Northern Kentucky Views Presents:

The Assassination of a Governor,
and the Extraordinary Incidents Which Have Followed the Attempt to Bring the Perpetrators to Justice

By

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THE ASSASSINATION OF A GOVERNOR

AND THE EXTRAORDINARY INCIDENTS WHICH HAVE FOLLOWED THE ATTEMPT TO BRING THE PERPETRATORS TO JUSTICE

By DAVID GRAHAM PHILLIPS

FOR the fourth time Caleb Powers must face a jury of his fellow citizens of Kentucky, to meet again the capital charge that he was a prime mover in a conspiracy to murder Gov. William Goebel. He has been in prison since March, 1900. Three times he has been convicted and sentenced to death; three times the Court of Appeals has reversed on technicalities. And now defense and prosecution are once more gathering their forces.

WILLIAM GOEBEL
From a photograph taken not long before his assassination

The murder of William Goebel arose out of a ferocious political strife that has reached its climax of fury in the emotions and events centering about the trials of his alleged murderers. Their guilt or innocence has been asserted and denied even in the jury-room itself, not on the merits of the facts, but on the prejudices of Goebelite and anti-Goebelite. From both sides have come not only lies of the deliberate sort, but also those far more dangerous assaults upon the truth, the unconscious lies prompted by passion. To listen patiently to an anti-Goebelite is to believe Powers and the fugitive ex-governor, Taylor, the victims of an infamous conspiracy to make political capital out of the murder; is to believe the prosecutors of Powers as savage bloodhounds as ever followed the trail of innocence; is to believe that the courts of Kentucky have been prostituted to the basest and most barbarous injustice. To listen with equal patience to a Goebelite is to believe that Powers and Taylor are a pair of procurers of murder whose plans miscarried; is to believe that in their efforts

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W. S. TAYLOR
Ex-Governor of Kentucky, now a fugitive in Indiana

to save themselves from the just consequences of their infamies they have not hesitated to abandon their wretched instruments and to drag the name and fame of their state in the mire.

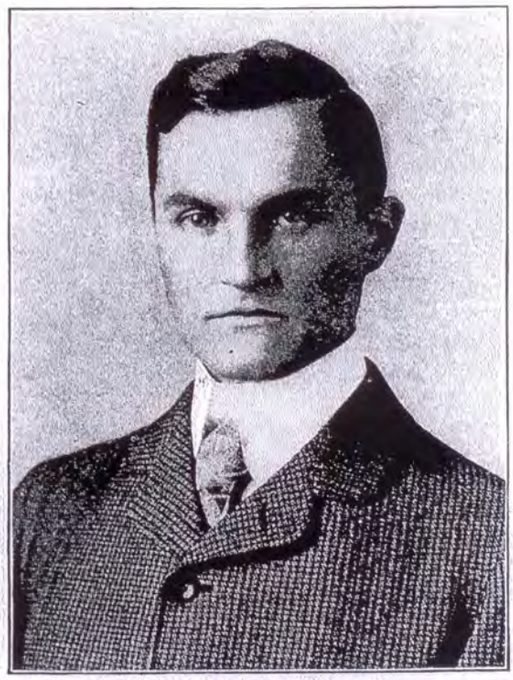
What is the truth? Is Goebelite or is anti-Goebelite right? Or, as so often happens in human affairs, are both right and both wrong? Far from the influence of those boiling passions and interested only in the truth as to this amazing and fascinating drama, perhaps we may, if not discover the whole truth, at least discover some valuable part of it.

I

Clearly, the key is William Goebel himself—who he was, why he was able to ignite fires that, five years after his death, burn with undiminished energy.

In every community power tends to segregate into the hands of a few. Kentucky, like all the Southern states, emerged from the Civil War's chaos with the Democratic party dominant, and that party ruled by its "better element"—the families having the culture, the education, the commanding position in the various communities. And the question of negro suffrage, of "negro domination," greatly strengthened the hold of these "first families." Also, the chicanery necessary to the maintenance of white rule educated and accustomed and hardened the people to election crimes of all sorts—to ballot-box stuffing, to tally-sheet forgeries, to violence at the polls, to sardonic swearings-in of the candidates with the fewer number of votes as the candidates elected.

