

Judge Gordon's Arraignment

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an abortion, burglary, robbery, grand larceny, resisting arrest with dangerous weapons, procuring and using deadly weapons in escaping from custody, breach of the peace involving personal violence and the use of dangerous weapons, or an attack by several have been held responsible for homicide committed by their accomplices in the furtherance of the common object.

The liability may extend beyond the enterprise in which the operator is engaged to any proximate and logical consequence thereof, so that if the common design embraces the contingency of a deadly encounter and includes a common purpose to aid therein, even to the taking of life, all members of the conspiracy are liable for a homicide resulting therefrom.

Where several persons combine to commit a crime of such a nature or under such circumstances as will probably result in the taking of human life, if they should be opposed in the execution of their design, it must be presumed that they understand the consequences which may be reasonably expected to follow their carrying their design into effect and to assent to the taking of a human life, if necessary to accomplish their purpose. So that if a homicide does occur in the prosecution of their common design all are responsible for it.

The following illustration is given of that proposition, and it is so apt in every respect, so comprehensive of this legal principle and illuminating as to the guilt of the defendants, that I read it:

One who joins with another to tease and annoy deceased is responsible for his death if caused by the other in carrying out their common design. There was some evidence in the case that one or both of the defendants threw dangerous missiles at deceased shortly before he was killed. This would bring the case within the general rule as to the use of such missiles by one and would be notice to the other that they were carrying out the design to a point where it was dangerous to life. But in this case the Court did not rest the liability on this ground, but put it on the broad ground that they had united in a common unlawful purpose.

In that case the unlawful purpose was merely to tease a man, but death resulted. All were held liable.

A person may be responsible for a homicide and guilty of murder or manslaughter, according to the circumstances, in whatever manner or by whatever means the death was caused, provided it was caused by his own unlawful act or omission, resulting in physical or corporeal injury; and one may be responsible for a death caused by an omission to act where he was under a legal duty to act, as well as for death caused by his positive act.

One is not legally responsible for a homicide unless his unlawful act or omission to discharge a duty which he owed to the deceased contributed as a cause of the death of the victim, but the unlawful act or omission need not be the sole cause of death. Thus, if defendant's negligence was the cause of the death, it is immaterial that the negligence of the deceased himself, or of some others, also contributed thereto. Defendant's act or omission need not be the immediate cause of the death, if the direct cause results naturally from his conduct.

Meaning of "Malice in Murder"

Now, may it please your Honor, the notes to that proposition in the Encyclopedia contain three cases from the State of Pennsylvania, and the editor comments and quotes this from the Pennsylvania case of McClain and the Commonwealth: "Malice comprehends not only a particular ill-will, but every case where there is wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty, although a particular person may not be intended to be injured. Reduced to its lowest terms, malice in murder means knowledge of such circumstances that according to common experience there is a plain and strong likelihood that death will follow the contemplated act."

An illustration is given of the quite homely and ordinary:

One who attempts to wreck a train, although he does not intend to kill a particular person, displays that depravity of mind and technically called "universal malice." It has been said that at common law a homicide committed in committing a misdemeanor or in an attempt to commit one is murder, but this rule seems to be restricted to cases in which the misdemeanor involved a breach of the peace or acts of the defendant which were such as would naturally endanger life.

With one other quotation I will close this branch of the law.

Manslaughter may be committed by mere negligence. Willful failure of a person to perform a legal duty, whereby the death of another is caused, is murder. But if the omission was not willful, but was the result of gross or culpable negligence, it is involuntary manslaughter. The omission must have been due to gross or culpable negligence, and the death must have resulted from the neglect of a plain legal duty imposed by law or contract upon the defendant personally. The defendant must have had knowledge of the facts imposing the duty to act, or he must have been grossly negligent in not ascertaining the facts. And where parties enter into a conspiracy to commit another offense, and in the execution of their common design one of them makes an assault with intent to murder, they are all equally guilty of the felony.

May it please your Honor, these are the beacons of the law which I argue here to illuminate the evidence in this case so that you may consider the facts with those bright lights shining upon them to guide you and guide all of us to a just conclusion.

