

Klux Klan, and could procure the acquittal or conviction of McCray and that McCray was in a serious condition and could not afford to antagonize them.

He read further in the indictment where it alleged that McCray believed the statement, but contended that his silence was not concealment.

Called On Concealment
"The evidence shows that they said: 'Keep this quiet, but their agreement, if any, that they wouldn't tell is not an act of concealment,' Ewbank said.

Ewbank also commented on the fact that Evans' resignation as prosecutor preceded the offer by less than one hour, but that Evans had knowledge of the alleged offer for two years.

Commenting on Governor Jackson's letter of denial to Boyd Gurley, editor of The Indianapolis Times, he said, "It constituted merely a denial, and denials do not amount to concealment."

No Evidence of Letter, He Says

"Further," he added, "there was no evidence here that the letter was written. Neither is there any evidence that McCray was kept from telling by threats and intimidation, excepting when Stephenson testified that he 'threw a scare into him and put the fear of God in his heart.'"

"The judge observed that Stephenson's statement was a mere conclusion."

"We insist that this trial should not be continued and should not be dragged out any longer," Ewbank said.

Called Folly to Continue

Attorney Clyde E. Jones then argued for the defense.

"It would be the height of folly to continue this case, since the State has rested without proving the concealment," Jones said.

"I believe it has been conceded that the concealment is one of the two most important elements. State attorneys, during the argument on the motion to quash, laid great stress on the fear of God that was placed in McCray's heart. There was nothing to show that Jackson had anything to do with this alleged fear or that Jackson stressed the power of the Ku-Klux Klan as stated in the indictment."

"There is no evidence that shows anyone but Jackson and Robinson talked to McCray. In these things the State's case falls far short of proving the specific acts charged in the indictment."

"The record will be as silent as a tomb when it comes to a showing that McCray was threatened with conviction in Criminal Court if he failed to comply."

Jones said the indictment alleged that McCray was in a serious situation.

"He knew that," Jones shouted. "I don't recall that Jackson said anything like that."

"The indictment says that they represented that McCray could not refuse this offer, but Evans' testimony showed that he did refuse it."

Challenges State

"Who testified that McCray was in fear? The State never asked him that question. The State alleged McCray was silenced by fear for three and a half years, but they didn't dare ask him that question, although they told the jury in their opening statement that they would prove it."

"Regarding the allegation that he couldn't afford to reject the offer, the indictment alleged that they could by the use of their power in the State to secure McCray's conviction."

"There was no testimony they could secure anyone's conviction."

Jones placed great importance on the fact that the State did not question McCray as to the effect on his mind occasioned by the alleged conspirators' representations.

"The State contends that from McCray's silence may be drawn the inference of fear, but that is not sufficient," he said.

Only McCray Can Tell

"Jackson only said the conversation was between himself and McCray. That's not putting the fear of God into McCray's heart. And McCray was the only witness who could testify whether he was placed in fear by the defendants."

"Why should this trial be continued as an effort to jeopardize this defendant's rights when there is no case against him?"

"To what purpose should this case be continued? Why take a week of the court's time, the time, and the jury's time? What have we to answer? They are through. They absolutely have failed to prove the allegation in the indictment."

"We were called into court to fight a charge supposed to have been concealed by artifice and trickery that, talked about by some of the State's witnesses, was known

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DETAILED TESTIMONY GIVEN IN JACKSON TRIAL

Detailed testimony in the trial of Governor Ed Jackson in Criminal Court follows:

Noel's Testimony

Noel said he had been practicing law for thirty-two years, was a member of the Legislature in 1899, has been a trustee of Purdue University since 1904, and was one of the citizens of Indiana two years before the indictment was returned.

Steve Is Rapped

"Stephenson came here. That convict trifled with the court for half a day and told a story about his alleged conspiracy with McCray, but didn't offer any testimony to prove concealment."

"There is nothing more preposterous than the charge that the defendant further concealed the alleged crime by writing letters to newspapers in September, denying the charge."

"We think the motion to take the case from the jury is well taken. We do not think the State has made its case on the alleged conspiracy."

Judge McCabe then said: "If it were not for the question of concealment I probably would overrule the motion."

Remy opened the State's argument opposing the motion for a directed verdict.

Power Is Pictured

Remy pictured the power claimed to be held by the alleged conspirators, and referred to Jackson's description of Coffin as "the greatest political genius in the Midwest," a man who could "do things no one else could do."

