

tary of War for his discharge. Defendant seemed to be in trouble—witness told him that he thought it would be a hopeless undertaking, whereupon defendant said, “that there was no use talking, he wish’d to God he had never been born, and that if he could not get out of the army honorably, he would not desert, but he would get himself out for good.”

Mr. Moore gives it as his opinion that the prisoner was laboring under strong mental derangement, and predicates the opinion upon the simple statement of the prisoner “that he wished he had never been born, and was determined to get out of the army;” an exclamation by a man in trouble. Mr. Moore is not a physician, and makes no pretensions to any knowledge of the diseases of the mind, and his opinion is consequently of no importance except so far as it is supported by the facts upon which he bases it.

In my opinion, the deposition of Mr. Moore furnishes more evidence of his insanity than of the prisoner, for what sane man would come to the conclusion that another man was insane because in a moment of trouble he expressed a regret at having been born. In a world of tribulations like this, in which the most favored of us are not exempt, most men in times of affliction or mental depression give utterance to similar exclamations. No doubt, Mr. Moore has done it himself, and if for this reason you should put a straight jacket upon him, he would declaim loudly against such an act of usurpation.

We have next the deposition of Frederick A. Cavendish, who deposes that on one occasion while prisoner was first orderly-sergeant, stationed at Fort Leavenworth, a man belonging to prisoner’s company, and some Irish citizens were engaged in a dispute, and were making a very loud noise on the stairway leading to defendant’s room. Defendant came out of his room much excited with a revolver in hand and said, “If you do not quit making such a damned noise I will blow hell out of you.” Mr. Lane testifies to the same fact.

I see nothing unnatural in this, for it was the duty of the defendant as first orderly-sergeant to keep order about him, and in the army, where strict discipline is enforced and pro-