The crimes in this case were particularly arrogant, cruel, wicked. One death only occurred, but, oh, how many bodies bruised, how much human blood shed in the performance and execution of the dreadful conspiracy. It ended in a death. Now, we may consider this evidence either deductively or inductively; we may begin when the conspiracy was first hatched and go down to the death, or we may take the Baconian method and begin at the death and trace it back to its primal cause. Either, I am sure, will lead to the same legal conclusion.

Calls Mayor Prime Malefactor

I shall endeavor hurriedly and from memory to adopt both methods of testing the guilt of the defendants in this case; and let me say, so that my remarks might not be misunderstood, and my argument may have its full value with your Honor in passing judgment, that I select out of these defendants, as the principal malefactor, Thomas B. Smith, at whose door the evidence places the criminal guilt for this murder.

Upon that proposition I shall now direct my argument. I regard the other defendants as mere agents and tools of his. All of the other eight are such tools, such agents, and others, as not yet disclosed or partially disclosed, but he is the prime malefactor.

To Mr. Stern, to Mr. Carey, early in the summer, when the police were injuring citizens, threatening them, intimidating them and beating them, Mr. Carey went to the Mayor and Mr. Stern went to the Mayor. They told him what his agents were doing, his agents, his legal agents, his police force, were doing in the ward; that they were using his name as authority for their acts of violence, and asked him if it was true. He responded arrogantly and defiantly "Yes." "At the end of the session of the Legislature, Senator Vare came to me and said to me 'Now, will you let me go for Carey,'" and he said, "I told Senator Vare, yes, go for him and go the limit; I and my administration will be behind you." Two witnesses to that; two that were produced, one as yet only heard partially through his son, is on a bed of sickness and could not be here, but two living witnesses testified to that—"I told Vare he could go for Carey and go the limit, and I and my Administration will be behind him."

Faction "Went the Limit"

Now they proceeded to go the limit. They went the limit. Through all the testimony you heard, and which I will refer to, and as coming within the legal propositions I have read, that testimony will show that every step in going the limit was called to his attention. No crime was committed down there that he was not promptly notified of. Every gross violation of law was presented respectfully, beseechingly to him, and he was told what his agents were doing, not by way of threatening him, but by way of begging him to perform the legal duty which the law put upon him and which, if he did not perform, made him more deeply the co-conspirator and participant in the crime.

Let me refer to that testimony. At a certain time Lieutenant Bennett, the lieutenant in this police district, was arrested, had a hearing before a magistrate with other police defendants and was bound over for court for the offense of aggravated assault and battery. Some one in authority, this defendant himself, Smith, or his next legal agent, the Director of Public Safety, had removed twenty regular officers from the Fifth Ward. Those acts were official acts. They were his acts. He is the head of the police department.

Brings in Director Wilson

The next after him in authority is Wilson. Not only did he and his agents remove those regular officers, but they brought into the ward officers from other police districts. Some of them are before you now as defendants, gross, coarse, brutal men. Aye, they sit here and must listen to my speech in silence, and I reluctantly describe them personally. But look at them, look at them! They were brought in from other wards, their uniforms stripped from them, and with blackjack and gun they were turned loose upon the citizens of the Fifth Ward to beat, intimidate and terrorize. They continued it day after day, week after week, and then this Mayor was appealed to by Mr. Carey, in a written document—a written document which was not merely vague assertion, but specific and detailed statement. He was offered the evidence under oath of what his police force were doing in "going the limit," which he told Senator Vare Senator Vare could go. He was asked to give an opportunity to present that proof before him of the control of these officers. He was advised that his name was daily being used as the authority back of the blackjack and back of the gun, and he was begged and begged to take this legal evidence and stop it and act before murder was done.

That there might be no mistake about what was said to him, it was put in writing, put in his hand in his own domicile, with his family about him; and he was told of the coming crime with its awful red face, which was right in his official face.

"Smug Hypocrisy"

And what did he do? He asked the man who gave him that information to suppress it, not to publish it. With smug, affected hypocrisy, this man said: "This is awful! I don't think this could be so bad. Does Senator McNichol know of the letters?" "No."