"There is no question of concealment, of course," Remy asserted, "between and among Noel, Evans, Jackson, Marshall, Coffin and McCray. That is not needed."

"But it is significant that McCray, in prison, wired his son-in-law, Evans, there must be no publicity about this and there was no publicity about it until he was released from prison. Isn't that evidence of the fear of God in his heart?"

"The prosecutor contended 'the threat doesn't have to be, you do this or we'll do that.'"

"The threat," he said, "need be no more than a simple request, if the request is backed with evidence of power and this is known to the person approached."

Shows Klan's Might

Evidence in the case, he asserted, showed the tremendous power of the Ku-Klux Klan back of the representations made to McCray by the conspirators.

He read from court decisions interpreting the statutes regarding concealment, defense attorneys and the court jotting down the references.

"This must be considered in the light of McCray's condition and situation at the time," Remy said.

"Also the intent of the parties who wanted to keep this thing concealed must be considered."

"They told McCray he couldn't afford not to accept the offer, testimony showed."

"The Evans and McCray—were perpetrating a terrible calamity was impending against the highest State officer. They came to the Governor and, in the guise of friendship, told him of the power the organization they represented had to control the courts."

Decision Anticipated

"As I remember, Robinson told them McCray wouldn't accept and Jim Noel said McCray wouldn't," the court remarked. "My point is that instead of fear being placed, these two men anticipated what McCray would do before the offer was made."

At this point the court was interrupted when Kivett fell back to the courtroom floor in the swirl of chairs in which he was sitting. He had been gazing at the ceiling in an indifferent attitude when the chair tilted just a bit too far back.

He got up and took a different chair, amid laughable laughter from spectators and attorneys.

"There is, as I see it," said Judge McCabe, "a total failure of the State to show the state of mind of Governor McCray. He might have revealed the alleged offense to innumerable people while at prison, so far as the evidence shows."

Wants to Do Duty

"Frankly, I have a conscientious duty to perform. I want to reflect credit upon this court and do my duty fearlessly."

Special Prosecutor Johnson replied it was for the jury to judge McCray's state of mind and the causes contributing to it.

"It would have made no difference," he said, "if McCray and Evans had said on the stand they had no fear of anybody. It still would have remained for the jury to decide."

Johnson commented that he knew the court had high respect for Judge Oscar Montgomery, who overruled the defense motion to quash. He read from Montgomery's opinion and declared the State had proved all allegation contained in the indictment which Montgomery upheld.

Judge McCabe again expressed doubt that there could have been any fear if McCray had told of the matter and that there was no evidence that he didn't.

"But I'm open to conviction," he added, and Johnson continued his arguments.

Again the court interrupted to say:

"I think it is regrettable that the defense made this motion and will not now be heard, for I think the honor of the State is at stake in this matter."

"If I do my duty, as I now see it, Mr. Johnson, the defense will not be heard."

"The defense can withdraw the motion," Johnson replied.

"Yes, they could," the court answered, and continued, when defense attorneys' smiles indicated they had no such intentions and would abide by their motion. "I haven't any doubt in my mind that it would be my duty to put aside the jury, but I am willing to go farther and see if this point can be cleared up."

Possibility of the case coming to

versity eleven years, and assisted in the prosecution of the McNamara bomb conspiracy in California and Indiana courts.

He said he had known McCray for ten years and represented him as counsel from August, 1923, until he went to prison at Atlanta. He said he had known Robert L. Marshall seven or eight years.

Q—Do you know D. C. Stephenson? A—I met him twice only and never saw him any other time.

An abrupt end became apparent late Wednesday, when Judge McCabe, ruling on an objection to a question asked McCray, expressed the opinion that there had as yet been no evidence of definite positive acts of concealment.

"Unless these are shown," he said, after the jury was excused, "there can be no conviction, because concealment alone will serve to bring the alleged offense within the possibility of prosecution, under the status of limitations."

"Did you ever tell any one?" was the question Special Prosecutor Emsley Johnson had asked McCray, referring to the alleged repeated offers of bribery made him.

Defense objection resulted in Johnson's outlining his reasons for believing the question admissible. He contended that McCray's concealment of the alleged offer was effected by the threat of power of the Ku-Klux Klan, held by the alleged conspirators.

