

## Attorney Gives Eloquent Appeal for Conviction on Murder Charge.

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such failure to render her such medical assistance, or if the evidence in this case shows beyond a reasonable doubt that her life was shortened by the failure on the part of these defendants or any of them so to find that she died. You that are guilty of manslaughter, if you find said omission to act was mere negligence; but if you find that such omission or failure to act was done wilfully, with a reckless disregard of the consequences, then I instruct you they would be guilty of murder."

### Klinck's Part

Judge Sparks also instructed the jury that if they found Klinck to have been a mere tool of the others and that he had no knowledge of their plot, if any, he should be found not guilty. However, if they thought that Klinck had knowledge of a pre-conceived plan and was a party to the crime, or if he himself assumed control of Madge and failed to give her whatever assistance was necessary that he would be guilty equally with the others.

Attorney Kane spoke for more than two hours. The juryman gave him strict attention.

Every seat in the courtroom was taken as Kane began his talk.

"Gentlemen, we'll all be glad when this trial is over. We then can go our several ways and follow our chosen tasks," Kane began.

"I'm not going to try to throw a smoke screen over the facts in this case. I'm going to try to show them in their nakedness for the purpose of dispelling the screen that others have thrown.

"Something has been said by defense counsel about the gigantic conspiracy that has been framed to destroy their precious client. Something has been said about the gold that jingles in our pockets. As far as I am concerned, I am here without the assurance of one penny of compensation for my efforts, without looking to one person for a single dollar. From the day I was asked to assist in this case I have done everything in my power to bring about the conviction of the men who have committed the most heinous crime that has ever plagued the fair State of Indiana," Kane cried.

"This is the case of the States of Indiana versus D. C. Stephenson and others, charged with the murder of Floyd Christian, a defense attorney, was Kane's target.

"Following in the footsteps of other attorneys in the case, regardless of whichever side they may be on, Kane took a few minutes to hurl the arrows of vitriol toward the opposition. Floyd Christian, a defense attorney, was Kane's target.

"I pity Floyd Christian—his creator gave him the bearing of a man, but none of the attributes. His whole argument was a sham, a fraud, a smoke-screen over the real facts of this case. He didn't mention facts, he dodged them."

Kane attacked argument of Eph Inman, general of the defense staff, that Madge Oberholzer was the boon companion of Stephenson months before the Governor's ball at the Indianapolis Athletic Club, Jan. 12, 1925. Kane pointed to the testimony of Maxine Elliott, Stephenson's former stenographer, and one of his witnesses, that the first time she ever saw Madge in Stephenson's office was early in January.

Kane made capital of the fact that all the defense's other star witnesses had said they saw her in Stephenson's office many times in the latter months of 1924.

"Maxine Elliott was the only one of those defense witnesses with any character or standing," Kane declared.

### State's Theory

"The theory of the law maintained by the State in this case has been the law of England, more than 500 years, and it has been the law of this country ever since the English common law was brought to this country," Kane declared.

With his voice crescendo, Kane shouted, "I don't care anything about germs. When these defendants unlawfully abducted Madge Oberholzer, attacked her, and dragged her to Hammond they made themselves criminals, and by that very act drove that pure girl, honored and respected in her community, loved by all—drove her to the position, where she had lost all, where she was bereft of all she cherished, forced her to take that potion of death, and D. C. Stephenson and his cohort became murderers just the same as if they had plunged a dagger into her throbbing heart."

"Every case cited to you by the defense in this argument was one where the woman went willingly. If that were true in this case I wouldn't be taking your time. I'd be back at my office trying to draw together some of the loose ends of my business, making some money for my own family."

### Quiet Logic

Although Kane's argument was not the pyrotechnical display of

some others who had preceded him, his pleading was based on plain logic, and was having a tremendous effect on the jury.

"I'll say to you frankly, if she went there willingly, there's no case. It's written here on the undeniable book of evidence that Madge Oberholzer was the unwilling companion of this desperate tri-umvirate."

### What's the story, gentlemen?

Why, it's the most scurrilous in the history of the ages. Trapped in a garage loft, two blocks from her home—dying!