Then he called up Senator McNichol and asked Senator McNichol to send for Mr. Stern and take the letter and prevent its publication, and Senator McNichol did so. The Mayor saying, "I have an appointment with him on Monday. Do not publish it."

this until then, until after then." And on Monday he saw Senator McNichol, and while he was talking to Senator McNichol there came a delegation of citizens, brought by his co-defendant Isaac Deutsch, the man for whose candidacy these crimes were being committed. The delegation of citizens were brought into his public office, led by Deutsch, by Abrams and by Uram, I believe—I am not certain. My memory does not recall that definitely, but I believe so—and he came out and, in his public office addressed those citizens.

Mayor "Blazoned the Way"

And what did he say to allay the dangerous condition of the Fifth Ward? What pacific word did he utter? What word that showed that he was not heart and soul with the murderous men who were going the limit under his direction? Not one. On the contrary he said to those citizens, in the hearing of Deutsch, who subsequently stored and led the gunmen, in the hearing of Uram, in the hearing of Abrams, he said to those citizens: "If heads must be cracked in the performance of police duty, they shall be cracked. I have no doubt the police are justified in all they have done." He applauded what was done and he blazoned the way that more should be done.

What followed that? Mr. Deutsch is candidate for Common Council. Mr. Deutsch wants to take citizens to the Mayor to see the Mayor and get his persuasion to go along in the scheme which was then being conducted in that ward.

May it please your Honor, in the pursuit of this conspiracy, Lieutenant Bennett, as the head of the police force in that district, is, of course, a constantly recurring figure. The testimony shows him in the office of the Director of Public Safety. It shows him leading at various times the police force of the district; Uram, Feldman, Murphy and the other defendant here whose name I do not now recall. The testimony of the citizen whose store was broken into, and he himself struck down with blackjacks and kicked around the floor. All this ten days before the election.

And then the time went on, and there came the election looming two days ahead, and then began the grand act which was to carry out the purpose of this conspiracy.

First, it had been agreed—and the Mayor had been told, told in writing, told orally—it had been agreed that the election officers and friends of Carey would be arrested early on election morning. It had been agreed that a mob would be started from one end of the ward and another mob from another end of the ward, led by Bennett, and they would go through their destructive path arresting the Carey people, and, to use Bennett's phrase, "it would be all over by 10 o'clock."

Where was the mob to come from? I again call your attention to the fact that the Mayor of the city was told that an important delegation of gunmen was coming into the city for the purpose of committing acts of violence, and that murder would be the consequence of letting loose these lawless men from another State in the Fifth Ward at that time. He knew it. He was told it. In writing he was told it. Orally he was told it. By responsible citizens. By men who had sworn, as he had sworn, to obey and defend the constitution and the laws.

One of them, Isadore Stern, "the dirty Jew." I represent "the dirty Jew" in this case. "The dirty Jew" of the Fifth Ward are my clients. It was upon the oath of that "dirty Jew" that you issued the warrants which bring about this hearing, and for those "dirty Jews" there and the "dirty Jews" wherever they may be, who are under the heel of Christian oppression and Christian insult, and for their sakes, I have gone into this prosecution. I entered it at the beginning for them. I will stay in it for them, and when they have been vindicated I will leave it.

"A dirty Jew" told him what was going on again and again, notwithstanding the insults flung in his face. But on Monday, the day before election—Senator McNichol was then sick on his bed; the appointment he had with the Mayor could not be kept, and any restraining influence, any restraining influence which he would recognize, a rich contractor, that influence was silenced and paralyzed by a sudden sickness which laid McNichol on his bed.

Official Depravity Begins

And then began the consummation of depravity, official depravity and wickedness. Samuel G. Maloney, formerly of the Fifth Ward, an adherent of the Deutsch and Vare faction in that ward, was visited by Deutsch in his office in the Real Estate Trust Building and asked to get eighteen strong-arm men from New York to go into the Fifth Ward on election day. When he asked that a Vare supporter, Magistrate Persch, was present. The fiction was used that they were needed to stand off a prospective gang from the Tenth Ward, who were going to be there, and they were to be used to stand off meditated violence from another source, which never appeared.