"The threat," he argued, "was more effective than if a revolver had been held over McCray's heart." He contended further that the fear instilled in McCray kept him silent during his imprisonment, when his effort for parole might have been jeopardized by any revelations of the offer.

The court interrupted Johnson to say that "silence does not constitute concealment."

Johnson asserted it was a matter for the jury to decide, after considering the evidence, and taking into consideration McCray's circumstances and his nature.

"Evidence in this case," he said, "has shown that one person said he had 'threw the fear of God into McCray's heart,' and another that he had told McCray, 'You keep this quiet.'"

Contents Jury Can Decide

"This was a man in great mental distress. He was silenced by definite, affirmative, positive acts. Why was he told of the power held by the alleged conspirators if not to silence him? The jury has the right to draw the inference there was concealment."

Judge McCabe reminded Johnson that it was for the court to determine what sort of evidence was to be admissible.

"Suppose," said McCabe, "that for the sake of argument, we grant there has been evidence to prove the offense was committed. You not only are required to prove facts which go to make up the crime charged, but must show positive acts of concealment."

Allows the Question

After Johnson further resisted the objection, the court told him:

"I will allow the question, if you will do no more than want you to regard it in the light of admissibility as evidence of concealment."

But Johnson withdrew the question. The jury was recalled and examination proceeded along other lines. The prosecution was faced, in view of the court's remarks, with the problem of producing evidence supporting concealment.

It was regarded probable that, upon completion of the State's case, probably today, unless new evidence tending to prove concealment was introduced, the defense would move for dismissal, on the grounds that there has been no evidence of concealment.

The court's expression encouraged the belief that such a motion would have hope of success. If such motion were made and granted, the trial would be at an abrupt end. On the other hand, it was pointed out, the court might conclude the permit the jury to judge whether the evidence supported concealment.

Would Require Week

With the defense having promised to "lay open" the Governor's whole career, a week or more probably would be required to hear defense witnesses.

McCray, under a heavy emotional strain, Wednesday afternoon told how both Fred B. Robinson, former State purchasing agent, and Jackson came to his office with the bribe offer. His testimony came as the second climax of a sensational day in court.

Stephenson provided the excitement throughout the morning, with frequent brushes with defense attorneys.

William P. Evans, McCray's son-in-law, and James W. Noel, attorney for McCray, substantiated testimony of McCray and Stephenson about conferences upon the bribe offer.

The State completed the bulk of its testimony against Jackson in the one day.

APPROVE BOND ISSUE

Athletic Club Members Plan Extensive Improvements.

Plans for two additional bandball courts, a squash court, remodeling the Inn and the locker rooms and putting in a new shower room were made at the annual membership meeting of the Hoosier Athletic Club Wednesday night. Approval was given to a proposed bond issue for these improvements and also a proposal to reduce the membership from 1,500 to 1,000 and change the dues to \$5 a month.

SUE IN JANITOR DEATH

Suit for \$10,000 damages for the death of William Stevens, janitor at Day's Casino, Emerson and Southeastern Aves., was filed in Superior Court Tuesday, Wednesday, against the General Accident Fire and Life Insurance Company and Joseph B. and Lucille O. Day, proprietors of the casino.

The suit, filed by E. Louis Moore, administrator of the estate of Stevens, alleges Stevens was shot fatally on Nov. 14, 1926, at the casino.

SEEKS BUSINESS AS GOOD

Secretary of State Says "All You Have to Do Is Go After It."

Optimistic business predictions for the year were voiced by Frederick E. Schortemeier, secretary of State, at the dinner of the Old Trails Automobile Insurance Association at the Hotel Severin Wednesday. The meeting celebrated the fifth birthday of the organization.

"Business in Indiana is good; all you have to do is go after it," Schortemeier declared.

The opening address was made by Dwight S. Ritter, secretary of the company. Frank N. Daniel, vice president, was toastmaster.

"Cooperation" was the subject of Charles W. Jewett, attorney for the association.

Chinook Leaves Hospital

By United Press. BOSTON, Feb. 16.—Chinook, famous sled dog, has been discharged from the Angell Memorial Hospital, where he has been receiving treatment for abscesses behind the ear.

Q—When first? A—Dec. 8, 1923, the date Evans resigned as prosecutor.

On that day, Noel said, Stephenson and Marshall called on him at his law office between 1 and 2:30 p. m. He did not recall whether the meeting was prearranged or not.

