.

⁴²Ibid.

The basic defense was insanity. However, no aspect of defense was overlooked. There were numerous Court appearances prior to the trial: July 30, a defense motion for authorization to employ expert witnesses; August 13, argument on motions for discovery of evidence in the possession of the Government; September 3, argument on motion to eliminate jury challenges based on the ground of a juror's objection to the death penalty; September 13, 14, 15, hearings with taking of testimony on motion to suppress the defendant's confessions; September 28, appearance in Court on objections to the Government's effort to have the defendant examined by a Government psychiatrist; October 8, another Court appearance on defense motions.⁴³

At 9 A.M. November 1, 1965, Duane E. Pope was placed on trial on six federal counts growing out of his June 5th robbery and killing of three people in the Farmers State Bank at Big Springs, Nebraska.⁴⁴ Jury selection took part of the first week. Judge Robert Van Pelt excused jurors who were opposed to the death penalty. Van Pelt overruled defense objections to the exclusion of persons having scruples against the death penalty. Chief Defense Attorney Robert Crosby maintained that such exclusions will not make the jury a "fair and impartial jury."⁴⁵ Attorneys on both sides did not examine the eligible jurors, but submitted general questions to Judge Van Pelt. Much of Van Pelt's questioning of prospective jurors dealt with their connections with insanity and psychiatrists, feelings about insanity as a defense to

⁴³Ibid.

⁴⁴Lincoln Star, November 1, 1965.

⁴⁵Lincoln Star, November 2, 1965.

criminal charges and experience with firearms.⁴⁶ Defense attorneys Crosby and Rudolph told the jury that Duane Pope admitted the robbery and killings and other related facts in order to focus on the contested issue--Pope's mental competency at the time of the crime. Crosby told the jury the issue is not whether Pope committed the act but rather was he legally responsible.⁴⁷

The prosecution in opening the trial called sixteen witnesses to establish the facts leading up to the crime, the crime and following the crime. Defense attorney Crosby objected several times to the Government's line of testimony contending that a judicial admission by Pope of the events made further questioning of certain witnesses "...redundant, excessive and unnecessarily prejudicial to the defendant."⁴⁸ Crosby also objected to the testimony of Dr. W.O. Brown of Scottsbluff who performed the postmortems on the bank employees. Brown testified that bank employees had drowned in their own blood after being shot.⁴⁹ District Attorney Richling emphasized time and time again that the crime was "...cold and premeditated."⁵⁰ From November 11, to November 15 friends of Duane Pope testified in his defense. People who had known Duane Pope all of his life testified one after another--all telling the same account of how Duane was the kindest and most law abiding person they had ever known. From November 16 to November 19 Pope took the stand in his own defense. Dr. John Baldwin, Dr. Elinanora

⁴⁶ Lincoln Star, November 3, 1965.

⁴⁷ Lincoln Star, November 4, 1965.

⁴⁸ Lincoln Star, November 5, 1965.

⁴⁹ Lincoln Star, November 6, 1965.

⁵⁰ Ibid.

Barssard and Dr. Herbert Modlin testified that Pope was not accountable for his actions on June 4th.⁵¹ On November 24th the defense rested its case. The prosecution then called Dr. John Macdonald, Dr. Chester Farrell and Dr. Charles Rymer. The three Doctors agreed that Pope was mentally competent at the time of the bank holdup, but two of the Doctors agreed that Pope was "schizoid".⁵²

Both sides then summarized. U.S. Attorney Richling argued that the government had met the burden of proving Pope sane. He claimed, "...all the evidence is more conclusive that he went to the bank at Big Springs to get money at the point of a gun."⁵³ Richling stated, "In America we do not seek revenge, but justice is justice. Let it be announced to all America that he who lives by the gun takes his chances."⁵⁴ Richling reiterated his call for the death penalty by telling the jury that the crime--in which three persons were shot to death and a fourth left paralyzed--"..Certainly does not call for less than the maximum."⁵⁵ Defense Counsel Rudolph said the bank robbery was a cover-up for a more deep-seated desire in Pope's subconscious. Rudolph asked, "Does schizophrenic illness explain why a kind, shy, obedient boy who was never in trouble could suddenly explode into violence? We believe it does."⁵⁶ Counsel Crosby argued, "Pope is a classic example of a person who could not control the impulse that was

⁵¹ Lincoln Star, November 22, 1965.

⁵² Lincoln Star, December 1, 1965.

⁵³ Lincoln Star, December 2, 1965.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

driving him."⁵⁷ Crosby reiterated, "The facts defy any explanation other than mental illness...it is impossible not to have a reasonable doubt."⁵⁸

The jury was then given the case. They had to reach a verdict on each of six federal charges, three of which called for the death penalty. First, they had to decide the question of Pope's defense of insanity and second, if guilty on the three capital offenses, should they recommend death.

On December 4, 1965, the jury returned to give its verdict. After fourteen hours of deliberation the ten men, and the two women on the jury held guilty on all six counts and recommended the death penalty. After three ballots they agreed that Pope was sane at the time of the crime.⁵⁹

Crosby said he was "...tremendously shocked by the verdict."⁶⁰ He emphasized, "Professor Rudolph and I will keep right on fighting for Duane." He stated, "...a serious miscarriage of justice."⁶¹ Rudolph echoed Crosby's sentiment: "I just don't believe it."⁶²

Defense Counsels Crosby and Rudolph carried an appeal to the United States Court of Appeals in St. Louis. Their petition for a new hearing was denied.⁶³ The case of the United States v. Duane Pope is currently before the United States Supreme Court.

⁵⁷Ibid.

⁵⁸Ibid.

⁵⁹Lincoln Star, December 4, 1965.

⁶⁰Ibid.

⁶¹Ibid.

⁶²Ibid.

⁶³Lincoln Evening Journal, March 17, 1967.

CHAPTER IV

DISPOSITIO

In analyzing dispositio the introduction, thesis, body and conclusion in each speech will be examined. Organization also tends to reveal the message of the speech as it is the outline of what is being presented; therefore, both organization and message will be considered together.

William Norwood Brigance, in Speech Composition, set forth the purposes of an introduction:

...the speaker must at all costs gain favorable attention. Through favorable attention the interest of the hearers will be aroused.¹

A second purpose Brigance lists is:

The basic rule is to make sure that your audience has a sufficient preliminary knowledge of the subject to understand what you are talking about.²

More exactly the purposes of an introduction are to develop interest, relate the subject to the audience and to clarify what you are going to talk about.³

Referring to the thesis, or purpose sentence Brigance said:

¹Brigance, William N., Speech Composition, 2nd edition (New York: Appleton-Century-Crofts, Inc., 1953), p. 68.

²Ibid., p. 74.

³Olson, Donald O., Organizing the Speech, (Lincoln: University of Nebraska Press, 1961), pp. 2-3.

The speaker should phrase his purpose into a 'purpose sentence' or proposition, stating in language 'instantly intelligible' to the hearers the exact response demanded of them.⁴

On the same subject, a thesis, Thonssen and Baird stated:

It is assumed that the speech possesses a clearly defined and easily determined thesis or purpose...⁵

In considering the body or discussion of the topic Weaver and Ness said:

The principal work of the speech is done in the discussion; it contains the basic substance upon which the speaker relies for accomplishing his purpose. ...Any central theme can be divided into several different sets of sub-ideas, depending on the way in which you analyze it.⁶

The conclusion according to Brigance should round out or dismiss the thought; summarize or motivate the audience.⁷

The quoted material in the speech analysis is to be found in the appendix, unless other sources are cited.

DELIBERATIVE SPEECH--"OPERATION-HONESTY"

Introduction

Governor Crosby began with what Brigance called "a popular kind of introduction,"⁸ a reference to the theme. Mr. Crosby stated, "This is the beginning of the campaign called 'Operation Honesty'."

He developed audience interest in his subject when he questioned, "Why should 'Operation Honesty' be launched first among public employees?"

⁴Brigance, op. cit., p. 85.

⁵Thonssen, Lester and A. Craig Baird, Speech Criticism (New York: Ronald Press Company, 1948), p. 393.

⁶Weaver, Andrew T. and Ordean G. Ness, Introduction to Public Speaking, (New York: the Odyssey Press, Inc., 1961), p. 48.

⁷Brigance, op. cit., pp. 109-114.

⁸Brigance, op. cit., p. 79.

His next statements not only answered his question but also related his subject, "Operation Honesty", to his audience, who were State House Employees, and helped to clarify what he was going to talk about-- taxes. He stated, "To begin with, you and I are paid from taxes." and "Further, not only are you and I paid from taxes--each of us pays taxes too." He pointed out that skeptical friends had wisecracked that if he could get all of the state employees to make out honest tax returns it would be a big help. This year he stated that employees would show the way by the listing of their personal property for taxation.

Crosby prepared his audience for the rest of the speech when he closed his introduction by, "Thus, we will lead the way for Honesty'."

Thesis

Bob Crosby's thesis statement conformed to the qualities of a good thesis sentence; it is a complete sentence, it contains one overall idea, and it is not too long or involved.⁹ The Governor stated clearly and concisely, "...I want each of you to clearly understand the reason for 'Operation Honesty'."

Body

The issues of the "Operation Honesty" speech were based upon an unfolding pattern of organization. In unfolding organization the speaker develops each issue after he has stated the issue. The audience is not aware of what the issues will be until it is to be discussed. Unfolding organization is contrasted to partitioning organization where a skeleton outline of the speech is given right after

⁹Olson, op. cit., pp.1-2.

the introduction.¹⁰

The arrangement or development of the speech was this-or-nothing. Brigance pointed out how this-or-nothing works:

Its plan is simply to portray a situation which gradually, of itself, without compulsion or contention on the part of the speaker, through the compelling power or a developing situation makes evident to the mind of the hearer the necessity of one certain solution.¹¹

This-or-nothing arrangement consists of the first issue presenting a problem, the second issue discards various solutions by the process of elimination until the one which the speaker advocates is the only one left, in the third issue the speaker shows that the only solution which will solve the problem is his solution.¹² Brigance agreed, "It develops a situation from which, if the hearers accept the facts, one and only one conclusion can emerge..."¹³

The first issue of the Operation Honesty speech was a presentation of the problem of equalization of tax assessments. He pointed out that the tax problem is far more important than raising revenue, it involved the very integrity of the state Constitution, and state laws. The problem in Crosby's opinion touched on the concept of honesty, decency and fair play with one's fellow citizens. He then quoted the Constitution which provided, 'taxes shall be levied by valuation uniformly and proportionately upon all tangible property.' He stated, "This provision of the Constitution has been knowingly and

¹⁰Olson, op. cit., p. 3.

¹¹Brigance, op. cit., p. 103.

¹²Olson, op. cit., p. 4.

¹³Brigance, op. cit., p. 102.

deliberately violated by all of us for many years." In the second issue he turned to specific aspects of equalization by reference to the plight of the home owner. The cause was three fold, the Governor stated. First there was a greater spending of tax money by local units of government. Second the home owner's tax misery was the lack of equalization, homes of equal value were assessed on drastically different levels. Thirdly, personal property was not carrying its fair share of the tax burden. Governor Crosby pointed out that the person who failed to report all of his personal property made his honest neighbor pay more in taxes.

In the third issue of "Operation Honesty" Mr. Crosby took different solutions to the problems outlined in the first issue. He asked, "What is to be done about this inequity, this failure of law enforcement?" He questioned, "Can we get rid of property taxes by persuading the Legislature to adopt a sales tax?" The Governor then said that it was ridiculous to even ask the question because a 2% sales tax would reduce the property taxes by a very small amount. For proof he turned to Iowa and Kansas; each of them has a sales tax and an income tax and their per capita property taxes was almost as much as Nebraska's, not even 10% less. He moved to other possible solutions--substitution of some other tax for property tax, and local administration in place of state collection of taxes. Mr. Crosby questions, "...could we then forget the problems of equalization?" He answered, "Again the answer is 'No'." He stated, "In any event, we cannot escape the constitutional requirement of seeing that substantial justice is done to our citizens by insuring a uniform and proportionate sharing of the tax burden."

The fourth issue completed the this-or-nothing arrangement. Governor Crosby pointed out that 'Operation Honesty' was the only answer to the problem as his solution. He stated,

The only practical way to solve this problem is to face up to it squarely. We must behave as good citizens should and obey the property tax laws. This is 'Operation Honesty'.

Conclusion

Brigance pointed out that a good conclusion could round out or dismiss the thought; summarize; and motivate the audience.¹⁴ Mr. Crosby does not summarize, but he does round out the thought. He dismissed the thought:

We are now beginning 'Operation Honesty' so that all of us will voluntarily comply with the personal property laws...I have no doubt of the success of 'Operation Honesty'...

The Governor also made a final plea for acceptance:

As Governor, I am charged by the Constitution to 'take care that the laws be faithfully executed'. You, as members of the executive branch of state government under my direction, share that constitutional obligation with me.

Together, as public servants, we shall lead a demonstration by Nebraskans that a free people can succeed in self-government. This is 'Operation Honesty'.

FORENSIC SPEECH--U.S. v. POPE

Introduction

According to Brigance gaining favorable attention and supplying preliminary knowledge of what you are going to talk about are purposes of an introduction.¹⁵

Crosby attempted to gain the favorable attention of the jury

¹⁴Brigance, op. cit., pp. 109-114.

¹⁵Brigance, op. cit., pp. 86, 74.

by praising them, "...you have been a jury that has been extraordinarily attentive, I think probably extraordinarily patient." He also approached them on what Brigance called a "...common ground of interest..."¹⁶, the desire for justice. He stated:

I will say this to you, that I'm sure that all of the counsel here, if we sat down in a quiet, contemplative atmosphere, we would agree that what we want you to do is to bring in a verdict that represents justice in its most enlightened sense in this part of the twentieth century in this wonderful country. We all want justice.

Mr. Crosby tried to give his listeners some preliminary knowledge of what he would discuss with them:

And let me visit with you just a minute about what your duty as jury members will be in this case. First let me mention something that we lawyers call the burden of proof. ...The government or the District Attorney's office has the burden of proving beyond a reasonable doubt that our client Duane is guilty. ...that to be convinced beyond a reasonable doubt means that you must be convinced to something like a moral certainty regarding the proposition of Duane's guilt.

Thesis

His approach to his thesis was a bit wordy, but clarity seemed to be achieved in spite of the excess of words. Before he offered the thesis he stated, "Now what is the issue?". Then Mr. Crosby stated his thesis, "...whether he was legally responsible for what he did, was he competent to the degree that he would be guilty in a criminal sense of what he did?" After he made the thesis statement, he emphasized, "And that has been the whole issue in this case from the beginning to the end."

Body

The organizational structure of the jury summation was partitioning. He gave a skeleton outline of the speech after the thesis

¹⁶Brigance, op. cit., p. 70.

statement. He partitioned:

In other words, how would we have felt about this case if we had never heard a psychiatrist or a psychologist on that witness stand over there. And then I think another slightly different approach is to consider the facts and whether the facts really make it possible to believe that Duane was acting from anything else except a terribly sick mind that robbed him of control of himself.

The issues were arranged topically. Each issue covered a different phase of whether Duane Pope was legally responsible for what he did.

