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RALPH FLEAGLE SHOULD HANG

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AN article, by Mr. Philip Van Cise, appeared in the November issue of Dicta, under the heading, "Should Ralph Fleagle Hang?" We will reply to the question propounded by Mr. Van Cise, under the heading, "Ralph Fleagle Should Hang".

Mr. Van Cise advises executive clemency, i.e. that the Governor of Colorado should disregard and set aside the findings of the jury, in the Fleagle case, and fix "life imprisonment" as the penalty; that the Governor should disregard the law now extant in regard to determining the degree of punishment which should be allotted to the accused. With this position taken by Mr. Van Cise we cannot agree.

What the Governor will do, under the circumstances, we do not know, but we have hope that he will enforce the law as it now stands without fear or favor.

Ralph Fleagle has, and had, from the inception of the cause, an able, learned attorney. Judge Cunningham knew, and naturally so informed Ralph Fleagle, that an oral promise that he would receive "life imprisonment only" was absolutely valueless; that there was no power under our statute to enforce the same.

Did Ralph Fleagle confess because of the alleged oral promise of clemency? Did he do so purely and alone because he had received the alleged oral promise that he would only be given a sentence of life imprisonment?

Mr. Harper, the detective employed by the Bankers' Association, testified at the trial of Fleagle that he secured the confession from Fleagle when he showed him a telegram which he had prepared to send to a Criminologist in California, employing him in the case; that Ralph Fleagle knew the Criminologist and feared him and then, and then only, agreed to confess, provided the Criminologist was not employed.

That fact has been practically lost sight of and been overshadowed by the glamour of a more appealing matter, towit,

an alleged promise. It cannot be justly claimed that the only cause which moved Fleagle to make the confession was the "promise", the terms of which are in dispute. There was in addition to the above, a promise which has been kept, to the effect that his brothers and father would not be prosecuted. There were perhaps other moving causes which caused him to make the confession, of which we do not know and never will know, for the reason that they are hidden in the breasts of Ralph Fleagle and his family. It does not appeal to us to be logical to assume, or presume, that Ralph Fleagle made the confession purely for the reason that an alleged promise, that he would receive a sentence of life imprisonment only, was made.

It has been, and is claimed, that the confession of Ralph Fleagle saved the lives of four innocent men. That is questionable. We feel safe in asserting that no jury in Prowers County or in any other county in the state would have convicted Whitey Walker et al. after the finger print of Jake Fleagle, connecting the Fleagles with the case, had been discovered. We do not believe that our District Attorney would have attempted to convict Walker et al. after the finger print of Jake Fleagle had been found.

The testimony, in regard to the so called agreement as to life imprisonment or hanging, was decidedly conflicting. Mr. Harper, testifying for the defense, alleged that a positive assurance was given Fleagle that he would only receive life imprisonment. Two or three others also testified to like effect, yet testimony was also given by equally credible witnesses to the effect that the agreement was only that the prosecutor would not *"ask"* for the death penalty. All this evidence was placed before the jury and it found against Fleagle. Should their finding be disturbed?

Mr. Van Cise claims that the prosecuting officers and police officials of our state must "dicker and deal" with criminals; that otherwise we will not secure convictions. That is a matter for our legislative bodies. The Fleagle case should be conducted in accordance with the law *now extant* and not in accordance with what some one or more individuals think the law should be. The same claim made by Mr. Van Cise was made by Mr. Harper in his testimony before the Fleagle

jury, although it was purely argumentative, yet the jury found that Fleagle should hang.

Mr. Van Cise alludes to the fact that no identification or attempted identification was made by the prosecution in the trial of Ralph Fleagle. No identification was necessary under the plea of guilty entered by Fleagle. What identification might or might not have been made of Ralph Fleagle is beside the point in question.

Mr. Van Cise further claims that the evidence against Ralph Fleagle prior to the confession was purely circumstantial. That may or may not be true, but, is it not just as reasonable to assume that Ralph Fleagle believed that there would be more than circumstantial evidence adduced? Ralph Fleagle knew what could have been discovered against him, in connection with the murder and robbery, and the confession was made by him with a clear understanding of the consequences. He and his attorney knew that the promise, if such promise were made, of a life imprisonment sentence only, meant nothing. They knew that the degree of punishment must be left to a jury, not then selected. Great care was taken by counsel for the defense in the selection of the jury.

Mr. Van Cise further states as follows, to-wit:

"Under the Statutes (C.L. 6665) the jury alone and no one else can fix the penalty for first degree murder! No outside agency of any kind can interfere with this exclusive prerogative."

This appears to us to dispose of the whole matter. Ralph Fleagle must hang, in accordance with the verdict of the jury, or our statutes must be disregarded. No "outside agency" should interfere.

The only way in which Ralph Fleagle can escape the penalty of death, imposed by the jury, is to have or secure some "outside agency" to circumvent the statutes in regard to this matter.

It is true some states have statutes authorizing contracts between the State and the defendant, but Colorado has no such statute.

Mr. Van Cise further says:

"Oral agreement between the State and the defendant, *without the approval of the Court.*

"Such an arrangement is of no value whatever in Colorado, affords no protection to the defendant, and cannot be offered in evidence. It also is dangerous, as it opens the door of misunderstanding."

As the alleged agreement made with Ralph Fleagle was made without the "approval of the Court", it appeals to us that the above statement made by Mr. Van Cise is controlling; that there should be no further quibbling or reference made to the alleged agreement and that the decision of the jury should be strictly adhered to and carried out.

We agree with Mr. Van Cise in his statement that evidence as to the so called agreement could not legally have been forced into the testimony, but the prosecuting officers in their desire to deal absolutely fairly in every respect with the defendant, Fleagle, permitted the evidence thereof to go to the jury and the evidence in regard to the agreement was full and complete.

Mr. Van Cise quotes a decision from our Supreme Court as follows, to-wit:

"We are not aware that the District Attorney has the power to suspend the operation of a statute or to make a valid agreement by which he is to refrain from enforcing the criminal laws of the State * * * proof of such an agreement, if made, was improper."

Under that decision of our Supreme Court, why should the alleged agreement made by the District Attorney be given any consideration whatsoever?

Our deductions from the facts and premises laid are as follows:

First: Ralph Fleagle was convicted by a jury of twelve men (one peremptory challenge remaining to the defense) of the murder of the President of the First National Bank and his son, the Cashier thereof, and robbery of said bank.

Second: No judicial or executive clemency should be allotted Ralph Fleagle.

Third: Ralph Fleagle should be hanged as ordered by the jury.

Fourth: That which cannot be done *directly* under the statute should not be done by *indirection, circumlocution* or *circumvention* thereof.