"Don't let the defense befuddle you about this story. Madge Oberholzer told you a coherent story. She was drugged—of course she didn't know the exact route she took through the Union Station. The Pullman conductor identified Gentry and Stephenson. So did the porter. They registered. We didn't have to call a hand-writing expert as Mr. Inman suggested, to identify the writer of 'W. B. Morgan and wife.' We had the man who held the pen, and there he is," Kane cried out, wiggling his finger at Stephenson.

### Raps Inman

Kane observed the solemn complacent look on Inman's face as he gazed over toward the defense table and could not refrain from taking a jab at the portly barrister.

"And Eph Inman, sullen as a boiled owl, looked like an affidavit as he stood before you."

"That isn't all; they go to the bedroom. The bell boy picked him out. Why, Stephenson, look like he was taking a dose of ipecac when that coon laid his hand on his shoulder. 'Shorty DeFrieze—where is he? He's your man, not ours—where is he?'"

Kane next turned to the historic night when Madge was brought back to Indianapolis and raved at the defendants for doing nothing to allay her pain.

"Now, let's take another step in the history of this outrage," said Kane, lowering his voice to a conversational tone. He had been yelling at the top of his voice in the faces of the jurors.

"These gentlemen don't like Asa Smith. How happy they would be if they had his character. He was born in Hamilton County. His mother sleeps in a church yard in Tomlinson neighborhood. He's one of the nation's heroes. He came back from the battle of the Argonne, terribly wounded. He's no Stephenson, he's no Klinck, he's no Gentry."

Kane said that Smith, when he learned that Madge would die, wrote the declaration and that he deserved credit for so doing.

"When the dead news came from the sick room, this poor girl couldn't recover, and that any evidence would have to be as a dying declaration. Smith wrote it down, God bless him. He brought the evidence in the court which clinches this case, and will send those men to the place where they belong. That's why they don't like Asa Smith."

"These men raped Madge Oberholzer, attacked her, kidnapped her, but the State can't use the dying declaration in those cases, under the law. It can only be used in homicide cases, yet these hired and paid criminal lawyers who wouldn't be here unless for the filthy dollars of the men who manipulated the Legislature, had the effrontery to attack Smith."

Kane then described Madge's death scene. He walked about in front of the jury holding his arms aloft for at least five minutes.

"No, they sped on and on, through the night, and instead of taking this poor girl to a doctor, they locked her up in a garage, while her own mother, stood outside."

"Oh, my God! When he got her this bottle of milk, that was all that he had! That measly little bottle of milk. Wanted to marry her—coward."

### Wore No Hat

"There's some things you and I know. If Madge Oberholzer had gone willingly with Stephenson that night, she would have done it by pre-arrangement—she would have worn a hat."

"On that fateful Sunday, Madge was out with her friend. She was a happy joyous girl, and little dreamed of the fate that awaited her. While she was out, that telephone rang and rang for Madge. When Madge came home he told her he was making a trip, and had something important to discuss with her, something that concerned her vitality. If she was going to make a trip with him, wouldn't she have made some preparations at least. Wouldn't she have worn a hat? I understand women, they usually take some cosmetics. Some lingerie and other things. Especially when they start on a 250-mile Pullman ride."

### Raps Newspaper Men

"Do you think she would have had a big, pug-nosed Gentry in the same compartment, if she had been con-

scious of what was happening. If she was a willing companion, why did they bring her home looking like she'd been in a fight?" Kane throughout the trial has been at loggerheads with newspaper men on the case. Seeing a chance to give vent to his feelings along this line, Kane declared.

"Newspaper men had no business at the autopsy, gazing on the nude form of this poor girl. Humiliation even in death!"

Kane seized a copy of the testimony of Miss Beatrice Spratley, Madge's nurse, and read:

"Her left cheek was bruised, her left breast was bruised, the lower half of her abdomen—the inside of her thighs, and her legs, down to her ankles—all were bruised."

"A willing companion, eh? Oh, gentlemen, she wasn't hurt. She just went along with Stephenson, just because she loved him," Kane hissed.

Glaring at Inman, Kane said, "And that able, touted, newspaper-boomed criminal attorney, Inman—if he had half as much sense as any one of you jurymen, he wouldn't have had the nerve to make such flimsy arguments."

"I want to demonstrate to Klinck, to Gentry, to Inman, to Stephenson, and to Christian, if it can be done, that in Indiana the law is supreme. Put them away so others will be safe," Kane demanded.