In the first issue Counsel Crosby asked his listeners to consider Pope's guilt and to "...try to measure it based on the experience of each of you...our experiences as human beings in connection with other human beings. In other words how would we have felt about this case if we had never heard a psychiatrist or a psychologist..." Mr. Crosby attempted to have his audience stand back and decide for themselves whether his client was guilty. He developed this issue by discussing with varying amounts of detail the thirty-seven character witnesses who had discussed Duane Pope. Crosby pointed out that they all agreed, "He had qualities to make people like him: gentleness and kindness and thoughtfulness, quietness, and never wanting to hurt anybody else's feelings..." Governor Crosby stated, "Remember, the District Attorney hasn't found a single tiny kind of evidence to discredit Duane Pope up to June 4." Counsel Crosby then summarized in one paragraph the entire discussion in this issue:

I simply say to you that it is impossible as you know people and as I know people, it is impossible to even consider that anybody, including Duane, could be that kind of boy up to June 4, gentle, thoughtful, trustworthy, dependable, honest, almost too scrupulous

about obeying the law, paying his debts, all of those standards that we have for human behavior, it's impossible for a boy to be like that up to a certain moment and then become completely the opposite and to do a horrid, terrible thing like he did.

He continued in an equally strong manner to point out the sickness of his client:

It's impossible. It's impossible for me at least-- I shouldn't speak for you--it's impossible for me to believe that a boy could thus reverse the entire pattern of his life and do the horrendous thing he did and be anything but terribly, terribly ill in his mind. He must have been acting under some terrible compulsion that he couldn't control, because everything he was doing was against all of the instincts and inward patterns that he had for his whole life. And you can't tell me those 37 people were fooled or that I'm fooled. And I think Dr. Bittinger was right. 'Duane, give yourself up. Something happened to you.' And something sure happened to him.

Crosby asked the jury to consider whether they would feel that a person was mentally ill or not based upon facts about his past life.

In the second issue Crosby shifted slightly. He stated. "Now I want to approach it in another way." The second issue is very clear, "I said, 'The facts defy any explanation except severe mental illness.' Once again he appealed to "...our own understanding of human affairs..." as a criteria to judge. He supported his idea that only mental illness could have caused his clients actions, by reference to the lack of motive. He cited a witness who testified for the prosecution, "He said he could discover no motive." Crosby discussed indebtedness as a possible reason for the robbery and killings. He stated, "... I don't know of a single thing that indicates that Duane worried about the indebtedness..." Mr. Crosby pointed out that Duane Pope had much greater debts in the past as compared with June 4th. He then turned to girls and

discounted the testimony of a prosecution witness who felt that Pope committed the robbery to obtain money so that he and a girl could get married. Counsel Crosby emphasized the fact that Pope had not asked the girl in question to marry him and that he still dated other girls. He then turned to the fact that Pope was not extravagant. Pope was a simple farm boy, "Duane had lived simply all his life."

I don't find that he was a faddist about clothes. He didn't smoke, he didn't drink, he--well, he just wasn't extravagant. Nobody in the whole list of 37 witnesses ever mentioned anything that would indicate that Duane was greedy for money.

Crosby discussed Duane's working habits stating:

He liked to work, and he could make money, and I don't find that greed for money was a motive, or a desire for extravagant living. And so here you have a total absence of motive.

Mr. Crosby then turned to what he called, "...this crazy series of events..." He pointed to the dreams Pope had, "...to shoot his brother...", "...to throw Eric in the pond..." He stated "...Duane began to do queer things..." Crosby told of Pope buying a gun, and shells. Pope constructed a breastplate as a bulletproof vest. Crosby emphasized that Pope was making preparations but not planning. He had not gone to Big Springs to look at the bank, the bank's hours and bank employees. He stated, "...he starts out to Big Springs, with no map..." Mr. Crosby concluded this issue with the point that he is trying to get across, "I say to you that this is a classic case of a person who couldn't control-- during this period of time couldn't control the impulse that was driving him, a crazy, bizarre, otherworldly kind of impulse that he couldn't resist."

Mr. Crosby stated, "I'm going to mention the doctors a minute..."

Crosby tried to prove that his client was a sick man, "Dr. Macdonald, about whom Professor Rudolph talked quite a little and whom the District Attorney put on the stand said this was a definite schizoid personality..." and "And Dr. Baldwin, a tremendously well educated psychiatrist...said that this was definitely acute schizophrenic reaction." Crosby pointed to yet another Doctor, "...Dr. Modlin, of course, from the world famous Menninger's Clinic, and he himself has a very wide reputation, 30 or 40 publications, head of their law and psychiatry division there, says it is definitely acute schizophrenia." He emphasized that according to the medical men Pope needed treatment, "And Dr. Macdonald further said, 'I regard this crime as a sick act', the government psychiatrist." He concluded this issue, "...some of the government psychiatrists and both of ours agree that Duane is sick."

Conclusion

A good conclusion should try to summarize and motivate the audience by a final plea for acceptance. Mr. Crosby tried to summarize and to motivate in his conclusion. In a fairly lengthy conclusion Crosby summarized that based on one's own experiences an individual could conclude that Pope was a sick man. Likewise, medical men had felt that Duane Pope was a sick man. He devoted some time to a final plea for acceptance:

...it is impossible, just impossible not to have some reasonable doubt about whether he could control his impulses, manage himself, on June 4. It seems impossible not to have some reasonable doubt about that in the face of all this evidence, in the face of what you and I know about human nature, in the face of what some of the psychiatrists say.

On at least four occasions he charged the jurors with their consideration of "reasonable doubt".

I pray that you listen to the instructions, that you will consider carefully as jurors in such an important case whether you are convinced beyond a reasonable doubt, that on June 4 Duane could control his impulses that led him to do this thing, or whether at that period of time he was out of control and doing the exact opposite of everything that his life stood for.

As a whole, Governor Crosby's organization did not stand in the way of communicating the ideas he had in mind. At times he was redundant. He admitted in the conclusion, "And in closing I just have once again, and, my, I have been repetitious, don't hate me for saying it once again, but I want to close with what I am going to say." In spite of the fact that he did not establish a clear cut order, his ideas stood out by his repetition of the major ideas that he was trying to get across.

CHAPTER V

INVENTIO

Inventio consists of three modes of persuasion; namely, ethical, emotional and logical. Thonssen and Baird stated:

Rhetoricians since Aristotle have generally accepted his concept that the modes of persuasion, depending upon the effect they produce in hearers, 'are of three kinds, consisting either in the moral character of the speaker or in the production of a certain disposition in the audience or in the speech itself by means of real or apparent demonstrations'. These, in the order mentioned by Aristotle, are usually called the ethical, the pathetic or emotional, and the logical.¹

Aristotle explained the three kinds of proof in the following manner:

The character ethos of the speaker is a cause of persuasion when the speech is so uttered as to make him worthy of belief; for as a rule we trust men of probity more, and the more quickly, about things in general, while on points outside the realm of exact knowledge, where opinion is divided, we trust them absolutely. This trust, however, should be created by the speech itself, and not left to depend upon an antecedent impression that the speaker is this or that kind of man. It is not true, as some writers on the art maintain, that the probity of the speaker contributes nothing to his persuasiveness; on the contrary, we might almost affirm that his character ethos is the most potent of all the means of persuasion.

Secondly, persuasion is effected through the audience, when they are brought by the speech into a state of emotion;...

Thirdly, persuasion is effected by the arguments,

¹Thonssen, Lester and A. Craig Baird, Speech Criticism, (New York: Ronald Press Company, 1948), p. 331.

when we demonstrate the truth, real or apparent, by such means as inhere in particular cases.²

Aristotle went into greater detail when he said of ethical

proof:

As for the speakers themselves, the sources of our trust in them are three, for apart from the arguments there are three things that gain our belief, namely, intelligence, character and good will.³

Weaver and Ness viewed emotional proof as:

Residing in the minds of all members of any audience are such innate drives and learned motives as love, hunger, patriotism, desire for security, enjoyment of prestige, etc...When properly aroused, they will determine the reactions of the audience. These feelings are the basis of emotional proof.⁴

Brigance explained emotional appeal as:

...we find human wants radiating into four quadrants:

(1) protective wants; (2) acquisitive wants; (3) social wants; and (4) sensory wants.⁵

Weaver and Ness commented on logical proof as:

Finally, the facts and opinions that the speaker employs, his methods of reasoning, the manner in which he organizes and arranges his ideas, these content factors are the elements of logical proof.⁶

The speeches were analyzed first for ethical proof, then for emotional proof and finally for logical proof. The word proof in this

²Cooper, Lane (trans.), The Rhetoric of Aristotle, (New York: Appleton-Century-Crofts, Inc., 1932), pp. 8-9.

³Ibid., pp. 91-92.

⁴Weaver, Andrew T. and Ordean G. Ness, An Introduction to Public Speaking (New York: Odyssey Press, Inc., 1961), p. 191.

⁵Brigance, William N., Speech Composition (New York: Appleton-Century-Crofts, Inc., 1953), p. 182.

⁶Weaver and Ness, op. cit., p. 191.

instance is not synonymous with evidence. The classical definition is that they are forms of persuasion. The quoted material in the speech analysis is to be found in the appendix, unless otherwise indicated.

DELIBERATIVE SPEECH--"OPERATION HONESTY"

Ethical Proof

As stated earlier Aristotle suggested: "...that the three constituents of ethical proof are character, sagacity, and good will..."⁷ The following analysis is by no means an exhaustive listing of the ways that character, sagacity or intelligence and good will are established, but these are the means that Robert Crosby used to establish character, intelligence and good will.

One of the ways that character was established, according to Thonssen and Baird, is through: "...the attitude of the audience toward the speaker--based upon previous knowledge of the latter's activities and reputation..."⁸ At the time Crosby gave this speech he was the Governor of Nebraska. His position in government carried with it ethical proof in that his prestige was established before he began to speak. His ethical proof was further established before he began speaking because this was the third elective office he had held in this state. Crosby had been elected to the Unicameral and had served as speaker of that body. He also served as Lieutenant Governor in the term immediately before becoming Governor.

Another way to build character is to associate one's message with that which is virtuous or elevated.⁹ This can be carried out by sup-

⁷Thonssen and Baird, op. cit., p. 386.

⁸Thonssen and Baird, op. cit., p. 385.

⁹Thonssen and Baird, op. cit., p. 387.

porting good, attacking injustice and by advocating fair play. He advocated, "...doing a 100% complete job of listing our personal property for taxation." He attacked injustice by reference to, "...the amazing examples of inadequate personal property returns that can be recited," and "...the low estate to which we had fallen in this enforcement." He urged fair play by personal property carrying its rightful share of the tax burden. In short the whole speech was a plea for honesty, "Operation Honesty."

Ethical proof can also be established by a speaker showing that he is a well-informed or that he has sagacity. This may be accomplished by being familiar with issues of the day and dealing with them.¹⁰ Crosby did this by explaining the tax issue in detail. He made specific reference to the Nebraska Constitution, 'taxes shall be levied by valuation uniformly and proportionately upon all tangible property.' He told of the Supreme Court decision telling the State Board of Equalization to enforce this provision of the Constitution. Mr. Crosby related the work that the State Board was doing to enforce the tax law. He dealt with the problems of home owners as a result of greater spending of tax money, lack of equalization and failure of other sources of taxes being reported honestly. He showed that he was well informed by his complete discussion of the tax problem, its causes and remedies.

Crosby also established good will in his speech. A speaker may do this by establishing a common bond with the audience and by identifying with them.¹¹ He identified with his audience by the use of personal

¹⁰Ibid.

¹¹Ibid.

pronouns; he used "we" fifteen times, "you" seven times, "our" two times and "us" once. He established a common bond with his audience by reference to himself and his audience as "public employees" at the outset of his remarks and as "public servants" in his conclusion.

Governor Crosby by his numerous references to honesty and by the title itself "Operation Honesty" showed that he was a man of character and had a true concern for the State of Nebraska. Likewise, by a discussion of the tax situation, past and present, Crosby demonstrated that he was a well-informed person. The third element of ethical proof, good will, was not as strong as the other two aspects of ethical proof. The Governor made no attempt to flatter his audience, acknowledge things he had received from them or to display a good nature. If good will is evidenced it is in Crosby's desire to see fairness prevail.

Emotional Proof

Emotional appeal can be carried out by appeal to what William Norwood Brigance called social wants.¹² Brigance stated: "Our social wants are myriad, but here we shall mention but four of the more prominent ones: (1) Reputation... (2) Leadership... (3) Honor and Duty (4) Fairness."¹³

He appealed to reputation as he stated that equalizing taxes "...involves the integrity of our state Constitution." and "...I have no doubt of the success of 'Operation Honesty', because Nebraskans are fundamentally honest. We all want to do the right thing."

¹²Brigance, op. cit., p. 185.

¹³Brigance, op. cit., pp. 185-87.

He used leadership as an appeal when he stated, "Before all others you and I should assume the leadership and set the proper example..." He refuted the wisecrack that if state employees would report honest schedules it would help the tax problem:

...the public can be assured that this year we state employees will show the way by doing a 100% complete job of listing our personal property for taxation. Thus, we will lead the way for 'Operation Honesty'.

In conclusion the Governor referred to his duty to enforce the laws:

You, as members of the executive branch of state government under my direction, share that constitutional obligation with me. ...Together, as public servants, we shall lead a demonstration by Nebraskans that a free people can succeed in self-government. This is 'Operation Honesty'.

In addition to leadership, honor and duty were used by Governor Crosby in appealing to social wants. He stated that a reduction in taxes were possible if complete personal property returns were made and further, "It is our duty as public servants to see that Nebraskans realize fulfillment of this hope." After discarding other solutions to raising revenue, Governor Crosby appealed to honor and duty, "The only practical way to solve this problem is to face up to it squarely. We must behave as good citizens should and obey the property tax laws. This is 'Operation Honesty'." The very subject of the speech, "Operation Honesty", carried with it an emotional appeal, an appeal to honor, duty, and fairness.

Fairness was one of the strongest appeals Mr. Crosby used. In the introduction Crosby pointed to the goal of equalization of taxes, "...so that no one carries more or less than his fair share of the tax burden." He pointed out that equalization is far more

important than raising revenue, "honesty and decent regard for the rights of our fellowman are bound up in this problem." He dealt directly with fairness when he stated, "The greatest present injustice is that borne by home owners in many towns and cities." After he dealt with this injustice to home owners he concluded with the reason for this unfairness, "In short, personal property is not carrying its rightful share of the tax burden."

Another emotional appeal that Brigance listed was acquisitive wants or wealth.¹⁴ The Governor used this appeal only once in a direct manner when he stated, "If we could get a full return of personal property at a reasonable value during this coming assessment period, the tax burden of real estate would be lessened by about 25%!!!" Much of Mr. Crosby's appeals that were just discussed under fairness were indirect appeals to acquisitive wants or wealth since fairness would in some cases result in a reduction of one's tax.

The emotional appeals of the Governor were appeals to social wants or acquisitive wants. Appeals to self preservation, welfare and sensory wants were largely unused. The appeals were very direct and concrete without appeals directed toward the more general aspects of protective wants.