Tenderloin Thugs Imported

Maloney sent Mike Sullivan to New York. He went into the Tenderloin and he got eighteen of the remnants of society, eighteen poor, wicked men, criminals maybe; certainly, unfortunates and anyhow the fruit of our present social system, disinterested men, who would sell their violence to one as well as to another. They readily accepted the lure of the \$50 for the two days that was tendered them and they came to the city, but at that time there came from the defendants, Smith and his administration, a strange and awful act, an act which should cause every respectable citizen to shudder when he thinks of the uses to which the police force will be put.

Samuel G. Maloney, after he had arranged for the bringing of these men at the request of Deutsch, went to Senator Vare's office to know whether the money would be paid to those unfortunates for their violent deeds. He saw Congressman Vare, and then the oracle spoke equivocally. Maloney said, "Deutsch said that you have authorized him to have eighteen men brought over and sent into the Fifth Ward; is that so?" Will you be responsible for their payment?" Congressman Vare said, "Isaac Deutsch has got all the money he needs and will pay his debts." That was retorted by Mr. Finley afterward; that is to say, Mr. Finley said, "Deutsch has plenty of money"; and then Samuel G. Maloney went downstairs. He saw Senator Vare, the man whom Thomas B. Smith told "might go the limit in the Fifth Ward" and he, the Mayor, "would be behind him with his police force." Maloney met Senator Vare. He, Maloney, as a result of a conversation he had had with James Tate, the captain of the detectives of the city of Philadelphia, who talked to Senator Vare, said, "Tate wants to help in the Fifth Ward; send for him—send for him." That was Monday. The men were brought to Philadelphia on Tuesday, and on Tuesday Mr. James Tate, the head of the detective force of Philadelphia, went to Senator Vare, to his office; they met; the door is closed; the four walls only heard what was said there. Tate told you his version.

Detective Captain Sees Senator Vare

We do not know what words were spoken in that room, but we do know the acts, the official acts, which followed that interview with Senator Vare. James Tate left Senator Vare's office and went to his own office and sent Lieutenant Wood to Samuel G. Maloney, the man with whom Deutsch had contracted for the eighteen gunmen—sent him to Maloney to know what Maloney wanted. Wood went, and Maloney told Wood what he wanted—he wanted ten detectives in command of Harry Clark sent down into the Fifth Ward, and Samuel G. Maloney's desires were carried out to the letter.

Ten detectives, in charge of Harry Clark, who was a subordinate detective, but who was elevated to command for the purpose of the dastardly deeds which were to be committed there, were sent into the ward because Maloney asked for them—the Maloney who had talked to Senator Vare the day before, who had been asked to send for Tate, who saw Tate, and afterward Tate acted as I had told you.

May it please your Honor, Samuel G. Maloney, who imported the gunmen at the request of Deutsch from New York, was as much in command of the police force as though he had been a sworn officer. Why was Harry Clark sent down there? Subsequent evidence reveals, because his brother, James Clark, was the man who plotted these gunmen through the ward, and the two brothers were to act and cooperate.

But the Mayor! But the Mayor! Is he ignorant? Does he not know that night these gunmen, led by Harry Clark and by James Clark, his brother, that night these men were sent to Deutsch's club and stored in the third story, and from time to time they were called down by twos and threes and fours and sent out to beat citizens? They performed their job and came back. Little guilt there with those poor men, those unfortunates, who were working for money and not for malice or revenge.

Raid on Finletter Club

During the night, again, a whole body of the gunmen, under the lead of Harry Clark, Feldman, Murphy, all officers of the law, descended upon the Finletter Club, broke into it, beat the citizens in the manner you know, and I shan't recount this—beat them until every room seemed, as witnesses have said, like the shambles, literally so—wall, floor, furniture covered with blood. What was done then?