Kane launched a fierce attack against the four Marion County deputy sheriffs, who testified regarding Klinck's alibi.

### Perjury Charged

"If the prosecutor of Hamilton County has the nerve, and I think he has, and the judge does his duty, the grand jury will be called to prosecute Red Koffel and those other deputy sheriffs and all others who had a hand in it, for perjury. Men who should be in jail instead of locking others in jail. Are you going to believe their word against that of the good, motherly Mrs. Kane could not see Klinck with her very eyes?"

In another outburst Kane assailed Ralph Rignold of Fountainview, one of Stephenson's star witnesses.

"Rignold, the loafing, lying bum, who licked the feet of Stephenson for the crumbs he could get."

"He was not free from his mind the sting of the defense's accusation that blood money jingled in the pockets of the prosecution."

"Our reward is in the consciousness of having performed a duty." Turning suddenly on Inman, Kane shouted:

"Can you say that Mr. Inman?" Inman features remained unchanged.

"These fellows are guilty of murder, staphlococci, or no staphlococci," Kane continued.

"That wound was placed on that girl's body by the fangs of this serpent. The infection which followed caused her death."

"The defense's medical witnesses didn't get a chance to answer the facts of this case."

answered hypothetical questions that were lies from beginning to end.

### His Conclusion

"Has Indiana no law that will protect her daughters from conduct of this kind? Kane said as he began his conclusion.

"You're going to write in your verdict whether your daughter, my daughter, or other reputable citizens' daughters are to be protected from violence. The eyes not only of Indiana, but of the whole country are on you. Gentlemen, I stand on hallowed ground as I stand before you. It is from the heart. Gentlemen, it wasn't suicide, it was murder. They drove her to her death—it was murder."

Before Kane had reached his seat Judge Sparks was reading his instructions to the jury. A child about 4 years old became confused and was wandering about in the courtroom near the defendants' table. He crawled under the table and Stephenson picked up the youngster and handed it over to his mother. The jurymen observed it.

Judge Sparks reviewed the indictment against the defendants, citing the entire text.

"To this indictment, the defendants have separately interposed a plea of not guilty and this forms the issue you are to try," Judge Sparks said.

"You will have the indictment, with you in the jury room to read for yourselves, but I further instruct you that the fact that the Marion County grand jury has returned this indictment raises no presumption of the defendants' guilt, or either of them. It is not considered as evidence."

### Penalties Cited

Penalties were cited.

"If you think the evidence warrants, you may find the defendants guilty of murder either in first or second degree, or of manslaughter, or you may find them, or either of them, not guilty."

"The death penalty or life imprisonment," the judge said, "may be given to whoever purposely and with premeditation, malice or in the perpetration or attempt to perpetrate, a rape, arson, robbery or burglary, or by administering poison or causing the same to be administered, kills any human being."

"Where there is no premeditation, but the killing is done purposely and maliciously the penalty of second degree murder may be inflicted—life imprisonment, the judge's instructions read.

Where there is no malice, express or implied and the act is one of sudden heat or involuntary, but is in the commission of some unlawful act, the penalty of manslaughter—two to twenty-one years in prison, may be inflicted, he said.

Judge Sparks then defined the crime of rape: assault and battery with intent to commit a felony for which the penalty is two to fourteen years.

### Presumed Innocent

"The presumption of innocence remains with the defendants throughout the trial and they are entitled to its benefits unless the evidence convinces you beyond a

reasonable doubt of their guilt," the judge said.

"But in clothing those charged with crime with the presumption of innocence, the law does not contemplate that the guilty shall be shielded from merited punishment. Its object is to protect the innocent as far as human agencies can, from the effects of unjust verdicts."

"If any one of the material allegations has not been so proved, it would be your duty to acquit. If all the material allegations of the indictment have been proved, it is your duty to convict."

"To prove a proposition beyond a reasonable doubt, the evidence must be such that it would convince a prudent man of the truth of it to such a degree of certainty that he would feel safe to act upon such conviction without hesitation, in matters of the highest importance to his own dearest personal interests, under circumstances where there was no compulsion resting upon him at all."