Logical Proof

Aristotle stated that persuasion is affected by arguments.¹⁵ Crosby used both induction and deduction in presenting his arguments.

¹⁴ Brigance, op. cit., p. 184

¹⁵ Cooper, Lane (trans.), The Rhetoric of Aristotle, (New York: Appleton-Century-Crofts, Inc., 1932), pp. 9-10.

Induction occurs when an argument is developed from particulars to a general conclusion by using casual relations, specific instances, authority, and analogy.¹⁶ Deduction occurs when an argument is developed by reasoning from a general truth to a particular conclusion.¹⁷ An enthymeme was defined as, "An argument, in which one of the propositions, usually a premise, is understood but not stated."¹⁸

The basic overall pattern of the speech was inductive. In the first issue Governor Crosby presented the problem, "This program is a necessary step in solving what is currently one of the most difficult tasks in state administration: The equalization of tax assessments."

In the second issue the Governor took up the causes of the problem. He forecasted the first two causes as follows:

The plight of the town home owner stems from three causes...

That cause is simply the greater spending of tax money by local units of government...

The second cause of the home owner's tax misery in many towns is the lack of equalization among individual owners of real estate. Frequently homes of equal value are assessed on drastically different levels.

The third cause the Governor developed by induction. He dealt with the inequity between the assessment of real estate and personal property and drew the inference, "In short, personal property is not carrying its rightful share of the tax burden."

¹⁶Thonssen and Baird, op. cit., p. 348.

¹⁷Ibid., p. 346.

¹⁸Webster's New Collegiate Dictionary, 2nd ed. (Springfield, Mass.: G.&C. Merriam Co., 1959), p. 275.

In the third issue Mr. Crosby discarded various solutions until only the one he was advocating was left. He asked, "What is to be done about this inequity, this failure of law enforcement?" He dealt with the first possible solution, "Can we get rid of property taxes by persuading the Legislature to adopt a sales tax?" He said that it is ridiculous to even ask the question because a 2% sales tax would reduce property taxes in towns and cities only a small amount. Governor Crosby raised another possible solution, a combination sales-income tax. He likewise dismissed it, "I am simply stressing the obvious point that such supplemental taxes do not even touch the problem of equalizing property taxes."

The induction was completed when he showed that only his solution would solve the problem. He drew this inference from the previous material presented, "The only practical way to solve this problem is to face up to it squarely. We must behave as good citizens should and obey the property tax laws. This is 'Operation Honesty'."

The individual issues were developed deductively. Deduction occurs when an argument is developed by reasoning from a general truth to a particular conclusion or by listing reasons for or against a general truth. Crosby stated what he considered a general truth, "... 'Operation Honesty' (should) be launched first among public employees..." He then moved to the specific arguments supporting this general idea. He stated, "...you and I are paid from taxes." and "Further, not only are you and I paid from taxes--each of us pays taxes too." These two enthymemes could be put in the form of syllogisms. They would read: All people who are paid from taxes should

launch this program. You and I are paid from taxes. Therefore, "Operation Honesty" should be launched first among us as public employees. Likewise the second can be put in the syllogistic form: All people who pay taxes should help launch this program. You and I are tax payers. Therefore, "Operation Honesty" should be launched among us.

As he developed the speech he stated, "This program is a necessary step in solving what is currently one of the most difficult tasks in state administration: The equalization of tax assessments." This deductive development is carried out by a series of enthymemes. He stated:

This problem of equalizing tax assessments has an importance far beyond the raising of revenue for government. It involves the integrity of our state Constitution.

The syllogism would read: Anything that would involve the integrity of our State Constitution is important. This involves the integrity of our state Constitution. Therefore, it is important.

Another argument was, "It involves the enforcement of our state laws." The syllogism would read: Anything that would involve the enforcement of our state laws is important. This involves the enforcement of our state laws. Therefore this is important. Other enthymemes were, "It involves not only my oath of office but that of all public officials." and "Honesty and decent regard for the rights of our fellowman are bound up in this problem."

FORENSIC SPEECH--U.S. v. DUANE POPE

Ethical Proof

Character as an aspect of ethical proof can be built through,

associating oneself or ones message with what is virtuous, prudently bestowing praise upon ones client and cause, minimizing unfavorable impressions of ones cause made by ones opponent, and creating an impression of sincerity in ones undertaking.¹⁹

Mr. Crosby associated his message with a virtuous cause when he talked about, "...the nature of a trial as we conduct it in this country...the adversary system... He pointed out that the District Attorney represented one side and he along with Professor Rudolph the other side... He asked the jury:

...to bring in a verdict that represents justice in its most enlightened sense in this part of the twentieth century in this wonderful country. We all want justice.

Counsel Crosby prudently bestowed praise upon his client as he referred to the thirty-seven character witnesses; he summarized their testimony, "He had qualities to make people like him: gentleness and kindness, and thoughtfulness, quietness, and never wanting to hurt anybody else's feelings..." He also referred to his client's life:

Here we've got a farm boy from a little town going to a church college where you have to go to chapel twice a week, and Duane did. Duane had lived simply all his life. ...I don't find that he was a faddist about clothes. He didn't smoke, he didn't drink, he-- well, he just wasn't extravagant.

Governor Crosby attempted to minimize unfavorable impressions advanced by the opposition. Counsel for the prosecution indicated that Pope was pretending to be insane. Crosby countered:

Well, I will not impress on you what you know already, that there isn't a single time from Las Vegas on when you can see any single slight indication that Duane

¹⁹Thonssen and Baird, op. cit., p. 387.

was trying to be insane or trying to act queer or trying to do anything funny or that would seem funny.

He pointed out that his client was a "compulsive truth teller."

Crosby also dealt with the prosecution's accusation that his client planned to kill all the people so they could not identify him. He showed that after the FBI had obtained the first confession there was no statement of motive. Crosby showed the jury how the typed confession had been altered and a page added. He stated:

And so they had to go back and put in this page in order to have Duane say something about a plan, and the best they could do is to say to Duane, 'You had to have some reason for killing these people. Didn't you do it to keep them from identifying you?' And poor Duane, that sick, schizoid situation, he says he didn't tell them that, but they told him that was the way he did, and so they put it in. And he didn't much want to sign the confession, but they told him he ought to, it wouldn't make any difference if he didn't sign it, they could still testify, and so he signed it.

Likewise, Crosby dealt with Dr. Smith's remark that, "...he wanted to get a bunch of money so he could have a lovely love nest for Melinda..." by pointing out, "...I can't find anything anywhere to indicate that he was feeling a pressure to get money for Melinda. He hadn't asked her to marry him; he still noticed other girls and so on." Also, Mr. Crosby referred to Mr. Coufal's remark, "...make the punishment fit the crime..." by stating, "...rather let the punishment be determined with respect to the person we are talking about."

Crosby enhanced his character by indicating his sincerity in his undertaking. He stated:

...I can't help but have been tormented day after day and hour after hour by what kind of reaction has been in your minds and in the minds of each of you.

His sincerity is best demonstrated when he stated the importance of the final argument:

...the final argument is a pretty important moment, and perhaps you will understand when I say that this case has become so much a part of my life that I sat a little short of breath by the desk there almost dreading the moment that I was to get up and to make this final argument because the case has assumed such a great amount of importance to me and because I am almost terrified about the matter of whether I can find the right words to make you understand my convictions about this case.

Sagacity is another element of ethical proof. A demonstration of knowledge of the subject was largely self-evident since Crosby discussed the trial from the beginning to the end in his summation. An example of sagacity was how Crosby explained a legal concept to laymen:

And let me visit with you just a minute about what your duty as jury members will be in this case. First let me mention something that we lawyers call the burden of proof....The government or the District Attorney's office has the burden of proving beyond a reasonable doubt that our client Duane is guilty. ...that to be convinced to something like a moral certainty regarding the proposition of Duane's guilt.

Sagacity was demonstrated by acting with tact and moderation.²⁰ Much of the summation is characterized by remarks showing tact and moderation. Some examples of this aspect of sagacity were,

Now then, in approaching this issue it has seemed to me, and I wouldn't mind if anybody quarreled with me about my analysis of how you approach this issue.

also,

If my argument is not entirely in logical sequence please forgive me.

and,

...I hope Duane isn't offended. I started to say that

²⁰Thonssen and Baird, op. cit., p. 387.

curious kind of person Duane is. Well, let me say quickly that I'm curious too, and maybe each of us is curious...

Good will, the third aspect of ethical proof, can be achieved by capturing the proper balance between too much and too little praise of one's audience, identifying with the hearers, and proceeding with candor and straightforwardness.²¹ Mr. Crosby praised his audience only once at the beginning of his speech:

Thank you, Your Honor. May it please the Court, ladies and gentlemen of the jury, I agree with my friend Fred Coufal who talked this morning to you for the District Attorney's office that you have been a jury that has been extraordinarily attentive, I think probably extraordinarily patient.

Counsel Crosby identified with the jury throughout the summation, for example:

...I tried to imagine many times during this case--I have put myself in one of your chairs and tried to think how I would be thinking...

and,

...I have sat in that chair there at the table and I have tried to think what could keep jurors--I am imagining myself a juror--what might keep you from saying instantly what seems so clear to me, that it is impossible, just impossible not to have some reasonable doubt about whether he could control his impulses...

Crosby is candid with his audience in his address. At one point he emphasized this point:

Now, in this case we had to make some decisions which I dreaded in advance, and I pray God they were the right decisions. First, the decision about whether to try to withhold anything from this jury, and some of you, at least, must have been impressed with the fact that we had decided that we would disclose everything there was to disclose.

²¹Thonssen and Baird, op. cit., p. 387.

Emotional Proof

Mr. Crosby used other means of persuasion to a much greater degree than he used emotional persuasion. The emotional appeals that he did use were appeals to fairness or justice and human compassion.

Mr. Crosby discussed justice with the jury:

I will say this to you, that I'm sure that all of the counsel here, if we sat down in a quiet, contemplative atmosphere, we would agree that what we want you to do is to bring in a verdict that represents justice in its most enlightened sense in this part of the twentieth century in this wonderful country. We all want justice.

Counsel Crosby also appealed to justice at least five times when he told the jury that they must have some "reasonable doubt" as to the guilt of his client. He concluded:

I urge you, my friends, to consider carefully whether what I have said isn't completely obvious, that with this evidence that we have had it's just not possible for any one of you to not have some reasonable doubt about whether Duane could control his impulses on June 4.

After discussion the killing of three bank employees and the maiming of a fourth Crosby pleaded for fairness:

...I implore that you don't act from a feeling that you have to do something bad to Duane regardless just to even up or for revenge or because it's expected of you. I know you won't.

Counsel Crosby's appeal to human compassion or sentiment was more subtle than the above appeals. Crosby related:

...Duane doesn't know about his subjective inward motives and reasons. I will admit Duane doesn't know what makes him tick. I will admit that he asked the FBI, 'Why, why?' He asked the psychiatrists, 'Why?' and he doesn't know what makes him tick, what made him do these awful things.

He told the jury of his clients condition:

I simply say to you that it is impossible as you know people and as I know people, it is impossible to even consider that anybody, including Duane, could be that kind of boy up to June 4, gentle, thoughtful, trustworthy, dependable, honest, almost too scrupulous about obeying the law, paying his debts, all of those standards that we have for human behavior, it's impossible for a boy to be like that up to a certain moment and then become completely the opposite and to do a horrid, terrible thing like he did...He must have been acting under some terrible compulsion that he couldn't control...

On other occasions Mr. Crosby referred to Duane Pope as, "...poor kid..." and "...poor Duane, that sick, schizoid situation..."

Logical Proof

Mr. Crosby used inductive reasoning to prove his arguments. He used specifics or particulars to lead to general conclusions. He used a general exposition of the facts from which he drew an inference.

In the first issue he asked the jury to view the case in the light of their own experience and understanding as if they had never heard a psychiatrist. He reminded the jury of the testimony of the thirty-seven witnesses, high school teachers, high school classmates, businessmen, former employers, college professors and college classmates. He cited specifically, Mr. McWilliams, Mr. and Mrs. Dennis Brunner, Mr. and Mrs. Wendell Burch, Wauneta Taylor Hanson, Ronnie Wieberg and others, who supported his clients character. He pointed out that the District Attorney could not find any evidence to the contrary. He drew a general conclusion, that as a result of these specific cases his client must have been mentally ill or sick,

He must have been acting under some terrible compulsion that he couldn't control, because everything he was doing was against all of the instincts and inward patterns that he had for his whole life.

In the second issue, Crosby stated, "...I think another slightly

different approach is to consider the facts..." He reviewed the specific facts; he pointed out that there was no motive, no extreme indebtedness, no girls and no extravagant tastes to satisfy. Mr. Crosby then dealt with the individual facts that lead up to the crime, the dreams of people lying on the floor being shot, his hostilities toward his brother, the silencer, the breastplate and driving to a town he had been to only twice in his life. From these facts Counsel Crosby completed the induction:

...I suggest to you...on the basis of the things that happened this boy was desperately ill in his mind...

and

I say to you that this is a classic case of a person who couldn't control--during this period of time couldn't control the impulse that was driving him, a crazy, bizarre, otherwordly kind of impulse that he couldn't resist.

Likewise he continued with another inductive argument. Crosby pointed to the individual psychiatrists, one by one and drew the general conclusion, "...I listened to these psychiatrists and I get the feeling that they all agree Duane is sick."

CHAPTER VI

ELOCUTIO

Hance, Ralph and Wiksell, in defining style, referred to Webster's Dictionary which, "...defined style as 'mode of expressing thought in language'..."¹ They feel that this definition is, "...the broadest and most useful..."² This chapter shall deal with those elements of language which occur with sufficient frequency that these elements of language could be regarded as the way Robert Crosby expressed himself in language in these two speeches.

The material enclosed in quotation marks in the speech analysis can be found in the appendix.

DELIBERATIVE SPEECH--"OPERATION HONESTY"

Typical elements of language which Crosby used frequently were short, simple sentences, questions and personal pronouns.

Short and simple sentences seemed to be an element of Mr. Crosby's style in "Operation Honesty". The average sentence length was 14.8 words per sentence. The figure 14.8 was achieved by taking three samples, the first full sentence of each page, the second full sentence on each page, and the third full sentence of each page. An average of the three samples revealed 14.8 words per sentence.

¹Hance, Kenneth, David Ralph, and Milton Wiksell, Principles of Speaking, (Belmont: Wadsworth Publishing Company, Inc., 1965), p. 181.

²Ibid.

The sentence length did vary but they seemed to be short, simple statements of his ideas. He stated:

Why should 'Operation Honesty' be launched first among public employees? There are several reasons.

To begin with, you and I are paid from taxes. ...Further, not only are you and I paid from taxes-- each of us pays taxes too.

One syllable words seemed to be an element of Crosby's style in "Operation Honesty". A 100 word sample obtained by taking the first full sentence on each page until 100 words were considered revealed that 67 of the 100 words were one syllable words.

The interrogative sentence or the question was another aspect of Bob Crosby's style. The question was used on numerous occasions throughout his entire "Operation Honesty" address to forecast what he was going to talk about. For example, Crosby questioning is revealed as he asked:

Why should 'Operation Honesty' be launched first among public employees?...