Q—When Marshall and Stephenson came in what was said? A—Marshall introduced me to Stephenson, whom I had known was called the "Old Man." He said that he and Ste-

phenson wanted to talk to me on an important matter extremely important. I took them into my corner room and they sat and a conversation ensued. Marshall said he had come to talk to me as McCray's attorney and was particularly desirous that McCray be appointed to succeed Evans.

I told Stephenson I had just read in the noon edition of The News of Remy's appointment. I said, "I suppose that settled the matter." Stephenson said no commission has been issued and although the announcement is in the paper, it was still open. He said, "We want McDonald appointed. We've just got to have him in the interest of Jackson for we can't elect him without Marion County."

I said I knew that McCray, after making the announcement, wouldn't think of recalling it. I thought it was useless to suggest anyone else.

Control of Underworld

Stephenson said, "We don't care if Remy is nominated as the primary, but we want the office during primary and election." He said it would mean 10,000 votes for Jackson if he could control the underworld. Stephenson said, "We have \$10,000 to turn over to McCray for attorney fees. McCray will appoint McDonald and further we will guarantee McCray will not be convicted on any charge in any court in Indiana."

I said, "That's a large undertaking."

Stephenson said, "I know what I'm talking about. I've an organization in Indiana that I can call upon any time for anything. If you want to find out what any man in Indiana is doing tonight, I can find out for you by tomorrow morning."

Want McCray Decision

He wanted me to take it up with McCray, but I said I knew exactly what McCray would say: that in the first place, Remy's appointment was settled and in the second the Governor would enter into no bargain. That was about the gist of the conversation as I recall it now.

Stephenson said, "I want McCray's decision. He's got to decide it. Mr. Remy is a good friend of the Governor's and will be willing to step aside. Remy certainly would give up prater than see his benefactor, McCray, in the penitentiary for twenty years."

Explained Proposition

Q—Did he say anything else? A—He asked me to convey the proposition of \$10,000 to Governor McCray and let me know the Governor's answer.

Q—Did he call at a future date? A—He did. Monday about 9 a. m. I said I had told the Governor of the proposition and that he refused to entertain or to discuss it. I told him that the answer I had prophesied I would have.

Q—On the first occasion, was Marshall in the same room during the conversation? A—He was.

Q—Was he with Stephenson the second time? A—I can't remember, some one was with him. The interview was short.

Q—What else was said at this interview? A—He said Remy is a young upstart, that he was willing to see McCray go to the penitentiary, rather than give up the appointment until elected.

Asked No Questions

Clyde Jones took up cross-examination for the defense.

Q—Is it true Stephenson was at your office before noon and back at 2 p. m., that same day? A—No, only once that day.

Q—You fixed the time in your mind by the fact that the noon edition of the newspapers was out and you had seen Mr. Remy's picture? A—Yes.

Q—Did he show you the money? A—He did not. He used the expression, "We have the \$10,000." I asked no questions. He said his case.

Noel then testified that McCray was out of his office that afternoon and since Stephenson had asked for a conference with him (Noel) the following Monday he told McCray about it on Sunday, the next day.

Q—Did he tell McCray about this? A—Yes, but he said he did not want to discuss it at all, because Remy was to be appointed.

Q—Did McCray say anything to you about Jackson making him an offer? A—No.

Close Political Friends

Noel testified that he did not hear of this alleged offer until three or four days before The Times printed the story. He said Gurley and Prince had called on him and related the situation. That he told them he didn't know anything about it.

Jones then brought out that McCray and Noel were close friends politically and socially prior to the McCray trial and that during the trial they were more intimate than they had been previously.

Noel stated that Marshall had talked to him after the alleged bribe offer story was printed and that he told Marshall that he had not revealed it.

Noel testified that Marshall had asked him to keep "that matter strictly confidential" when they had talked about it at the time the offer was first made.

Evans on Stand

William P. Evans, former county prosecutor and son-in-law of McCray, took the witness stand at 2:31 p. m., and related his version of Robinson's and Jackson's visit to McCray's office in December, 1923, when they allegedly had made the bribe offer.

Evans testified he filed his notice of resignation in the Marion Criminal Court at 9 a. m., Dec. 8, 1923. He said he then went immediately to McCray's office at which time McCray accepted his resignation. He said he left McCray's office, but returned later.