The Mayor was down at Atlantic City enjoying himself, and Mr. Stern, "the dirty Jew," called him up on the phone and told him of what was done, and that gunmen were in that ward beating up the citizens, and Stern said, "Won't you come up yourself and stop this?" No threat, but a citizen and a legislator and a lawyer, well known to him, "the dirty Jew," begged him to come up and take charge of his police force and prevent further crime. And he said, "Can I get a train this evening?" "No," said Stern, "nothing but the electric train." "Well," said he, "that takes too long. I won't take that." It would be too long for him that his languid body should be carried up on an electric train from Atlantic City for an hour and a half to stop murder in the city where he was Mayor and where the people had elected him to protect their lives and their property. "Call me in a half hour."

Mr. Stern, with singular discretion, went to the Pennsylvania Railroad and hired an engine and parlor car, thinking that maybe the parlor car, with its luxury, would tempt this man who has recently enjoyed luxury, would tempt him to come up to the place of his duty and stop the riot and probable murder that were impending. He called him up in a half hour and said the Mayor, "I can't get a train out of here tonight, Stern." "I have provided for that," said Stern. "An engine and special car awaits you at Atlantic City station, and will take you up to the city of which you are Mayor and enable you to come down in the ward and prevent the murder which is impending." Then, driven to a corner, his hypocrisy was at last fully revealed and he said, "What circus stunt is this you want me to get off? I am going to bed. You go and see Robinson. I have told him to take those Second District men out of the Fifth Ward. I am going to bed."

And he went to his bed! He went to his bed and probably he dreamed, but I am sure he did not dream of the events which would occur the next day. His mind was not on them. No. If they were dreams, they were golden dreams, dreams of the rich contractor to whom he had given letters of marque and reprisal to go through the Fifth Ward and wreak his purposes with the thugs and brutal policemen. He dreamed of that coalition which he had formed with this rich contractor and politician who was now using his police force to carry him into further suc-

cesses and tighten his grip upon the treasury of the city by the election of another favorite Councilman.

Yes, he went to bed, and a number of citizens in the Fifth Ward, with heads cut and bleeding, went to their beds with pain and sorrow.

And the Mayor slept! In snug and greasy respectability, he slept at Atlantic City, though his city was in riot and men were being stricken down by his legal agents. He slept!

The next day, may it please your Honor, this murder was committed, but, may it please your Honor, I do not stop there. Young Mr. McNichol, Senator McNichol's son, on that very night, the day before, and on that night, talked to him and told him what was going on and what would occur the next day. And young Mr. McNichol begged him to keep his promise to Senator McNichol, and send a decent captain of police down there to take charge of the policemen and see that order prevailed and that citizens were not abused. And what did he say to young McNichol? "Well, I do not know that I promised your father that."

"My father says you did; that you promised you would send Captain Callahan down."

"No. Well, if I did, I have changed my mind, because Callahan was suggested to your father by Judge Gordon."

What ghost rose up before him when Judge Gordon occurred to his red imagination that night? What ghost was it that caused him to say that? Well, he said it. "Go down yourself," pleaded McNichol. He said he would on the morrow, the inaction that night? What ghost was it that caused him to say that? Well, he said it.

Systematic Crimes of Violence in Ward

Again he went to sleep. And that day dawned, the day of election. Then began the systematic crimes of violence, invasion of liberty, defiance of law, spitting upon authority, beating "dirty Jews" in their houses, on the way to the polling places, in the polling places—and finally Eppley was killed, Carey beaten almost to death, an Assistant District Attorney struck down by a murderous blow, and other citizens through that ward beaten—by his agents! his agents! his agents!

He knew it. He had been told the night before it would be done, the day before that, the day before that, the week before that, the week before that, always he was told, always he was begged to do something. No, he did nothing but to say, "If heads must be cracked, then they will be cracked."

And that murder occurred! And then young Mr. McNichol goes again to this Mayor, in his office, and tells him of the murder, and then asks him to go down to the ward and try to stop any more murder, and the Director of Public Safety is there, and then—oh, the satire and irony of it!

"What can I do?" said the Mayor. "What can I do?" And the Director of Public Safety said he would send 500 more policemen down in the Fifth Ward to preserve order. And young Mr. McNichol, who was no diplomat, but a plain, common-sense young man, said, "Why, that would be fine politics. You want to send more policemen down there and strike more terror into the citizens of that ward."