What is to be done about this inequity, this failure of law enforcement? Is there some easy way around the problem so that we can be excused from solving it? ...But what of the future? Can we get rid of property taxes by persuading the Legislature to adopt a sales tax?...

Could you and I, as state employees, sidestep this problem by persuading the Legislature to substitute some other tax for the money that state government gets from property taxes?

The use of personal pronouns as an element of establishing common bond was also an element of Crosby style in "Operation Honesty". In the introduction "you" was used five times, "we" once, "us" twice, "I" seven times, "my" twice and "our" once. This direct method of discourse was used throughout the speech. In the rest of the address

"I" was used nineteen times, "we" fifteen times, "you" seven times, "my" two times, "our" two times and "us" was used once.

FORENSIC SPEECH--U.S. v. DUANE POPE

Elements of language which reoccured frequently in Mr. Crosby's closing argument in U.S. v. Duane Pope were long, loose sentences, repetition of words and clauses, and use of personal pronouns.

Long and loose sentences seemed to be an element of Mr. Crosby's style in U.S. v. Duane Pope. A sample of ten sentences revealed an average sentence length of 46 words per sentence. The sentence length did vary; there were long as well as short sentences. However, the sentences seemed to be long and loose for the most part. A loose sentence was thought of as one:

...so constructed, both in grammar and in the presentation of idea, that it could be terminated possibly at several points, before the end is reached without violating grammatical sense.³

Loose sentences occurred frequently throughout the speech. For example, Counsel Crosby stated:

I am sure you all know that the defendant in a criminal case need not testify if he doesn't want to, and frequently the defendant doesn't testify. And we made the decision to put Duane on the witness stand and let you hear yourself what manner of young man Duane is. And I had no notion when I put him on the stand it was going to take three days--I guess it took almost three days, which astonished me as much as anybody else. I wanted you not only to have everything we had about him and everything we knew about him, I wanted you to share with me the experience of knowing him, of listening to him, of experiencing to me the indescribable or indefinable quality of Duane.

The loose sentences seemed to be constructed so that they could expand Crosby's ideas. This type of sentence structure did not seem to inter-

³Thonssen and Baird, op. cit., p. 418

fere with Mr. Crosby's message

Another aspect of Bob Crosby's style was his use of simple or common words. J. Mark Wilcox pointed up the importance of simple language in his article on "Summation to the Jury". Wilcox stated, "In approaching the summation, the trial lawyer should keep in mind that the jury is composed of laymen who are not versed in legal verbiage."⁴ Six of the jurors made the observation of simple language when I asked them for general observations about Bob Crosby's speaking. When I asked the other two what kind of language Mr. Crosby used they responded that he used common language. One jury member remarked, "Crosby was easy to understand because he didn't use legal terms"; another juror stated, "He used words that people could understand."

One syllable words were used a great deal by Bob Crosby in his summation. Three different word samples of 100 words were taken by taking the first full sentence on each page until 100 words were considered, the second full sentence on each page until 100 words were considered, and 100 words at random. The average revealed that Crosby used one syllable words 75 times per 100 words in the samples taken.

His understandability may be partially attributed to his repetition of major ideas. As the news media recorded, "Defense Counsel Robert Crosby time and again told the jury, 'The facts defy any explanation other than mental illness'."⁵ Repetition of words and clauses was also characteristic of Robert Crosby's language in this forensic speech. Examples of groupings of twos were:

⁴Wilcox, J. Mark, "Summation to the Jury," Insurance Counsel, Journal, XXIV (1957), p. 218

⁵Lincoln Star, December 2, 1965.

...it is impossible as you know people and as I know people, it is impossible to even consider..

I mean, it just doesn't add up, it just doesn't add up.

...if the face of what you and I know about human nature, in the face of what some of the psychiatrists say.

...impossible, just impossible not to have some reasonable doubt...

...whether you are convinced to a moral certainty, whether you are convinced beyond a reasonable doubt...

Examples of Crosby's use of groupings of three were:

It's impossible. It's impossible for me, at least-- I shouldn't speak for you--it's impossible for me to believe that a boy could thus reverse the entire pattern of his life...

But I look at Duane, I look at his behavior, I look at his life.

...unless you are convinced beyond a reasonable doubt, unless you are convinced to a moral certainty... unless that is true...you should find him not guilty.

By using the device of grouping one can add rhythm to his speech and emphasis to his remarks. However, if one views Counsel Crosby's remarks in context it appeared that his use of this device was not so much for the beautiful sound of the words but to emphasize the importance of what he was saying.

A very obvious aspect of Crosby's forensic style is his use of personal pronouns to establish a common bond. A glance down every page of the U.S. v. Duane Pope text summation revealed extensive use of personal pronouns. Personal pronouns were used extensively throughout his speech. In a seven page sample Mr. Crosby used "I", 50 times; "you", 33 times; "we", 27 times; "me", 11 times; "my" 10 times; and "he" 9 times. Other pronouns used to a lesser degree were, "our", "them", "his", "us", "him", "your" and "I'm".

CHAPTER VII

ACTIO

DELIBERATIVE SPEECH--"OPERATION HONESTY"

The observations of Robert Crosby's speaking were the results a reporters account and my personal observations from listening to tapes of three speeches delivered on "Operation Honesty."

Only one newspaper account told of how the Governor delivered his speeches; all of the other newspapers accounts dealt only with the material in his speeches.

Arch Donovan recorded, "With the fervor, sincerity and zeal of an evangelist, the Governor pointed out instances of law violation and how the citizens co-operating in being honest can meet immediate needs."¹ I concurred with the observations of the news reporter. I listened to three tapes on the subject of "Operation Honesty"; one tape was the Governor's message to the state employees on the formal announcement of "Operation Honesty" and two were speeches to unidentified groups. I also found that Mr. Crosby used a sincere, forceful delivery. His speed or rate of delivery in the tapes I heard was from 130 to 160 words per minute. His volume was adequate but yet intense. The quality and variety of his delivery was pleasant. His words were easy to understand and well articulated. I felt that the most important

¹Lincoln Star, November 21, 1953.

aspect of his delivery in the "Operation Honesty" speeches was the intensity and forcefulness of his approach to the subject.

FORENSIC SPEECH--U.S. v. DUANE POPE

The observations of Robert Crosby's speaking in the Pope trial were the results of my interviews with most of the jurors and my own personal observations at the Pope trial during November and December of 1965.

The jurors that I interviewed had various observations, but they generally agreed on two points about Counsel Crosby's delivery. They agreed that he was sincere, and had a conversational but strong delivery.

Joe Van Derveer in an article on "Advocacy" stated: "...the prime essential for arousing emotions in others is to be moved ourselves. There is one quality that the advocate must have...and that is sincerity."² Seven of the eight jurors that I interviewed stated that Mr. Crosby was sincere and believed in his cause.

Arthur Vanderbilt in Forensic Persuasion stated;

...the ideal voice for public address is the conversational voice... It is never thin or unsustained, but always direct and personal. It requires no little art to talk conversationally using simple language yet with such intensity of purpose and such obvious elevation of thought as to carry with it the conviction that the speaker believes wholeheartedly what he is saying.³

Mr. Crosby seemed to have Vanderbilt's conversational delivery; six of the eight people I interviewed noted that Crosby spoke in a conversational manner. When I asked if his conversational delivery lacked

²Van Derveer, Joe, "Advocacy", Tennessee Law Review, XXVII (1960). p. 526

³Vanderbilt, Arthur, Forensic Persuasion, (Lexington, Virginia: Washington and Lee University Press, 1960), p. 34.

forcefulness, the jurors stated that it did not. One juror commented that Crosby's delivery was relaxed and homey; he noted that Crosby spoke slowly and quite unhurried. A number of those whom I interviewed stated that Crosby was an effective speaker.

It was interesting to note the jurors reaction to all of the lawyers in the Pope trial. They seemed to agree that Rudolph spoke in forceful and intense manner; they agreed that at times his legal terms and use of legal words made understanding difficult. The jurors concurred that D.A. Richling was most like a TV lawyer. One juror termed him a Perry Mason on the prosecution; another referred to him as "bombastic." The news media seemed to agree; they described Richling's speaking as, "...his powerful voice trembling with emotion..."⁴ Crosby was described by the jurors as speaking slowly and quite conversationally.

I observed the jury summation by Crosby in December of 1965. His speed or rate of delivery was slow and he paused at times to emphasize his points. His volume was adequate, but a trifle soft at times. The quality and variety of his delivery was pleasant. His words were well articulated. He achieved emphasis by a more forceful delivery of certain words and by his repetition of major ideas or points. The news media recorded, "Defense Attorney Robert Crosby time and again told the jury, 'The facts defy any explanation other than mental illness'."⁵ It was very easy to achieve emphasis by a very

⁴Lincoln Star, December 2, 1965.

⁵Lincoln Star, December 2, 1965.

slight increase in volume intersity over the soft delivery pattern he used throughout. His gestures seemed appropriate and did not detract from his message.

CHAPTER VIII

EFFECTIVENESS OF THE SPEECHES

DELIBERATIVE SPEECH--"OPERATION HONESTY"

Effectiveness of speaking can be measured by the immediate response and changes in attitude.¹ The response to the early attempts of "Operation Honesty" can be seen in the words of Archer Burham writing in Nebraska Education News. Burham attended the first conference on "Operation Honesty" and wrote, "I left the conference a little awed by the very simplicity of the idea. I was stirred by the Governor's sincerity and idealism. "Operation Honesty" is of the essence of Democracy."²

The immediate response and changes in attitude after the formal launching of "Operation Honesty" were recorded by Arch Donovan. Donovan wrote:

A crowd that overflowed the legislative chamber and into the rotunda Friday heard Governor Robert Crosby launch his "Operation Honesty." Constitutional officers as well as the departments directly under the Governor attended.

Many state employees not housed in the Capitol attended voluntarily.

Prior to the Governor's talk considerable scoffing by state workers could be heard, but after hearing his statements on the reasons for getting equalization of taxes, and how the person making a full return would benefit

¹Thonssen and Baird, op. cit., pp. 355, 357

²Nebraska Education News, November 27, 1953,

by having those now evading paying their full share, sentiment changed rapidly.

Some employees who had threatened before the meeting not to wear badges were later heard to remark that they were wearing them with 'pride'.

Pledges to make 'a full report of all my personal property for tax purposes' were handed the employees upon entering and it appeared that most of the pledges were signed.

Following the meeting a number of employees obtained additional badges and pledges³ which they said had been requested by their neighbors.

According to this report, the immediate response and change in attitude were employees changing their mind about wearing badges, most of the audience signing pledges, people attending when they were not required to do so and people obtaining badges and pledges for their friends and neighbors. Another aspect of effectiveness was reflected by the number of people signing "Operation Honesty" pledges throughout the state. Within a week 2,420 citizens had signed "Operation Honesty" pledges.⁴ Within two weeks, 4,462 citizens had signed "Operation Honesty" pledges.⁵ One interesting example of Crosby's effectiveness is reported by Dodge County Treasurer R.B. Schurman. Treasurer Schurman reported receiving an anonymous note with \$393.00 included which was mailed to the County Treasurers office. The note stated, "May God forgive me for cheating," and was signed "A taxpayer."⁶ Crosby's effectiveness is also noted by Time magazine. Time reported on Crosby's state wide campaign, "Almost everywhere that Crosby went, he was greeted +

³Lincoln Star, January 16, 1954.

⁴Lincoln Star, January 21, 1954.

⁵Lincoln Star, January 27, 1954.

⁶Lincoln Star, March 19, 1954,

with hostility that slowly turned into warmth. Everybody admitted that he meant well."⁷ "Operation Honesty" also had its detractors, Lancaster County Attorney Frederick Wagener, Commissioner Chris Kuhner and State Senator Terry Carpenter.

Effectiveness can also be measured by long-range effects.⁸ Crosby promised that property tax could be reduced if honest personal property taxes were collected. In spite of an additional 22 million dollars in the budget due to highway construction, property taxes were reduced during the next biennium. "Operation Honesty" was no doubt a factor in the reduction of property taxes. The average taxpayer paid \$3.47 less in property taxes to the State Government in the biennium following "Operation Honesty." Taking the natural increase in property values into consideration the over-all cut in State property taxes was \$1,641,493.24.⁹

FORENSIC SPEECH--U.S. v. DUANE POPE

The effectiveness of Crosby's speaking in U.S. V. Pope can be seen through the eyes of the judge and jury.

The jury did not return a verdict in favor of Mr. Crosby's client, however this does not imply that Crosby was ineffective as a defense counsel. I was able to interview eight of the twelve jurors. One half of those I interviewed told me at their own initiative that they felt Robert Crosby did an effective job; others commented that he did a good job.

⁷Time, LXX (March 15, 1954), p. 23.

⁸Thonssen and Baird, op. cit., p. 458.

⁹State of Nebraska, Executive Budget, Biennium 1955-57, Honorable Robert B. Crosby, Governor, p. 1.

Mr. Crosby spent over 539 hours in preparation of the case and 142 hours in Court. These times can be translated into almost 90 days of preparation, at 6 hours per day; almost 30 days in Court at an average of 5 hours per day. These times do not include the time spent in preparation and in Court in the appeal to the Eighth Circuit Court of Appeals. In a memorandum opinion in connection with the allowance of fees and expenses Judge Robert Van Pelt stated:

The defense in this case was well prepared and well presented. The allowances herein are not adequate even though they represent the maximum allowable for the services. It stands in this case as a tribute to the two lawyers here appointed that they willingly accepted and faithfully bore this heavy assignment knowing that they could not be adequately compensated. The Court again commends Messrs. Crosby and Rudolph for demonstrating the finest tradition of the bar.¹⁰

¹⁰ Judge Robert Van Pelt, U.S. v. Pope, CR 443L, U.S. District Court for the District of Nebraska, memorandum opinion.

CHAPTER IX

SUMMARY AND CONCLUSION

In this final analysis of Robert Crosby as a speaker, the questions asked in the purpose section of Chapter I will serve as an outline for the conclusions.

In regard to the first question, "What training and experience has Robert B. Crosby had in speech and speech making?", the following are my conclusions.

The Speaker's Background

The first major influences on Robert Crosby's life were the influences of his parents' church, civic and political activities. Young Crosby had the opportunity to observe the community work of his mother and to observe the community service of his father. He saw his father deliver speeches in court as the elder Crosby practiced law and speeches in the community in connection with the political and service offices that M.E. Crosby held.

I found no record that indicated that Robert Crosby had ever taken a speech course in high school or college. What he may have lacked in formal speech training, Crosby made up for it by his actual speaking experiences. His college years were rich in speech experience. While at Hastings College, he received training from debate Coach Baccus. His 11-1 record in decision debating is some indication of his speaking

ability. He spoke extensively as a member of the Gospel Team and also served as Gospel Team Captain.

His academic honors included receiving his A.B. degree cum laude and graduating from Harvard in the top ten per cent of his class with a LL.B. degree.

His experiences in political speaking began in the 1936 presidential race. Public speaking was also a factor in the civic positions he held in North Platte before and during holding political office.

