

DETAILED TESTIMONY GIVEN IN JACKSON TRIAL

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 No 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 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."

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 jettisoning 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.

"They—Evans and McCray—were perturbed. A terrible calamity was impending against the highest State office. 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 swivel chair 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 loud 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 professed 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:

"It's my impression that McCray made a clean breast of the whole thing."

"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

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 Uni-

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. Marsh seven or eight years.

"When Marsh and Stephenson came in what was said? A—Marsh 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 the date Evans resigned as prosecutor.

On that day, Noel said, Stephen- son and Marsh 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.

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phenson wanted to talk to me on the date Evans resigned as prosecutor.

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.

"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. Jackson said it was important to them that McDonald be appointed and they would raise \$10,000 and insure him he would not be convicted. That is the substance of the conversation."

"Q—Did he tell you who was there? A—No."

"Q—What else did he say? A—He

said he would not care if Remy was nominated at the primary, but we want the office during primary and election."

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