In the mountainous regions of Kentucky lived a population that had never held slaves—a lawless, rather brutal, but by no means unattractive or unintelligent, people, for the most part Republicans. And as the industrial development spread southward from the Northern states, this Republican element was reenforced until it was close to two-fifths of the voting population of the entire state and liable to attain power if there should be a serious split in the Democratic party. Further, just as the Democrats, overwhelmingly in the majority in the leveler counties, could and did adjust election results to the needs of their party or its dominant clique, so the Republicans, where they were vastly in the majority, could and did conduct elections as they pleased, unchallenged.



CALEB POWERS
Whose fourth trial for conspiracy in the murder of Goebel will soon open

MILITIA MARCHING TO GUARD THE STATE HOUSE GROUNDS, FRANKFORT AFTER GOEBEL WAS SHOT

Presently, the inevitable Democratic split came. While it is true that power everywhere tends to segregate, it is also true that in a democracy this evil itself breeds its own cure. Soon there was a large and increasingly powerful element in the Democratic party that was exceedingly restless under the rule of the oligarchy of "first families." This restive element was led by the younger men of the state, weary of waiting for the "old fellows" to get out of the way; and behind them began to line up a large part of the Democratic masses dissatisfied with the intimacy of the oligarchy with the rich corporations. Of these corporations the most powerful and the most aggressive politically was the Louisville & Nashville Railway, which had almost a monopoly of the railway transportation of the state. The L. & N.'s officials, high and low, either were conspicuous in the oligarchy ruling the Democratic party or had the friendliest possible relations with it. And the rights of the people were naturally trampled more and more recklessly. Not only was there corruption of the grosser kinds, but also there was that subtlest form of it, the social bribe, to which the Kentuckians, with their expansive temperament, were peculiarly susceptible. The oligarchy, descendant and heir of the haughty slavocracy, would not have had any too great respect for the rights of "the common people" in any circumstances; with the L. & N. and other corporations corrupting it, it rode straight and fast to its own ruin.

The destroyer finally arose in the person of William Goebel. A Kentucky faction has tried to canonize Goebel since his death. In fact, he was a politician; but shrewd, brave and perhaps not overscrupulous. When such a man as was Goebel devotes his whole energy to building up the power of corrupt wealth, he is mildly criticized: "After all, he was on the side of the better element!"

JAMES B. HOWARD
Outlaw Taylorite, accused by Youtsey of firing the shot that killed Goebel

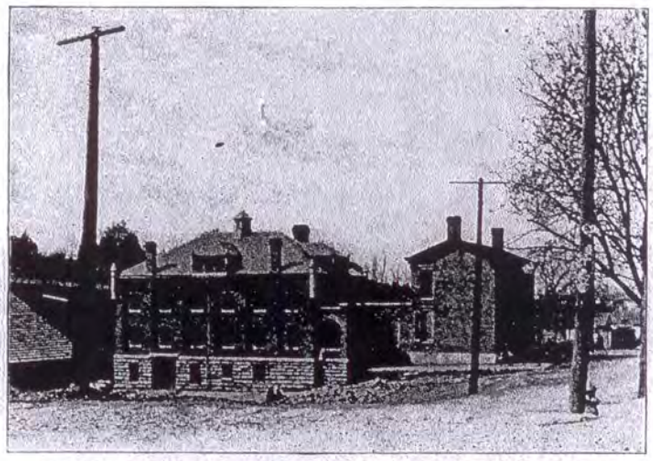
But when a Goebel happens to be indifferent to wealth and "respectability," and devotes himself to building his power through the common people, he is denounced as a monster by the leaders of the comfortable and luxurious classes; and in public prints, which are so largely in the hands or under the influence of "the better element"—the rich and successful and socially highly placed—it is all but impossible to get any just idea of him. The truth is that Goebel was honest, as politicians go, was beyond the reach of corporate corruptions, was determined to make himself a mighty figure in state and national politics by fighting corrupt wealth. His purpose was good, as good as the purposes of the opposing servants of privilege and caste were bad; his motives may have been selfish, but no more so than those of all politicians; his methods were corrupt, like those of his opponents—no more corrupt than theirs, but shrewder and braver. In his superior shrewdness and audacity, which finally resulted in the complete overthrow of the oligarchy and brought about a cleaner and more democratic Democratic party in Kentucky, may be found the clue to the ferocity of so large a part of the "respectable" element in Kentucky, of those bearing the names with which the country at large is most familiar.