Lacking money for political advertising, Bob Crosby used speeches to reach the people with his message. Extensive speaking engagements were a part of his campaigns for State Senator, Lieutenant Governor, Governor, and U.S. Senator.

Speeches were used to carry "Operation Honesty" to the people. In addition to political speeches, Crosby delivered untold speeches on many different aspects of civic and political concern while in office and since his return to private life.

Robert Crosby's legal speaking likewise had a long and extensive history. In my consideration his legal speaking began as a young lawyer in 1936 and extended to 1965 in the trial of Duane Pope.

Analysis of Speeches

Selected political and legal speeches were considered in detail in this study. In answering the questions,

What were the characteristics of Crosby's deliberative or political speaking as exemplified by his 'Operation Honesty' speech?

What were the characteristics of Crosby's forensic or legal speaking as exemplified by his summation in the United States v. Duane Pope?

What similarities and differences were revealed

by an analysis of Crosby's deliberative and forensic speaking as exemplified by "Operation Honesty" and U.S. v. Duane Pope?

the speeches were analyzed according to the Canons of Rhetoric: dispositio, inventio, elocutio, and actio. These three questions will be considered together rather than individually.

Dispositio

In Governor Crosby's introduction to "Operation Honesty," he opened with a reference to the theme. In the introduction he attempted to develop interest in his subject, clarify what he was going to talk about and prepare his audience for the rest of the speech.

His thesis statement contained one overall idea, was a complete sentence and was not too long or involved.

The issues of the body were presented in an unfolding pattern of organization in which the audience was not aware of the issue until Mr. Crosby began to discuss it. The arrangement was this-or-nothing in nature where a problem was presented, different solutions were presented and discarded until only the solution that the speaker was advocating remained.

In the conclusion Crosby did not summarize, but he did round out and dismiss his ideas and he made a final plea for acceptance.

In the introduction to U.S. v. Pope, Counsel Crosby attempted to gain favorable attention by praising the jury, establish common ground by an appeal to justice, and give preliminary information of his topic by explanation of "burden of proof" and "reasonable doubt."

The approach to the thesis was wordy, but clarity was achieved in part by the words surrounding the thesis. Mr. Crosby asked, "Now

what is the issue?", he then stated the thesis. After he made the thesis statement he emphasized that this statement was the issue "...from beginning to end."

The organizational structure of the body in U.S. v. Pope was partitioning. He gave a skeleton outline of the topics in the speech after the thesis statement. The divisions were arranged topically since each issue covered a different phase of the speech.

In concluding, Counsel Crosby summarized why he felt that Duane Pope was a sick man. He devoted part of the summary to several pleas for acceptance of the idea that some doubt must exist as to the mental state of his client.

The introductions of "Operation Honesty" and U.S. v. Pope were quite similar. Both introductions developed interest and gave information about the speech. The difference occurred in the development. Crosby spent more time giving general information about the speech in the Pope trial summation. He praised his audience in the Pope trial, whereas he did not praise his listeners in "Operation Honesty." He spent less time on the introduction in "Operation Honesty" and seemed to go right to the heart of the matter sooner than he did in U.S. v. Pope.

The thesis statement in U.S. v. Pope was surrounded by more words, but both theses were clear.

The organizational structures and arrangements were different in the two speeches, however this does not seem quite as important as the approach to the subject matter. In the Pope trial Mr. Crosby used many more words in approaching his ideas and in expressing his ideas.

His wordy approach did not seem to interfere with the clarity of organization and communication; this may in part be due to the use of partitioning organization and to repetition of major ideas.

The concluding remarks in both speeches were similar since both made a final plea for acceptance, however in the Pope trial the plea was repeated several times. In "Operation Honesty" Mr. Crosby did not summarize and in the Pope trial he did. The failure to summarize in "Operation Honesty" may be due to the shortness of the speech and the publicity of his ideas on taxation before the speech.

Inventio

In "Operation Honesty" Governor Crosby enhanced his ethical proof by referring to his position as Governor, by promoting a just cause, and showing that he was well informed and a man of good will.

Mr. Crosby's emotional appeals were made to reputation, leadership, duty, fairness, and wealth. The appeals of the Governor were appeals to social and acquisitive wants. Appeals to self preservation, welfare and sensory wants were largely unused.

Logical appeals consisted of induction and deduction. The overall pattern of the speech was inductive. The issues were developed deductively.

In U.S. v. Duane Pope, Crosby attempted to show that he was a man of character by associating his message with a virtuous cause, justice, by prudently bestowing praise upon his client and cause, by minimizing unfavorable impressions made by his opponent, and by sincerity in his undertaking. Counsel Crosby attempted to show that he was a man of intelligence by being tactful and moderate. Crosby also

demonstrated sagacity by his explanation of legal terms to laymen. He attempted to show that he was a man of good will by tactful praise of his audience, identifying with the jurors and being candid.

The emotional appeals that Mr. Crosby used were appeals to fairness or justice and human compassion.

His logical appeals were inductive; he used a general exposition of the facts from which he drew an inference.

Robert Crosby did more to establish character in the Pope trial than he did in "Operation Honesty". Most of his "Operation Honesty" appeal was to fairness. He showed that he had a true concern for the state and he demonstrated familiarity with the issues of the day. The appeals were at a much lower key in U.S. v. Pope, but they were more numerous and more developed.

Mr. Crosby's emotional appeals were more varied in "Operation Honesty," but the appeals were not as numerous. In U.S. v. Pope Crosby appealed to justice and human compassion many times.

The logical appeals were more formal in "Operation Honesty," whereas in the Pope trial they resembled story telling, i.e. exposition.

Elocutio

Style can be viewed as the way one expresses himself in language. Elements of style which occurred frequently in "Operation Honesty" were short sentences, one syllable words, forecasting of ideas by the use of questions, and the use of personal pronouns to establish common bond.

Stylistic elements in U.S. v. Duane Pope were long, loose sentences, one syllable words, the repetition of words and phrases

in groupings of two and three were used to emphasize ideas. The most striking contrast between this deliberative and this forensic speech was discovered in the sentence construction. The sentences in "Operation Honesty" were short and simple, while the sentences in the Pope summation were long and loose. An element of clearness that the jurors stressed in the Pope trial was the use of common or non-technical language. The long sentence structure did not seem to interfere with the Crosby message, according to the jurors.

Actio

The delivery of "Operation Honesty" was filled with sincerity and zeal. The volume was adequate but yet intense. Governor Crosby was conversational, but this speech was characterized by intensity and forcefulness.

In the U.S. v. Pope, Mr. Crosby was described as having a conversational yet sincere delivery. He spoke slowly and softly. Emphasis was achieved by a slight increase in volume. He was described as being homey in his approach.

Robert Crosby was conversational in both speeches. The major difference in the speeches was Mr. Crosby's intensity, and forcefulness in "Operation Honesty," and his milder approach in the Pope trial.

General Conclusions

Considering the political speech, "Operation Honesty," and the legal speech, U.S. v. Duane Pope, as a whole Mr. Crosby seemed to be much more open or demanding with his requests for acceptance of his ideas in the political speech, whereas in the legal speech Mr. Crosby seemed to have the reserved contemplative approach of asking the jurors

to concur with his requests for acceptance.

His appeal in the political speech was more overt as if he had a right to ask for concurrence, while in the legal speech his appeals were more quiet and subtle as if in the light of reason, concurrence with his views should result.

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APPENDICES

Text

of

"Operation Honesty"

Speech to State House Employees

January 15, 1954

Governor Robert B. Crosby

This is the beginning of the campaign called "Operation Honesty."

Each of you has received a form of pledge reading as follows: "I pledge my full support and cooperation to OPERATION HONESTY and promise to make a full report of all my personal property for tax purposes."

Each of you has received a lapel badge bearing the words "Operation Honesty."

Today in the various state institutions and offices throughout Nebraska hundreds of other state employees are receiving these same pledge forms and badges.

At this very time in most of the court houses throughout the state the county employees are holding meetings and are receiving these same pledge forms and badges.

Why should "Operation Honesty" be launched first among public employees? There are several reasons.

To begin with, you and I are paid from taxes. Before all others you and I should assume the leadership and set the proper example for our fellow citizens in bringing about the equalization of taxes, so that no one carries more or less than his fair share of the tax burden.

Further, not only are you and I paid from taxes -- each of us pays taxes too. I know some of you have wondered whether citizens remember that public employees are also taxpayers. Well, I can tell you that some of my skeptical friends have lately been remembering just that. They wisecrack about as follows: "Governor,

if you can get all of the state employees to make out honest personal property schedules it will certainly be a big help!" My answer is that I am convinced that no group of Nebraskans does a better job of returning personal property than do state employees -- and, granting that many of us have fallen short in past years, the public can be assured that this year we state employees will show the way by doing a 100% complete job of listing our personal property for taxation. Thus, we will lead the way for "Operation Honesty."

Before you sign these pledges and begin to wear the badges I want each of you to clearly understand the reason for "Operation Honesty."

This program is a necessary step in solving what is currently one of the most difficult tasks in state administration: The equalization of tax assessments.

This problem of equalizing tax assessments has an importance far beyond the raising of revenue for government. It involves the integrity of our state Constitution. It involves the enforcement of our state laws. It involves not only my oath of office but that of all public officials. Honesty and decent regard for the rights of our fellowman are bound up in this problem.

Nebraska's Constitution provides, "taxes shall be levied by valuation uniformly and proportionately upon all tangible property."

This provision of the Constitution had been knowingly and deliberately violated by all of us for many years.

At the beginning of last year the Supreme Court commanded the State Board of Equalization to enforce this provision of the Constitution.

Last year the State Board earnestly enforced the constitutional requirement of uniformity in taxation, particularly in regard to real property.

While we are now much closer to the standards set by the Constitution than we were at the beginning of last year, yet the present situation is only a beginning. In fact, we are only about one-third done with the task of equalization.

The greatest present injustice is that borne by home owners in many towns and cities. The agricultural community, farmers and ranchers alike, will gradually realize that its overall property taxes are generally less than last year, although its situation needs much repair.

The plight of the town home owner stems from three causes.

In many towns and cities the greatest cause is a purely local one, beyond the legal reach of myself or any other state official.

That cause is simply the greater spending of tax money by local units of government. Assessments do not determine the amount of taxes -- taxes are determined by the amount of money spent by men in public office. Remember, State Government is spending 10% less of property taxes this year than last year.

The second cause of the home owner's tax misery in many towns is the lack of equalization among individual owners of real

estate. Frequently homes of equal value are assessed on drastically different levels.

This inequality between individual owners is beyond the jurisdiction of State Government because we are restricted by law to equalizing among counties and classes of property on the basis of average assessments. We cannot equalize among individual property owners; that is the job of local officials.

Now to the third cause of the town home owners' tax misery -- the one that gives rise to "Operation Honesty." You must understand what has happened to the relationship between real estate and tangible personal property to appreciate this third cause.

In 1952 real estate, especially town property, was assessed far below the legal level. Personal property was also assessed below the level required by law; especially, personal property used in business, household goods and personal belongings were all assessed absurdly low.

On the average all real estate is now at the assessment level required by law. But much personal property is still scandalously low in assessed value. In short, personal property is not carrying its rightful share of the tax burden.

If we could get a full return of personal property at a reasonable value during this coming assessment period, the tax burden of real estate would be lessened by about 25%!!! This is the real hope of the real estate owner, especially the town home owner: a possible tax reduction of one-fourth on his home! It is

our duty as public servants to see that Nebraskans realize fulfillment of this hope.

As Governor of our state I am humiliated at the amazing examples of inadequate personal property returns that can be recited. In news accounts you have noticed many examples that I have mentioned during the past two months. There is no need to repeat them now. During coming weeks I shall publicly mention many more examples. I want the public to fully understand the low estate to which we had fallen in this neglected area of law enforcement. I want everyone to see the extreme injustice suffered by honest taxpayers -- there were many of them in Nebraska -- because we were ignoring the others who were evading personal property taxes.

What is to be done about this inequity, this failure of law enforcement? Is there some easy way around the problem so that we can be excused from solving it?

For the present, we must assume that existing Nebraska tax laws express the will of the people of Nebraska because the Legislature was in session in this very Chamber until June, 1953, and did not see fit to make any appreciable change in those laws. But, what of the future?

Can we get rid of property taxes by persuading the Legislature to adopt a sales tax? Most people realize that it is ridiculous even to ask the question. A 2% sales tax would reduce property taxes in towns and cities only a small amount -- not more than 10 or 15 percent. And the reduction would apply to personal property as much as real estate. Homes would continue to carry an

undue amount of the property tax burden. And, if nothing else were done, the slight reduction from a sales tax would benefit the property tax evader just as much as the honest taxpayer.

If you want proof from the experience of other states, then look at Iowa or Kansas. Each of them has both sales and income taxes. Yet the per capita property taxes in both those states are almost as much as ours -- not even 10% less.

Please understand, I am not arguing for or against broadening the tax base by other revenue such as sales or income taxes. I am simply stressing the obvious point that such supplemental taxes do not even touch the problem of equalizing property taxes. Furthermore, remember that the Legislature refused to enact a sales tax in 1953.

Could you and I, as state employees, sidestep this problem by persuading the Legislature to substitute some other tax for the money that state government gets from property taxes? If state government were taken out of the property tax field and that source of revenue left solely to school districts, towns and counties -- could we then forget the problems of equalization? Again the answer is "No". Other states have tried this, and today they are as vexed by the problem of equalizing property taxes as we are. Hundreds of school districts lie in two or more counties, and there must always be equalization among those counties. In any event, we cannot escape the constitutional requirement of seeing that substantial justice is done to our citizens by insuring a uniform and proportionate sharing of the tax burden.

The only practical way to solve this problem is to face

up to it squarely. We must behave as good citizens should and obey the property tax laws. This is "Operation Honesty".

We are now beginning "Operation Honesty" so that all of us will voluntarily comply with the personal property tax laws. I confess that for many of us it means the abandonment of a custom of neglect and evasion. However, I have no doubt of the success of "Operation Honesty", because Nebraskans are fundamentally honest. We all want to do the right thing. In part we can find some excuse for past violations because many elected officials have been too timid to enforce the personal property tax laws. I have committed myself to enforce the law against those taxpayers who refuse to cooperate with "Operation Honesty", and those officials who refuse to enforce the law. I think such taxpayers and officials will not be many.

As Governor, I am charged by the Constitution to "take care that the laws be faithfully executed." You, as members of the executive branch of state government under my direction, share that constitutional obligation with me. For that reason I do not hesitate to request that you do as I am going to do.

Now, in your presence, as the chief executive of Nebraska, I sign the same pledge that each of you has. I fasten on the badge exhibiting the words "Operation Honesty." I shall wear that badge during working hours from now until April 20th. I request and strongly urge that each of you do the same.

Together, as public servants, we shall lead a demonstration by Nebraskans that a free people can succeed in self-government. This is "Operation Honesty."

Text

of

the

Closing Argument of Robert Crosby

UNITED STATES OF AMERICA vs.

DUANE E. POPE, Cr. 443L.