Mayor Called "Great, Coarse, Indifferent Defendant"

McNichol left, and the Mayor and his Director did what? Go into the ward and stop further violence? No. They didn't go to bed. They went out to a golf field and beat the little white ball over the lawn of a country club.

May it please your Honor, that is the story of this crime. Who is the great defendant? Oh, those men over there—that were there—I pity them all. I wish they had all escaped. I am glad we have got the defendants here who committed that crime. I am glad we have got the great, coarse, brutal, indifferent defendant, who was the proponent of it, who nursed it during all those weeks, and who was in at the death.

There is no feature of this lawlessness that he was not acquainted with. He knew it always, every way. A contractor, once his friends, told him again and again, McNichol, Carey, who was once his friend, told him. Stern, a legislator, told him. Young McNichol told him. And, oh, with McNichol he perpetrated another act of hypocrisy, and told the son how he loved the father, for the father had started him in

politics. Little care he who starts him in politics, but only who continues him in politics. And he was with the contractor afterward, who carried out to the limit the plan, and who is said to dominate politics in Philadelphia. How long? Oh, Lord, how long? May it please your Honor, another deed was done that day as infamous, or more so, because justice was perverted because a minor magistrate gave over his office to

thugs; issued warrants by the Mayor; handed them out to henchmen and accessories to arrest citizens in the performance of their legal duties, at their business, on the street, in the polling place. Persch, Persch! Persch, who was present with Deutsch contracted for the gunmen, Persch who was a Vare leader in a division in another ward.

And, Oh, I forgot another element of testimony, so incriminating, so incriminating. The detective, the captain of detectives, had sent down into that ward fifty detectives, Harry Clark, James Clark's brother, in command. Lieutenant Bennett, in command of the police force. They went down on Tuesday. They were there until the polls closed. What did they do? They arrested no malefactor. Why didn't they arrest any malefactor? Why, because no Mayor's man was hurt, no supporter of Deutsch was beaten. Deutsch had things of his own way. Had there been a Carey man there, strong enough, valiant enough, that had an opportunity to strike a Deutsch man or a policeman, the detectives would have arrested him.

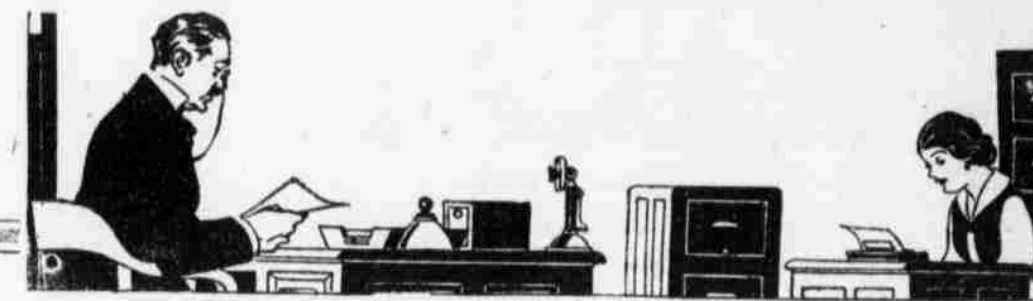
They arrested nobody, because none of the Mayor's men were hurt. None of Deutsch's men were hurt. No Deutsch supporter was beaten. Nothing was done against them, and the detectives, therefore, made no arrests. Every cut head, every man whose liberty or property was invaded, every man whose rights were stricken down was a Carey man. Not a Deutsch supporter. We have had men come in here with their heads bandaged, showing the evidence of the brutality upon them. Where is there a Vare supporter hurt? Where a Deutsch supporter hurt? Where a Mayor's supporter hurt? No. The man who led the crime were all Deutsch men, all Vare men, all the Mayor's men. All were cadets of Gascon, and no other province.

Crime Calls Out for Justice

Oh, may it please your Honor, this crime cries out for justice, and justice against the real potent criminals. With the termination of this hearing my active participation in the prosecution will cease. I brought the first prosecution. I brought the second for Mr. Stern. I began that prosecution. The District Attorney's office, The District Attorney

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