### Each Acts for Self

"Each juror acts for himself in coming to a conclusion and acts on his own convictions. If any juror after consulting and deliberating with his fellows, should be convinced beyond a reasonable doubt of the defendants' guilt, it would be his duty to refuse to vote for a conviction. And if on the other hand, any juror convinced of the defendant's guilt, it would be his duty to refrain from voting for an acquittal. But it is the duty of each juror to consult and deliberate with his fellow jurors."

"The rule of the law touching reasonable doubt is a practical rule intended to guide jurors engaged in the serious and important duty of administering justice. There is nothing in it that is mysterious or fanciful. It does not furnish a shield for those actually guilty whereby to escape merited punishment. It does not contemplate absolute or mathematical certainty. Despite every precaution that may be taken to prevent it, there may be, in all matters depending on human testimony for proof, a mere possibility of error."

"The third count of the indictment charges the defendants with having killed and murdered Madge Oberholzer in an attempt to commit rape on her. You would not be warranted in finding the defendants, or either of them, guilty under said third count unless the evidence has established beyond all reasonable doubt that the death of said Madge Oberholzer was mediate or immediate result of such alleged attempt to commit a rape on her if any. And if you should have a reasonable doubt that her death was mediate or immediate result of such alleged attempt to commit a rape on her, you could not convict said defendants or either of them on said third count."

"The statute defining murder in the first degree includes cases where the homicide results from the perpetration or the attempt to perpetrate such crimes as named, viz: rape, arson, robbery and burglary. The statutory provision as to the first degree is to make criminal in that degree the murder resulting from committing or attempting to commit the particular felonies specified. No intent to kill and no deliberation and premeditation of murder are necessary in such cases as the implied malice involved in the felonious intent is sufficient."

"To authorize the conviction of the defendants for murder in the second degree, the State must have proven beyond a reasonable doubt all the facts necessary to be proven to entitle it to a conviction for murder in the first degree, excepting that the alleged killing of the deceased was premeditated, premeditation being the only distinction between murder in the first and second degree."

"To authorize the conviction of the defendants of manslaughter the evidence must have shown beyond a reasonable doubt that at the place and time the said deceased was killed in at least one of the ways alleged in the indictment, to wit: malice, express or implied, either voluntarily, upon a sudden heat, or involuntarily but in the commission of some unlawful act."

"If there is in the minds of the jury a reasonable doubt as to which of the different degrees of felonious homicide embodied in the indictment the defendants or either of them are, or is, guilty, if either, he or they, as the case may be, must be convicted of the lowest degree only."

"In order to entitle the State to a conviction of the defendants for murder in the first degree it must have been proven, beyond a reasonable doubt, that at the place mentioned in the indictment at some time before the finding of the indictment, the defendants did unlawfully and purposely kill, or cause to be killed, the deceased in the manner alleged in at least one of the ways of the indictment, and that such killing of the deceased by the defendants, if it was so done by them, was premeditated and malicious, and in pursuance of a purpose, previously formed in the mind of the defendants, and deliberately considered and resolved upon."

"If you find from all the evidence in this case that such evidence fails to show any motive on the part of the defendants, or either of them, to commit the crime charged against them, the same is a circumstance in favor of the defendants to be given such weight as you may deem it proper to give it in the case."

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will necessarily or probably require the use of force and violence, which may result in the taking of life unlawfully, every party to such agreement will be held criminally liable for whatever his co-conspirators may do in furtherance of the common design. If the offense contemplated is a felony, and death ensues as a result, of some act alone or move of said conspirators, done in furtherance of said design, all of said conspirators will be guilty of murder. If in such case, the offense contemplated is a misdemeanor, the guilt will be of the grade of manslaughter.

The act which caused the death, however, must be shown to have been done for the furtherance or in the prosecution of the common object of design for which they combined together. There can be no criminal responsibility on the part of a co-conspirator for a death resulting from something not fairly within the common enterprise. The homicidal act must be the ordinary act probably expected by the wrongs agreed upon. But the fact that the killing was not within the actual contemplation of the parties, does not relieve them of responsibility. In such cases it is always a question of fact, pending in all the surrounding circumstances. Whether the homicidal act was within the scope of the original unlawful project, and this question in such cases is peculiarly within the province of the jury to determine."