MR. CROSBY: Thank you, Your Honor. May it please the Court, ladies and gentlemen of the jury, I agree with my friend Fred Coufal who talked this morning to you for the District Attorney's office that you have been a jury that has been extraordinarily attentive, I think probably extraordinarily patient. I have sat at the desk there, and because of my position on this side of the desk I have had to sit with my back to you most of the time, but like Mr. Coufal I know your names, and like him I suppose I can't help but have been tormented day after day and hour after hour by what kind of reaction has been in your minds and in the minds of each of you.

This case, of course, as we go through the trial of it, becomes quite apparently a very important case, and we now come to the time of the final argument. I know that I have heard some people discuss the matter of how much difference the final argument makes to the jury, because the jury has heard the testimony just as we lawyers have heard it. But you will forgive us if we lawyers can't help but feel that the final argument is a pretty important moment, and perhaps you will understand when I say that this case has become so much a part of my life that I sat a little short of breath by the desk there almost dreading the moment that I was to get up and begin to make this final argument because the case has assumed such a great amount of importance to me and because I am almost terrified about the matter of whether I can find the right words to make you understand my convictions about this case.

Mr. Coufal mentioned, and I agree, that the nature of a trial as we conduct it in this country, and I think we do it very well, is to

have what is called the adversary system, and the District Attorney's office is on one side of the case and the defense attorney is on the other side of the case, and so we argue and behave, I suppose, somewhat like people at the extremes of a proposition. And perhaps in my argument I will sound that way, although to me it won't seem so. It will seem to me that I am presenting to you just what seems to me at least was completely a reasonable proposition. I will say this to you, that I'm sure that all of the counsel here, if we sat down in a quiet, contemplative atmosphere, we would agree that what we want you to do is to bring in a verdict that represents justice in its most enlightened sense in this part of the twentieth century in this wonderful country. We all want justice.

Now, I may just as well plunge right to the heart of this matter, what seems to me to be the heart of it, and that is to-- well, let me discuss this a little without any condescension. I won't conceal from you the fact that we, the lawyers, have had a chance to visit with the Judge about what his instructions will be on the law, and he will instruct you about what the duty of the jury is in this kind of case. And let me visit with you just a minute about what your duty as jury members will be in this case. First let me mention something that we lawyers call the burden of proof. Mr. Rudolph has mentioned it. The government or the District Attorney's office has the burden of proving beyond a reasonable doubt that our client Duane is guilty. Now, those words "beyond a reasonable doubt" may from time to time have fascinated you. There is nothing new

about those words. They are among the oldest words in our system of criminal justice. I think the Judge will charge you that-- something to this effect, that--and mind you, listen to him, not to me, that to be convinced beyond a reasonable doubt means that you must be convinced to something like a moral certainty regarding the proposition of Duane's guilt. Now, that's an abstract thing to say, the proposition of his guilt. What precisely am I talking about? I'm sure the Judge will instruct you that in this case as it has developed there is no issue about whether Duane went to Big Springs and committed the offenses that are charged against him. Of course you noticed that right at the beginning of the trial we filed something called a judicial admission, and you have noticed that at the first opportunity we introduced in evidence the very long transcript of questions and answers that were taken down by Elmer Shamberg, who at times was the court reporter in this case, when Mr. Ruddph and I went out to the penitentiary, what was it, the third and fourth day after our appointment, and interviewed our client to get the facts. I think that transcript runs some 189 pages. And from the very beginning, in our opening statement, we have been at pains to let you know that there is no issue here about whether Duane went to Big Springs and whether he did the things charged against him.

Now, what is the issue? Of course you know what the issue is, and I think the Judge will so instruct you. The issue is whether Duane when he went to Big Springs and did the things charged against him was--and here I want to use my words carefully; I will use a general phrase right now--whether he was legally responsible for what

he did, was he competent to the degree that he would be guilty in a criminal sense of what he did? And that has been the whole issue in this case from the beginning to the end. Now then, in approaching this issue it has seemed to me, and I wouldn't mind if anybody quarreled with me about my analysis of how you approach this issue, but it has seemed to me you can kind of go at it by three routes, this question of whether or not Duane was acting from an uncontrollable impulse as he went through this weird and bizarre series of conduct on June 4. Now, one approach is the one that Professor Rudolph has discussed, and I confess to urging him a little to take that on, to discuss the manner in which the psychiatrist and the psychologists approached this case, and that's a tremendously important way of approaching the problem.

I have told you that I tried to imagine many times during this case--I have put myself in one of your chairs and tried to think how I would be thinking, and for all I know the approach that Professor Rudolph has discussed is the most important, perhaps, in the minds of most of you. But I don't think it's the only approach, although I will mention it occasionally, but I want to avoid if I can duplication anything Professor Rudolph has said. I think there are other ways of approaching this, not entirely different, and I jotted them down here in my notes. There is the approach where you simply stand off after a month and a day, you stand off and you look at this picture, and then you try to measure it based on the experience of each of you, and I can't help but think of my experience, too, our experience as human beings in connection with other human

beings. In other words, how would we have felt about this case if we had never heard a psychiatrist or a psychologist on that witness stand over there. And then I think another slightly different approach is to consider the facts and whether the facts really make it possible to believe that Duane was acting from anything else except a terribly sick mind that robbed him of control of himself.

Now, briefly I am going to discuss both those ways, and first the experience that you and I have had as human beings about other human beings. You can't help but feel, of course, each of us always thinks that others think as we do, but by golly, I'm sure that we have some things in common, and even after you hear the psychiatrists and the psychologists I think we are bound to think to ourselves that each of us is to some extent a kind of an expert about human beings. After all, we have been living with them and we have been dealing with them, other human beings, that is, for all these years, and most of us either raised children, and some of us, including myself, are trying to raise grandchildren, at least to the extent that our children get annoyed with us for trying to raise the grandchildren, and we think we know something about people and young people and children and adults.

Now, in this case we had to make some decisions which I dreaded in advance, and I pray God they were the right decisions. First, the decision about whether to try to withhold anything from this jury, and some of you, at least, must have been impressed with the fact that we had decided that we would disclose everything there was to disclose. Ladies and gentlemen, it's the first time

in my life I ever sat down and read to the jury the lawyer's notes, which is what those were when I had Elmer Shamberg go out to the penitentiary and take down our questions and answers. That was my first thing in writing from my client about what the case was about that Judge Van Pelt had appointed me to be a lawyer in. I never read those notes to a jury before. We had the decision about whether to put Duane on the witness stand. I am sure you all know that the defendant in a criminal case need not testify if he doesn't want to, and frequently the defendant doesn't testify. And we made the decision to put Duane on the witness stand and let you hear yourself what manner of young man Duane is. And I had no notion when I put him on the stand it was going to take three days--I guess it took almost three days, which astonished me as much as anybody else. And, of course, having taken the stand he had to submit to cross-examination. But I wanted you people as one of his lawyers, and Professor Rudolph concurred, I wanted you not only to have everything we had about him and everything we knew about him, I wanted you to share with me the experience of knowing him, of listening to him, of experiencing the to me indescribable or indefinable quality of Duane. And I hope you remember those three days and the manner of his testimony.

If my argument is not entirely in logical sequence please forgive me. I will mention some things that have come to my mind. I recall that Mr. Coufal mentioned this morning that Duane had read in Las Vegas of the appeal by his college president, Dr. Bittinger, when Dr. Bittinger said, "Duane, please give yourself up. It must

be that after you left here something happened to your mind," or something of that sort. The appeal is in evidence, and Mr. Coufal indicated that at that time Duane got the notion that the thing for him to do was to be--was to, as I understood Mr. Coufal, the thing for him to do was to pretend to be insane. Well, I will not impress on you what you know already, that there isn't a single time from Las Vegas on when you can see any single slight indication that Duane was trying to be insane or trying to act queer or trying to do anything funny or that would seem funny. As nearly as I can discover Duane Pope from Las Vegas on was just Duane. When the FBI questioned him, when we questioned him at the penitentiary, that curious but--here-I hope Duane isn't offended. I started to say that curious kind of person Duane is. Well, let me say quickly that I'm curious too, and maybe each of us is curious, but human nature is a peculiar thing. But with regard to Duane, right from the very beginning to the extent of his ability he has been what I--and I will use the words again that popped out of me in my opening statement in the beginning of this case, and I kind of wondered if I should have said it, but he is--I will say it--a compulsive truth teller. In all of the time I have spent with him, days and days, and weeks, and you have seen some of our work papers, so to speak, he hasn't told a falsehood. He didn't falsify to the FBI. The things that Duane doesn't know about are his subjective inward motives and reasons. I will admit Duane doesn't know what makes him tick. I will admit that he asked the FBI, "Why, why?" He asked the psychiatrists, "Why?" and he doesn't know what made him tick, what made him do these awful things.

In passing I want to--and here again I am not being entirely logical, but I want to mention something because I fear it will be mentioned in the closing argument of the District Attorney. And at this time allow me to register my same complaint I register every time I am on this side of the case, that I wish the District Attorney didn't get to close, but that also is an ancient part of our judicial system, that the district attorney gets the closing argument. And so the words that I am saying to you now are the last words as I say them, the last words that will be spoken for the defense, and then the last thing you will hear from the lawyers will be the District Attorney's closing argument. And in that connection, as he argues please--I don't know what to say--don't forget what Wally Rudolph and I said, and I hope that I will be able to cover everything I should cover in anticipation of his closing argument. And I'm afraid something will be said about his confession. Now, two confessions were obtained. They are in evidence. This is a Zerox copy, but I could go over and get the original over there. Do you care?

MR. RICHLING: No.

MR. CROSBY: The original, you will notice, I think is blue ink. That looks different than this. You will remember the FBI first got a confession on the date when he turned himself in in Kansas City on June 11, and you can take a look at that if you would like. It's the bare recital of facts, no motive suggested, no plan, nothing. Obviously when they took it and when they went home afterward and looked at it, or went to their office, where they go, it was--well, it didn't make sense, and so they came back the next day to get

another confession, and this is a good deal longer, and when they finally got it all down before Duane signed it I'm sure they looked at it again and it still didn't make sense. And even when they finally got it done you don't find anywhere in this confession any suggestion of why Duane went to Big Springs or what his motive was. They did get two things in the confession, and you have heard Dr. Macdonald, the government's psychiatrist, tell about it and others tell about it and Duane tell about it. They got in two pages where a plan is mentioned, and I simply want to be sure that you understand the nature of these two pages and the fact that there are insertions after the main part of the confession was written. Now, on page 4--try to remember page 4--they got the first suggestion about a plan. "My plan"--there plans, by the way, both places, page 4 and page 10, are about the same language. "My plan was to rob the bank and then kill everybody in the bank so they would not identify me." They got that in here. I want you to notice that page 4 could have been subtracted, the language that is crossed out at the top of page 5 could be left in, and the statement will read perfectly. I mean, you can go on from the bottom of page 3 to the crossed-out portion at the top of page 5 and you get all of the facts and all of the continuity. And so they had to go back and put in this page in order to have Duane say something about a plan, and the best they could do is to say to Duane, "You had to have some reason for killing these people. Didn't you do it to keep them from identifying you?" And poor Duane, that sick, schizoid situation, he says he didn't tell them that, but they told him that was why he did, and so they put

it in. And he didn't much want to sign the confession, but they told him he ought to, it wouldn't make any difference if he didn't sign it, they could still testify, and so he signed it. And you heard Dr. Macdonald, the government psychiatrist, say that he regarded Duane as having told him the truth, and Dr. Macdonald agrees that this was not a plan that Duane suggested to the FBI. And the same identical thing on page 10, not quite as well done. Page 10 looks like this. The top part is written on, but if you read from the bottom of page 9 to the top of page 11 you will see that the continuity is perfect, and so then page 10 was inserted to have Duane say again, "That kind of a plan." Now, the matter of fact is that as Duane has testified from the stand, as the psychologists have testified, this thing was done apparently without what you and I would call planning. Preparations, yes; acts engaged in in advance, but never any deliberative, ordinary, normal kind of planning. The route you get there, the route you leave by, what is the bank like, how many people work in the bank, I mean, a total absence of that kind of a thing.

Now then, going back to the thread of thought I want to first talk about our experience, yours and mine, with human beings. Just as Mr. Coufal mentioned, I hope not once again to review Duane's entire life, but I am going to remind you very briefly of what we first did. I counted up. We got 37 people who had known Duane, and we did it a little by design. We got high school teachers, we got high school classmates, we got Roxbury businessmen or the former employer--I will mention him specifically in a minute, but not for long--we got McPherson College professors, McPherson College classmates,

we got some other employers. We tried to get the people who had the best opportunity to know Duane. We tried to put them on the stand one after the other as fast as we could, but we wanted every one of you to have as complete a picture as could be given to you of Duane Pope as he was known in the only way that you and I ever know people, by observing them from a number of different angles. And I think you agree with me that if any one of us was subjected to that test it would be interesting, wouldn't it? If somebody wanted to find out about Bob Crosby, why, if they got my high school teachers, my high school classmates and my college teachers and my college classmates and some of the businessmen in North Platte and some of the businessmen where I went to school and then, since I am a little older than Duane, if they got a few people who have known me since, and if they had all of them testify under oath and if they got a good sampling of each you would know more about me than perhaps I would want you to know. You would know about me as much as is possible for ordinary mortals like you and me to know about somebody. So they took the stand one after the other, and you will remember as they went across the stand there was Mr. McWilliams, superintendent at Roxbury, a nice, retired superintendent now, and indeed he remembered Duane and he had pictures with him and he had the school yearbook with him. And I think it was he who mentioned how Duane would be playing in football, and if he blocked somebody extra hard, especially a smaller person, Duane would turn around almost in time to catch him as he was falling. And Mr. McWilliams told you about what a fine behavior Duane was, and his considerateness. And so you heard it from Mrs. Magnussen, and you heard it from, oh, you

heard Dennis and those people that are bothered so much about whether they should have persuaded him. I'm thinking of Dennis Brunner and his wife, the high school coach, and his wife you remember was a teacher too, and I can well imagine their wondering if they should have urged Duane to go to college. I mean, there was something that changed his life. And they testified. I think it was Mrs. Brunner said they felt toward Duane just like their own son. And you heard the classmates, you heard Mr. and Mrs. Wendell Burch. You remember Endell Burch is working on his PhD at the university at Manhattan, Kansas, and Mrs. Burch, and you heard from the little--who was the sophomore girl and who was a senior, Hanson, Wauneta Taylor Hanson, and she told about how nice Duane was and how he didn't cut up and didn't misbehave like the rest of the boys, didn't smoke and didn't drink, didn't drive his car fast around the corners. You heard from Ronnie Weiberg, one of his schoolmates; you heard from Warren Schmidt, from Margaret Ann Schmidt. Now, Margaret Ann Schmidt I think told about Duane as a student and person after person after person described what kind of a boy. I'm not so concerned, perhaps about the fact that he didn't get in trouble or didn't misbehave, but some of them used the word gentle, a thoughtful boy, not just quiet, and to be sure he never lost his temper and he never exploded and he didn't betray frustration like the rest of you and I do. But there was more to it than that. One of them, was it Wauneta?--one of them, you remember, said that Duane was the kind of boy that other mothers told their boys they wished they would be like. Do you remember that? And Duane was a gentle, sensitive, refined boy, that kind of a boy. And so you heard, well, the businessmen in Roxbury. You heard the banker from whom

Duane had borrowed money and paid him off, and the banker told about the good reputation of Duane. He didn't hang around. And, oh, the service station man, a typical service station man in a little town of 200 people. Nick Schoning. Nick had a service station less than a block, as I recall from the high school and grade school, all together, grade school and high school in Roxbury, and he watched the kids grow up. It makes me think a little of my grandfather in the town of Sutherland, Nebraska, who used to be the janitor, and you see generations of kids go by if you are close to the school. And Duane stood out as one of the fine boys, one of the very good boys. And you heard from--I think Mr. Coufal mentioned him--you heard from Clark Ingram, I think his name is, that neighboring farmer that operates several farms, I have forgotten how many, and he testified he had hired a hundred men in his life and the best of all was Duane. And he described Duane and Duane's gentleness with animals and Duane's punctuality and so on.