Goebel became conspicuously active in the early '90s, when the hard times were making the people peculiarly sensitive to corporate oppressions and aggressions, and the Populists were drawing off the Democratic rank and file by the tens of thousands.

In 1895, the Republicans had elected their entire state ticket—and the Republican party was directed by an oligarchy of "leading families," exactly like the Democratic oligarchy. Obviously, Goebel's attacks upon oligarchy were in a way to be successful—there was the object-lesson of the Democratic party ejected from its ancient seats of power by the rule-or-ruin policy of its oligarchs; there was the object-lesson of the Republican oligarchy, in power through Democratic quarrels, and using that power in precisely the same way in which the Democratic oligarchy had used it. Goebel made campaign after campaign, and he grew steadily. And

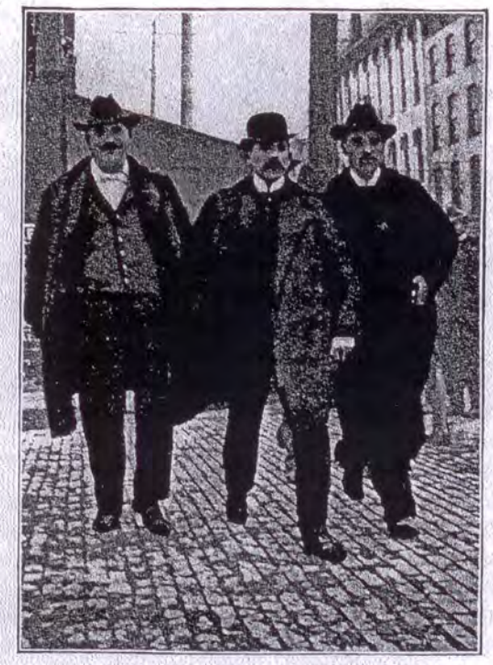
HENRY E. YOUTSEY
Whom Howard accuses of the shooting, and who confessed himself to being a principal

hatred of him grew steadily, and it was no uncommon thing to hear a Kentuckian end a eulogy or a denunciation of him with, "But somebody'll kill him sure before he goes much further."



SCOTT COUNTY JAIL, GEORGETOWN, WHERE GOEBEL SUSPECTS WERE CONFINED

Finally, he got the Legislature, and in the winter of 1898 passed the famous Goebel law. That law has been widely described as a deliberate Goebel concoction to steal the state and to hold it indefinitely. Any one who will take the trouble to read it and to compare it with the law which it superseded will find that it is if anything more in sympathy with the Kentucky Constitution. But that is not important. The real point is, that under the old law the oligarchs could more easily steal an election, while under the new law the Goebelites could more easily steal it. Under neither law was the object a fair fulfilment of the will of the majority, but the easiest and most plausible accomplishment of the will of the political bosses. In the broad, the old law made the governor and a few other state officers final judges of who was elected, while the new law transferred this power to the Legislature and boards appointed by it. As between these two pieces of roguery, cleverly disguised, a fair man will probably make no choice.



ARREST OF A GOEBELITE
He killed a negro who said, "Goebel ought to be shot," half an hour after the shooting of the governor

At the Democratic state convention of 1899, at which both factions outdid themselves in fraud and corruption and outpourings of envenomed passion, Goebel got the nomination for governor, and leaders among his followers the nominations for the other state offices. The beaten oligarchs bolted and nominated an "old-line Democracy" ticket. At the election in the fall of 1899, after a ferocious three-cornered campaign, the Republican ticket, headed by W. S. Taylor, was successful by a narrow plurality on the face of the returns. Did it actually win? Nobody knows; nobody ever will know. The Republicans cheated in the mountains; the Democrats, both Goebelite and anti-Goebelite, cheated in the valleys. The devil fought himself with fire all over the state. It was a great triumph for everything but right and justice and decency. Those who, noting that the Democrats were divided, rush toward the conclusion that the Republicans probably won, are flung back by the fact that, while the Democrats to a certain

MILITIA GUARDING COURT-HOUSE TO PREVENT LEGISLATURE FROM ASSEMBLING

extent checked one another from fraud in the valleys, the Republicans in their mountain strongholds were unchecked.