Q—Any one come in while you were there? A—Yes.

Q—Who? Fred B. Robinson.

Q—What did he say to McCray? A—I can give you the substance of it. He said he had been called into a conference in the Secretary of State's office and asked to deliver a message to McCray. He said there were representatives of a powerful organization in that office who

wanted him to present a proposition to the Governor.

He said that if the Governor would appoint McDonald to the prosecutor's office, they would contribute \$10,000 for attorneys' fees and would guarantee McCray would not be convicted in Marion County or any place else.

Q—Did he say who these men were? A—No.

Q—What did McCray say? A—McCray said he could not do that. And said that he had made up his mind and furthermore he wouldn't entertain such a thing.

Promise of No Conviction

Q—Who came in next, A—Ed Jackson.

Q—How long after Robinson had left, A—A few minutes.

Q—Did he talk to McCray, A—Yes.

Q—Detail that conversation. A—Jackson said he wanted to help McCray and the proposition they were presenting would be of great help to McCray. Jackson said he came from a meeting where Coffin and a representative of an organization that had State-wide membership were present. He said that was the group he represented was very eager to have control of the prosecutor's office and was willing to give me \$10,000 to pay attorneys' fees and I wouldn't be convicted by any jury.

Q—What did the Governor say, A—He said he had made up his mind to appoint Remy and had let it be known. He said he would not make the appointment and Jackson said it would be a great opportunity for McCray and they wanted to help him. Jackson said it would be alright with them to support Remy in the following primary, but they needed McDonald during the campaign. McCray said he didn't see how he could do it and maintain his self-respect.

Resigned After Indictment

Q—Had McCray issued the commission, A—I had no personal knowledge of it.

Evans said he did not remember the exact time that Robinson and Jackson visited McCray. This closed the direct examination of Evans at 2:50 p. m.

Kivett cross-examined:

Q—Your resignation grew out of the indictment of your father-in-law. You felt you should resign, due to this? A—I did.

The majority of the questions asked by Kivett were agreed with by the witness. It was brought out that the McCray family learned on Thanksgiving Day that he was to be indicted and that then Evans decided he should resign.

Q—You had been interested in a successor and had talked with Remy about the successor, A—I had.

Evans explained that he returned to McCray's office the second time the day he resigned because he "felt the Governor was disturbed at the resignation and that I should be with him."

Didn't See Remy

Kivett questioned Evans on Robinson's entry into the Governor's room and Evans repeated that he heard all the conversation between Robinson and McCray.

He said he did not recall having seen Remy until the following Monday when he asked Remy if he had received his commission and when Remy replied no, he said, "You'd better get it."

Questioned as to whether he had talked to Noel, Evans said not until a year after McCray's conviction. He related that his first conversation with anyone from the prosecutor's office was with Special Prosecutor Johnson after the story was published in The Times.

He talked to McCray when he returned with him from the prison at Atlanta about Aug. 21, 1927.

Q—Did you get in touch with McCray about this before you went to meet him? A—Yes, by telegram on the Friday before The Times published the story on Monday.

Q—You knew it was about to be published, A—Gurley and Prince had told me on Friday.

Q—Did you tell them anything about it? A—No details, but in a general way, yes.

Tried to Stop Story

Evans said he wired McCray, "There must be no publicity on this matter."

Q—Did Prince and Gurley show you what was purported to be written statements? A—They said they had them, but didn't tell where they were.

Prince and Gurley had told him, he said, that nothing would stop them from publishing the story. His only reason for discussing it with them was the hope he might persuade them not to publish it, he said.

Q—Were you under obligation to them? A—In a way I was. Mr. McCray was due to be released and I didn't want the story published.

Telling of his deep regard for McCray, Evans said, "I didn't want him to die in prison."

McCray's Story

Former Governor Warren T. McCray took the stand shortly after 3:30 p. m. Wednesday.

After answering a few minor questions, in which he gave his home as Kentland, Ind.; his age as 63; and his period of Governorship from Jan. 10, 1921, to April 30, 1924, he said he had known Jackson for about fifteen years.

Q—On Dec. 8, 1923, did Evans visit your office? A—Yes.

Q—What time of day was that? A—During the morning, shortly after 9 a. m. I would say.

Q—Did he say or do anything? A—He handed me his resignation as Marion County prosecutor.

Q—Was there further conversation? A—I at first remonstrated