And then you go to college, and I'm not going to bore you with a whole lot of this, but you get the same thing in college. I do want to mention one thing. I listened carefully as Mr. Coufal talked, and we mustn't be misled. Now, Duane was liked and admired by his classmates at Roxbury. Now, remember that was a class of 10. You remember Myron Messenger--yes, Myron Messenger was in that class, and that Myron roomed with Duane a half year there at McPherson College, and I recall when Myron was on the stand this matter came up of Duane being the class president. You remember Myron said, and visualize a class of 10 in a little town of 200, yes, Duane was president because

he was the one that nobody disliked. In small groups, you know, sometimes people get elected president because in a small group quite a few of them get so that maybe they have a few enemies. Duane did-- Mr. Coufal made the point was called by Margaret Ann Schmidt a leader, but this was a small group where all of them had jobs to do. It is significant to me that when Duane got to a slightly larger environment, McPherson College, not very large either, a small college, that even that slight increase in largeness was enough so that--well, I hope Duane forgives me--but he didn't have what are commonly called leadership qualities. He had qualities to make people like him: gentleness and kindness and thoughtfulness, quietness, and never wanting to hurt anybody else's feelings, but in McPherson College he never got elected to anything, and it was just a little tougher. But there in McPherson College-- you heard from his professors, professor, oh, Frantz and Rothrock and Willems, the professor in metalwork, and so on, all of the rest of them, I can hardly name them all, Dr. Frantz, the dean, who would see Duane working early in the morning and visited with Duane, and you got the same story from these professors, Duane was one of the finest. You heard from his college classmates, not only the boys, Jamie Oxley and what is the name of the Brown boy, Brown, and the roommate, Nick Petrucci. You heard from--well, you heard from Ramona, Ramona Lowe. I agree with Mr. Coufal that Ramona still cares for Duane. She told about him, and how she hoped she could eliminate--what did she call it?--the confusion in his mind or something like that. She sensed, she sensed the problem. She is one of the few--maybe she's the only one we had on the stand that sensed the problem, Ramona. Her father took the stand. He sold him the

insurance policy, and admired Duane because he wanted to have an insurance policy. I'm a skeptic, a little hard for me to think that Ramona's father didn't take advantage of the situation, but he said he didn't, that Duane was interested and wanted a policy and wanted to protect his parents. And you heard from the banker in McPherson who told about how Duane had looked after his credit. What was the fellow? Anderson, the banker Anderson, whom Duane had owed as much as \$900--I'll come to that in a minute--and paid it off and then got another little loan. And you heard from Mr. Ruser, the custodian of the grounds at McPherson College. I was surprised on the stand that Mr. Ruser allowed himself to say that--and most of what our witnesses said I thought I knew what they were going to say--that Duane was the best student he ever had work for him. Now then--well, you heard from the coach, both coaches, Sid Smith and what was the other, Don Widrig. I think it was Sid Smith testified he would trust Duane with anything he had. You heard from Norman Adrian, the employer, with whom Duane went for three summers on the harvest, and Norman told that very understandable story about how Duane was the boy that he would send back to get--well, you remember they had a pickup they had left behind, so Duane and Mr. Adrian's teenage daughter could go back in one vehicle and then one would get in the pickup and then drive it back to catch up with the rest of them, and Duane was the boy he chose to do that.

Now, we have all of this testimony, and I just barely touched on it, and I pray that you will remember it, and I'm sure you remember it. We had all of this testimony, and like any lawyer, I'm sure, in

preparing a case, as I began to become acquainted with this case, and you can perhaps sometimes put yourselves in my shoes, as I become acquainted with this case I was tormented by that question that torments a lawyer every time, and especially in this case. "Can this be true? I mean, look, there must be a crack in the armor somewhere." Well, if there are cracks they are pretty small, and most of them, I guess all of the cracks, have been disclosed by Duane himself, not by the prosecution. He had five, six cans of beer in his lifetime when he was on this harvest session. There was a girl there at the beginning of his--what started I think in the summer before his senior year, some girl, I'm not going to mention her name but you can read about it. The only way they know about it is that it is in that question and answer transcript of 180-some pages that Professor Rudolph and I took three days and four days after our appointment in this case, and Duane told all about it. And she was engaged, but she came to the dormitory and had the housemother call him and had the date with him and pursued him, and that bothered him, that was bad. It didn't last long. I don't know how many dates altogether, maybe four or five. There are those little episodes. Golly, I think I have named them all. Wauneta, a pathetic, ironic kind of thing. In criminology class with Wauneta she would sit across the other side of the room, and finally at the end of the semester in January he got up nerve to ask Wauneta for a date--Melinda, I mean, excuse me. I said Wauneta, Melinda, got up nerve to ask Melinda, Melinda Hansen, for a date, and they had two dates and a half I about call it, they had two dates and they rode around one day, and then she went down to Texas where she

had a job, so she told Duane. And the prosecution, the District Attorney's office, and we are agreed, you remember we stipulated on this being true because we have investigated, both of us, and so Duane thought she was down there working. And he wrote to her and she wrote to him, and they wrote more and more. You remember Duane has said on the stand that he finds it easier to express his thoughts in writing than in conversation. And so awfully close to having a romance grow right there by correspondence. She would write to Duane and he would write to her, and expected her to come back when her job was finished down there sometime in June. And let me say here in connection with this psychiatrist Dr. Smith's testimony that there isn't a suggestion in the record that they were betrothed. I mean, Duane hadn't asked her to marry him, there wasn't anything like that. And don't forget that in the last semester that one of the fellows Duane knew arranged this date with Gloria Benfield. She testified on the stand, and she was the one, you remember, that told Duane he was too repressed, he was too much inside himself, that he ought to let loose. He made her feel a little afraid. You remember that witness. He had a couple of dates with her. And Dr. Smith mentioned a Kay Kyle, I think it was, with whom he had a couple of coffee dates the last week in school, the Saturday night date. Sure he was writing Melinda every day and had a high regard for her, but they weren't about to get married or anything like that. Now we have this picture of this kind of a boy. We have made a full disclosure. If you know anything bad about Duane we have told you. Remember, the District Attorney hasn't found a single tiny kind of evidence to discredit Duane Pope up to

June 4. Now, I simply say to you, friends, that--and here's this, and maybe you will think I'm clumsy, but it's the way I think. I simply say to you that it is impossible as you know people and as I know people, it is impossible to even consider that anybody, including Duane, could be that kind of boy up to June 4, gentle thoughtful, trustworthy, dependable, honest, almost too scrupulous about obeying the law, paying his debts, all of those standards that we have for human behavior, it's impossible for a boy to be like that up to a certain moment and then become completely the opposite and to do a horrid, terrible thing like he did. It's impossible. It's impossible for me, at least--I shouldn't speak for you--it's impossible for me to believe that a boy could thus reverse the entire pattern of his life and do the horrendous thing he did and be anything but terribly, terribly ill in his mind. He must have been acting under some terrible compulsion that he couldn't control, because everything he was doing was against all of the instincts and inward patterns that he had for his whole life. And you can't tell me those 37 people were fooled or that I'm fooled. And I think Dr. Bittinger was right. "Duane, give yourself up. Something happened to you." And something sure happened to him.

Now I want to approach it in another way. Did you notice when I started?

THE COURT: Yes, I can tell you. You started at 1:19. You have about 26 or 27 minutes left.

MR. CROSBY: Thank you very much.

Now, I mentioned another way of going at this, and I don't think it's really a different way, and to some extent Professor Rudolph has

touched on it. What did I write down this time? I said, "The facts defy any explanation except severe mental illness." Well, you may say, "What's Bob Crosby talking about, the facts?" But I'm thinking about some different facts, and here again I won't spend a great deal of time because Professor Rudolph has reviewed them somewhat in connection with the psychiatric testimony, but I'm thinking of the facts beginning along in May of this year. Now, again I say to you that I am approaching this not from the technical psychiatric point of view, although I have come to have a high regard for it. Medical practitioners who study the ills of the mind I think are entitled to the highest regard. But also I think that in this field you and I can consider our own understanding of human affairs, because after all each of you, you and I, we have had to go through stresses and strains, we have had to live with people. Now, I want to mention two things, first the lack of motive. Inevitably, and especially in this kind of a--here I started to say this kind of a case. That's an inappropriate thing for me to say. Do you know why? I haven't heard anybody suggest--how many psychiatrists did we have on the stand? Six. Not one of the psychiatrists even mentioned another case like this one. I suggest to you, I thought about it in my own connection with being a lawyer, that indeed it will be interesting to know if there ever was a case that would fit into the same category or class as this case. Strange, unique kind of situation that we face here, and so I shouldn't say this kind of case because I don't know of any others to classify with this case. This is a unique situation, and one thing we lack is motive, and I certainly thought that before I got to this point some kind of a motive would emerge. Like Professor Rudolph, I admired that highly

educated Dr. Macdonald who testified for the prosecution. I don't agree that he is right. I thought some of his testimony came from his lips reluctantly. He admitted the strangeness of this case. He said he could discover no motive. Here again I trust that I am a reasonably adequate, ordinary working lawyer. I knew at the beginning that one of the problems was motive. I'm sure that there has to be an argument and will be an argument to you about motive. I looked at the indebtedness in this case. I thought, there is no sign that Duane was worrying about his indebtedness, but could that bother him? I want to call one thing to your attention. Perhaps I shouldn't, because I don't know of a single thing that indicates that Duane worried about the indebtedness, but as long as we had it in evidence I did this. I checked to see how Duane's indebtedness on June 4 compared to earlier times in his life when he had indebtedness. That means something to me, maybe to some of you. I checked back to March 30, 1964. That was after he bought his tractor--Caterpillar tractor. I should say Caterpillar. Tractors are one thing, but a Caterpillar is a different thing, so I am led to understand, much bigger and more powerful machine. On March 30, 1964 the evidence shows Duane owed the McPherson Citizens State Bank of McPherson \$900 and on that same day he owed the Roxbury State Bank where Ivan Henne and the Hennes are \$200, a total of \$1,100. And those were not installment notes. I would have to go back to look at the records, but they were payable on a date certain. \$1,100 on March 30, 1964. That was the second semester of his junior year when he was working at the gas station \$1,100. He paid it off. Do you remember? Mr. Anderson told about it. The final payment on that big

note to the McPherson Citizens State Bank was made when Duane sold his Ford and got \$400 from it. He sold that Ford before the end of his junior year, got \$400 and turned it over to Mr. Anderson, so he had it paid off. On June 4 this year, the date that we are interested in, his total indebtedness was \$890. Now, compare that \$890--I intended to get a blackboard, don't need it, the blackboard is over there. But you can see, \$890 on June 4 of this year compared with \$1,100 on March 30, a year and two months earlier. Now, he had cosigned that note with his brother for Dennis's Caterpillar tractor, so I put a note about this, a note that Duane had cosigned with his brother. That, you will remember from Mr. Ivan Henne's testimony, was a note on which only \$325 still remained due, and you remember Mr. Henne told us that it was paid \$200 ahead, and you will see that on the note, that mostly Dennis, I guess, but Duane had helped. They had paid that ahead \$200, so the next payment wouldn't be due until September 19 of this year. Oh, well, I mentioned it to you and maybe I should. It's impossible to imagine that he was worrying about his debts. I have anticipated what I was going to say about girls. I think some doctor without any plausibility at all, I think it was Dr. Smith, said he must have been worrying about--I guess the idea was--it was a little vague to me, he wanted to get a bunch of money so he could have a lovely love nest for Melinda to come back to or something like that. And I'm not speaking derisively. I honestly can't put it any better than that. And I have told you already why I can't find anything anywhere to indicate that he was feeling a pressure to get money for Melinda. He hadn't asked her to marry him;

he still noticed other girls and so on. I considered the matter of whether or not Duane is a fellow who just plain is greedy for money. Now, every one of us has had enough experience to know that certainly there are some people pretty greedy for money. But I look at Duane, I look at his behavior, I look at his life. He's a farm boy, and let me say to you, and I don't pretend to be a great sociologist or anything else, but I have read repeatedly that if you take farm boys as a group you will find less crime, less delinquency among farm boys than any other group of boys. Here we've got a farm boy from a little town going to a little church college where you have to go to chapel twice a week, and Duane did. Duane had lived simply all his life. I can't discover he had any extravagant tastes. Gosh, I've got some, but Duane, he loved to work on the motors of old cars. I don't find that he was a faddist about clothes. He didn't smoke, he didn't drink, he--well, he just wasn't extravagant. Nobody in the whole list of 37 witnesses ever mentioned anything that would indicate that Duane was greedy for money. And basically, beyond that, and it came our time and again, Duane liked to work. Poor kid, he didn't really like college. If he had his choosings he probably would be a farmer. That's what he said, like to be a farmer when he got the military thing out of the way. And he liked to work, he enjoyed the gas station, he enjoyed the Sanor Construction Company where he worked his last year in school, he enjoyed working on the harvest group. He liked to work, and he could make money, and I don't find that greed for money was a motive, or a desire for extravagant living. And so here you have a total absence of motive.