"The persons is not to be held criminally responsible for a homicide unless his acts can be said to be the cause of death; but I instruct you that a person may, under some circumstances, be guilty of the crime of homicide, although he did not cause his unlawful acts, as well as the direct result thereof. Thus, one may, by his own direct, through fear of another or others, cause his own death, under such circumstances as will constitute felonious homicide on the part of such other person or persons who cause such fear. In such cases it must appear, however, that the act of the deceased which destroyed his or her life while under the influence of fear was:

"First, such a step as a reasonable man or woman might take.

"Second, that the apprehension was of immediate violence or injury.

"Third, that the apprehension of violence must have been well grounded.

"Fourth, the act of the deceased must have been the natural and necessary consequence of the unlawful conduct of such other person or persons."

"In determining the question whether or not the deceased was a willing or unwilling participant on the trip in question, it is proper for you to consider all the facts and circumstances surrounding such trip. Her previous acquaintance, if any, with the defendants, the different places where she was, and whether they were public places or not; the fact, if it be a fact, of whether she came in contact with persons other than the accused; and whether or not she was under such circumstances as to make an outcry, or attract attention of persons other than the defendants; and it is also proper in this connection to consider her physical and mental condition at those times, and whether or not she realized such opportunities if they existed, and all other facts and circumstances as shown by the evidence which in your judgment will throw light on this question."

### Explains Homicide

"One who inflicts an injury on another is deemed by the law to be guilty of homicide, if the injury contributes mediately or immediately to the death. The fact that other causes contributing to the death does not relieve the actor from responsibility. While it is true that a person cannot be killed twice, yet it is equally true that two persons can contribute to cause the death of another in which case each will be responsible for such death."

"The law declares that one who inflicts an injury on another and thereby accelerates his death, shall be held criminally responsible therefore. Although the death would not have resulted from the injury, but the diseased and wounded condition of the person injured, already existing at the time of such act of acceleration."

### Legal Duty

"One of the theories of the indictment, is that Madge Oberholzer met her death as a result of the failure of the defendants to perform a legal duty which it is alleged said defendants owed to her. There is a difference between moral obligations and legal duties. All legal duties are moral obligations, but all moral obligations are not legal duties. The violation of a moral obligation alone can never form the basis of felonious homicide unless such moral obligation also constitutes a legal duty.

"For instance, as a human being there rests upon me a moral obligation to render aid to the needy, but if I refuse to do so, and death results therefrom I am not to be held for felonious homicide for the violation of the mere moral obligation. But on the other hand, if I should take possession and custody of a human being through fraud, deceit, force or threat, and thus deprive such person of his or her liberty, of the right to exercise his or her will power, then the legal duty immediately arises and rests upon me, to protect such persons from danger, and if under such circumstances I am guilty of any act of negligence either of omission or commission, with relation to such legal duty, and injury results to such person, as the natural and probable result of my negligence, I am liable for such injury; and if death results as a reasonable and natural consequence, of my said act of negligence, I am guilty of felonious homicide."

"Unless you are convinced beyond a reasonable doubt that the defendant, Earl Klinck, aided, abetted, counseled, encouraged, hired, commanded, or otherwise procured or helped to procure said alleged acts to

be committed as alleged in the indictment, you would not be warranted in convicting him, and unless you are convinced beyond a reasonable doubt that said Klinck was a party to or participated in a plan of said other two defendants or either of them, to entrap and to make a criminal assault upon the person of Madge Oberholzer, as alleged in the indictment, with knowledge of the purpose of said plan, he could not be held liable for the acts of said other two defendants, or either of them, outside of his presence, and during said trip to Hammond, if you find such trip was made; but if you find that he was a party to such a plan with said other defendants, with knowledge of its purpose, as alleged in the indictment, and assisted in the preliminary arrangements of such trip, such plans, he would be liable for the acts of such other defendants, fairly within the common enterprise, and for the furtherance or in the prosecution of such common objects or designs, and this would be true regardless of whether he was with said parties all the time or not, and although he might not have been a party to such a plan as alleged, and hence not liable for the acts of said other defendants while on such trip, if such trip were made, yet if you are convinced of the evidence beyond a reasonable doubt, that said defendant, Madge Oberholzer, was returned to the garage of the defendant Stephenson, in a weakened and helpless condition, in which condition she was placed into the custody and control of said Klinck in said garage, which he assumed and undertook to perform, then I instruct you that at that time, there was a legal duty resting upon him, to use all reasonable means