And then you have this crazy series of events that came along where, well, it's almost like some other world. Professor Rudolph mentioned the dreams, and I almost smiled when he talked about it. It would have been strange indeed if a couple of lawyers-- and you are better than I am, Wally--but it would have been strange indeed if I interviewed a client the first time and asked him about his dreams. I have never done it with clients before. And there is nothing about dreams in that first statement. I was trying to find out what happened, what Duane did and where he went and so on, and where he lived and who his folks were and where he went to college and all of that, ~~what~~ girls he had known, but I certainly wasn't asking him about dreams. But here you are along in May or April, I don't know, and mind you, I don't hear anybody saying that there is any fiction about these dreams. The government psychiatrist, I mean Dr. Macdonald, may try to explain it, but they were very curious dreams, different than Duane had had before, of a daydream of people on the floor being shot, pointing his gun at Dennis. I don't know, I'm not a psychiatrist, but I know that these were different experiences for Duane. The year before he hadn't had the impulse to throw Eric in the pond, and something was happening, some deep down in thing. And don't ask me to explain the subconscious, but something was happening. And then Duane began to do queer things, and mind you, the story he has told to everybody has been invariably the same. He buys that gun on May 15, and Dr. Macdonald seemed to believe it too, the government psychiatrist, to shoot turtles, kind of a thought, and he got interested in a silencer. I have looked at the notebook. I

urge you to look at it. I can't myself tell when he made those drawings except he made them on the back of a page on which some other notes were, so he might have leafed through and made them on any page in the book. It's the second semester in school. That's the notebook. And he thought about the silencer and he worked upon the silencer and he had a part of the silencer in his college room, and his roommate asked him about it. and Jamie Oxley asked him about it, and Mr. Brown asked him about it and Mr. Willems, the instructor in industrial arts saw it in the laboratory at the college and inquired about it, and Duane's father said he worked on the silencer. And then this thing seemed to grow, and there was this curious split life. Well let's start. I mean, the Saturday night, what would it be, the--well, he buys the gun on May 15. I don't know when he starts working on the silencer, sometime after that. That last week he has final exams. Saturday before the last week as I understand it Kay Kyle and he had gone to the movie. On Tuesday of that last week the Hutchinson fellows were going to have a tryout for the Hutchinson softball team, and Duane went out right there at the college and they said, "Duane, we want you to play." On the 27th, that would have been Thursday, he bought the second gun at Crabb's town & Country store, as I recall it. I believe it was Mr Crabb who spoke highly of Duane and the family. He bought that gun. The first softball game that he played in was that same week of final exams. Probably the exams were over that Friday night. Two days before graduation he went to Hutchinson and played in the first game. Sometime in there he is working on the silencer, maybe

putting it on the second gun. He graduates on Sunday, the 30th of May. They have the church, the religious exercises in the morning; in the evening they have the commencement exercises. He helps Nick move out of his room. That day or the following day, I'm not clear which, he put the blacking on the silencer. It was the following day, on Monday, when he and Dennis--they heard about or knew something about a tractor at Brewster. I looked at the map again; it looks like about a hundred or more miles away from Roxbury. And he and Dennis on that Monday went out to Brewster, bought some gas at Oakdale, I believe, or Oakland or something, the gas ticket is there, and looked at an old antique tractor. This is on Monday. And he comes home. Maybe it was that night he put the blacking on the silencer. And he gets up the next morning, and either he or Dennis had read about some part that was advertised for sale at Salina for for some of the farm equipment. I have forgotten the name of it. A winch, I think it was a winch. So they go to Salina and they go to the place where it is advertised and they look at the winch, and then they go down the street and they are going by the Hertz place, and so Duane stops, apparently somewhat on impulse, and Dennis stays in the car and Duane goes in and finds out how to rent a car. Duane had never rented a car before. And they go on, and Duane buys a baseball mitt. They had a practice that night, and of course they had a game coming up Friday at Hutchinson and he buys the mitt. And somebody ahead of him buys shells and he bought shells. And then they had to go home because Duane doesn't have his shoes, so from Salina they drive to Roxbury out to the farm, Duane gets his baseball shoes. From there they drive to Hutchinson. That night, this is Monday night, Tuesday night,

they play baseball, and on the way home, gosh, a couple of kids, they stop at a pizza place or something and they have something to eat--miniature golf place, I think it was, and they have something to eat, and they get home a little late, and Duane gets up the next morning and he is around the place, and he begins to make a breastplate. I do trust that you folks will go and take a look at what he made the breastplate out of. It is, as Professor Rudolph found out when he was helping me carry it--well, I think some of you men can't do what I did just now, lift it from that point by grasping it. That thing weighs, I don't know, that weighs 200 pounds. And he cuts that off and makes a breastplate out of it. Try to lift it yourself, a heavy--my, what a thing to put on you. And he welds some things on it. I mean, listen, my friends, he's way out, if you will allow me a colloquialism. That thing must weigh 200 pounds. I just have to--and he cuts off enough--you can see how much he cut off at one end. He puts it on him, and he doesn't have the belts at home so he doesn't try it, but he makes the loops and everything. And when he gets the breastplate finished--this is Wednesday--something made him go, like a signal, and he gets his things together and borrows the \$50 from his dad and he goes, acting for all the world I think like a kind of a robot. No, he does things, he makes preparations, but there is no sensible planning or anything. Going to Big Springs. He had only been in Big Springs about twice in his life. He didn't know the bankers, he hadn't looked at the bank to see how you would rob it and what the hours are of the bank. He gets in his car and goes to Salina, registers at the Log Cabin Motel, writes a letter to

Melinda, goes to bed, doesn't sleep very well, gets up quite early the next morning before the Hertz place is open, goes over to the Hertz place and finally they get there, the manager gets there, and then he rents the car. He understands perfectly that the car would record the mileage that he has been. If he is going to travel 400 and some miles to Big Springs that car will show it. And he rents the car and he finds out he doesn't have his current driver's license. Apparently Duane is--they get them on their birthday. His birthday, is what, February 8th, I have forgotten, in February. He sent his money in all right, the new license according to the records had been issued, but he didn't have the new one, he had the old one, so there was a hassle over that, but the Hertz guy at the Hertz place finds out he has the license so he gets the car and he drives south from Salina, the opposite direction he's going to go, he drives south to McPherson, pays the 50 cents so that in due course he will get his duplicate license, and if he doesn't get it he gets his receipt on the 50 cents, goes back to Salina. You will remember that earlier he had done these curious things. He had stopped on the way to Salina the day before. He stopped at a little store, he bought underwear, new underwear, three shorts and three uppers, and a tie and a new shirt like he was--well, if I say some things that sound ridiculous it's because I grope for answers--like he was wanting to be well dressed for his funeral. New underwear and everything. And so he got those the day before. Then on the day he went to Big Springs after he got the Hertz car and he went down to the opposite direction, down to McPherson and applied for a duplicate certificate, when he

got back to Salina he bought a different tie.

And then he starts out to Big Springs, with no map, and doesn't to this day know quite what route he took. The FBI told him he went through Phillipsburg. Buys gas on his credit card--you know the story--Ogallala, Brule, did what he did. There is, my friends, and I don't believe it's because I am his lawyer, there is something kind of unearthly or robotlike here. I mean, it just doesn't add up, it just doesn't add up. And I suggest to you that on both bases, on the basis of his background and our experience with human beings and on the basis of the things that happened this boy was desperately ill in his mind, and Dr. Modlin and Dr. Baldwin are right. Don't ask me to tell you what schizophrenia is, but I know this boy was behaving in a way that was exactly opposite to all of the training and behavior of his whole life, and he had to be ill, and if he wasn't ill and if he wasn't acting under compulsion so that he couldn't control himself then I don't know anything about people and I might as well give up predicting anybody's behavior. The only way I can get through life is to predict how people are going to behave, and if people all of a sudden can reverse themselves like this and be well and be under perfect control of their impulses, then I tell you it pretty well shoots everything--or pulls the rug out from under everything I know about how to behave in life. I say to you that this is a classic case of a person who couldn't control--during this period of time couldn't control the impulse that was driving him, a crazy, bizarre, other-worldly kind of impulse that he couldn't resist.

Now let mention a few circumstances at the risk of being repe-

titious. I of course am not a psychiatrist.

You will tell me on five minutes, Judge?

THE COURT: Yes. You have nearly 15

MR CROSBY: Oh, thank you.

Let me mention these doctors a minute more myself.

THE COURT: I misstated your time a moment ago. You have nearly 15 minutes.

MR CROSBY: I'm going to mention the doctors a minute, and remember what Professor Rudolph said, because he knows a lot more about psychiatry than I do and a lot more about psychology and a lot more about the doctors. But I listened carefully while they were testifying, and I am impressed by a few things. I am impressed by the fact that the District Attorney's office put on the stand after knowing what our doctors had said a psychologist. I agree Professor Rudolph is not very well trained, but that psychologist without much training reported to Dr. Farrel, "This is a schizoid personality." And you remember how we found out. When the direct examination was completed I asked Mr. Fauth if he had made a report and he said yes, and I asked for a copy of the report and he furnished it--or maybe you did that, it doesn't matter--and he furnished--I guess Professor Rudolph did, and he furnished Professor Rudolph with his report and so on, and so we looked at his report. He hadn't testified about it in direct examination. There it was in black and white. He told Dr. Farrell, Mr. Fauth had, Dr. Farrell hired him, he told Dr. Farrell, "He's a schizoid personality." and Mr. Fauth had to say yes, it's in his report that

he had in his file.

Dr. Macdonald, about whom Professor Rudolph talked quite a little and whom the District Attorney put on the stand said this was a definite schizoid personality, said that with regard to repression of hostility and aggression he said that this was a--their own psychiatrist said that this was a severe--I better look, make sure I use the right word--said that this was--it was on direct examination, something about a severe schizoid personality. It's where he discusses those. "Very true of Mr. Pope." that's what he said, "inability to express hostility. Very true of Mr. Pope." That was when Dr. Macdonald was discussing these attributes of schizoid personality. Of course, Dr. Baldwin, a Lincoln psychiatrist, and I hope you will forgive us for getting a home town psychiatrist. We both agreed we wanted a Lincoln psychiatrist. He lives here. When he testifies on the stand he is not going to step down and go back home to some far--off place. He lives in Lincoln and may be seeing some of you. And Dr. Baldwin, a tremendously well educated psychiatrist, younger, about--I don't know how old, 30, 35--said that this was definitely acute schizophrenic reaction. But the thing I want to mention, Dr. Modlin, of course, from the world famous Menninger's Clinic, and he himself has a very wide reputation, 30 or 40 publications, head of their law and psychiatry division there, says it is definitely acute schizophrenia. But I want to mention the fact that Dr. Modlin and Dr. Baldwin both said in addition that now Duane needs medical treatment. And then I want to remind you that the government psychiatrist, Dr. Macdonald, from the witness stand on cross-examination

said that right now, yes, speaking of Duane, "Yes, he could benefit from psychiatric treatment," speaking of Duane right now. And Dr. Macdonald further said, "I regard this crime as a sick act," the government psychiatrist. And I am a little impressed, and forgive me for getting into your field, Wally, but I listened to these psychiatrists and I get the feeling that they all agree Duane is sick. Maybe I shouldn't say all, but some of the government psychiatrists and both of ours agree that Duane is sick. Well, the government psychologist agrees that he is a schizoid, they agree that Duane is sick. I suppose that he was sicker on June 4. The question comes down to how sick was he. Well, I didn't intend to get that much into the psychiatrists because I admittedly don't yet know enough about it, I suppose, to discuss it. But trying to put myself in your place--forgive me for doing it--I'm telling you that it would sure be coming through to me that maybe this is only a matter, if there is any argument we lawyers are having at all, it's a question of how sick when you get it all settled.

Now, then, more often than I have I wanted to repeat what the Judge will instruct you, that unless you are convinced beyond a reasonable doubt, unless you are convinced to a moral certainty that on June 4 Duane was able to control his impulses in connection with the things he did at Big Springs, unless that is true the Judge will tell you you should find him not guilty. Now then, that's the burden the government has. That's our American system. I have tried to me-- and admittedly I am an advocate and on one side and so on, and I have told you how we lawyers get, but I have sat in that chair there at the table and I have tried to think what could keep jurors--I am imagining

myself a juror--what might keep you from saying instantly what seems so clear to me, that it is impossible, just impossible not to have some reasonable doubt about whether he could control his impulses, manage himself, on June 4. It seems impossible not to have some reasonable doubt about that in the face of all this evidence, in the face of what you and I know about human nature, in the face of what some of the psychiatrists say. I have asked myself what might, what might lead you folks to still decide that rather than find him not guilty you would find him guilty. I have tried to think, and one thing that came to my mind was--and I think I should discuss it--the terrible nature of what Duane did. I don't know how far any of us is from--I look at myself occasionally, but we would like to think we are civilized. I don't know how civilized. When something terrible is done--I laugh at the--well, I'll finish what I was going to say--when something terrible is done I suppose it's hard to repress a feeling that might be characterized as revenge. I mean, doggone it, if somebody does something awful bad somebody ought to pay. Mr. Coufal used an expression which I think is proper but ought to be handled carefully, make the punishment fit the crime. I think I would rather say let the punishment be determined with respect to the person we are talking about. We are pretty civilized. Of course, Dr. Macdonald, the government psychiatrist, told--golly, he made me think of myself, about the husband that comes home and he has had a bad day at the office and kicks the cat and so on and slaps the child. Well, we all are a little likely to do that, but here we are dealing with a horrible, horrible series of acts. The Kjeldgaards, such fine

people out at Big Springs, and that dear lady who was killed and that fine young man, Franklin, who came here and testified, and you could see the bitterness in him. Well, my friends, I haven't yet thought of just the words I ought to use. It's hardly adequate to say what's obviously true, that Duane and the parents and I and Professor Rudolph and all concerned are as sorry, as sorry, as sorry can be that those deaths occurred and the maiming occurred to Franklin, a terrible thing, and in our life in the peculiar age in which we live we see terrible things happening. This is one of the worst, but still I implore that you don't act from a feeling that you have to do something bad to Duane regardless just to even up or for revenge or because it's expected of you. I know you won't.

THE COURT: Five minutes.

MR. CROSBY: Thank you, Your Honor.

I know you will consider the question, as the Judge will tell you. I pray that you listen to the instructions, that you will consider carefully as jurors in such an important case whether you are convinced to a moral certainty, whether you are convinced beyond a reasonable doubt, that on June 4 Duane could control his impulses that led him to do this thing, or whether at that period of time he was out of control and doing the exact opposite of everything that his life stood for.

I thought of one other thing that might deter you, and this is the last thing that I can say if I can find the last of my notes. I wondered if I were in your shoes what my--because it's so obvious to me that you've got to have reasonable doubt, you can't say that Dr. Modlin and Dr. Baldwin and your human experience and my human experien-

ce, just wipe them out and say, "So what? The boy was one kind of a boy on June 4 and a different kind of a boy." You don't say that, it is not sensible, it doesn't make sense. I wonder if you might have some concern, and here I pick my words carefully, and will you please listen carefully, I wonder if you might in your deliberations feel or think about some concern about his custody if you find him not guilty. Now, I'm sure you will find that the Judge will charge you--I say charge, and that means instruct--that you should not consider, you should not discuss with each other, anything as irrelevant as a concern about Duane's custody in case you find him not guilty. And I think you can assume, and I say this carefully, I think you can assume that if you do your duty as jurors, considering what the Judge tells you to consider, this question of whether you are convinced beyond a reasonable doubt, whether you are convinced to a moral certainty that Duane could control his actions really on June 4, and then bring your verdict in on that basis, you will have done your duty, and that you can assume that others will do their duty in connection with Duane.

Now, I mentioned everything I had to mention. I didn't purposely take up all the time. It seems to me I ought to have said something more. And in closing I just have once again, and, my, I have been repetitious, don't hate me for saying it once again, but I want to close with what I am going to say. I urge you, my friends, to consider carefully whether what I have said isn't completely obvious, that with this evidence that we have had it's just not possible for any one of you to not have some reasonable doubt about whether Duane could control his impulses on June 4.

It's just not possible for you to be convinced, each of you, to a moral certainty with this evidence that Duane was acting with a command of himself and an ability to control his impulses on June 4. It goes contrary to everything that you and I know about human nature and human experience. Thank you very much.

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