We now come to January, 1900, and to the tragedy. The Republicans had had all the state offices since 1895—therefore the new lot of Republicans, elected on the face of the returns in November, 1899, were sworn in and were given possession by their Republican predecessors. The Goebelites had the Legislature—a majority of fourteen in the Senate and of eighteen in the House. The Goebelites had filed contests before the boards appointed by the Goebel Legislature to hear and pass upon election contests—and Taylor's nominal plurality over Goebel was only 2,856 out of a total vote of 403,000; the pluralities of the other Republicans were similarly small. Under the Constitution of Kentucky, the Legislature was charged with the duty of finally deciding all contests for governor and lieutenant-governor; under the so-called Goebel law, the Legislature was also the court of final appeal for all contests brought before the returning-boards which it appointed. That is, the Goebelites had two legal chances, arbitrarily or justly, to oust the Republican state officers or Taylorites and to install themselves. If the returning-boards should refuse to do the work, the Legislature could do it—and from the Legislature the only appeal was to arms and civil war.

Of course, the Taylorites, while they knew their heelers had done some cheating at the polls in November, believed they had done far less of it than the heelers of the other fellows; of course, the Goebelites, while they knew their heelers had cheated at the polls in November, believed they had done less of it than the other fellows. And so the two factions, with virtuous hearts, shook their fists at each other; the Taylorites despairingly, because the Goebelites had the Legislature. In any warm-blooded community where weapons unconcealed were freely borne, and borne for use, here was a situation that meant violence and murder.

II

Frankfort, the country town which is the capital of Kentucky, and Franklin County, of which Frankfort is the county-seat, were then overwhelmingly Democratic. Almost all the white people

J. C. W. BECKHAM
Present Governor of Kentucky

were Democrats. Almost the only white Republicans were those from the mountain counties who had been elected to state offices through Democratic factional quarrels. Apparently this shows that the Republican state officials were at Frankfort strangers in a hostile land. But that is not altogether true. There was a strong sympathy, as has been said, between the leaders of the Republican machine and the leaders of the old-line Democratic machine—the old-fashioned Democrats hated Goebelism with a ferocity which made their antagonism to Republicanism seem mild in comparison. So, the majority of the "leading citizens" of Democratic Frankfort were not hostile to de facto Governor Taylor and de facto Secretary of State Powers and the other de facto state officials whose positions the Goebelites were contesting. They were not friendly, but they were not hostile—and it is important to bear this in mind.

Orders from Governor Taylor and letters have been published, showing that he got the militia, such companies as could be counted on, in readiness early in January. A few days after a brawl between a Taylorite and a Goebelite in Frankfort, he had several companies of militia secretly put under arms and kept in readiness at the armory. It does not anywhere appear that there was anything in the temper of the people of Frankfort or of the Goebelites to justify this; but there were rumors of Goebelites mustering in force, and the Taylorites put forward other rumors in justification of Taylor's action, though it must in fairness be remembered and noted that, as the Goebelites had the majority of the Legislature, their program was one of peace and order, and electoral outrage under forms of law, if outrage it was. It is difficult for a fair-minded person to understand why Governor Taylor should have assembled militia, except in preparation for armed resistance to the electoral decrees of the Legislature, though those decrees, whatever they might be, would be binding under the explicit mandate of the Constitution of the state.

Caleb Powers, the de facto secretary of state, hastened up into the mountains whence he came, and there assembled and caused to be brought down to Frankfort to attend the sessions of the contest-boards a band of about a thousand Taylorite mountaineers. The unimpeached testimony is that they came drinking, and shooting out of the car-windows; that they conducted themselves fairly well, except in speech, while they were at Frankfort; that when they left on January 25th, after having accomplished nothing, they fired farewell volleys from the car-windows. While they were at Frankfort, they indulged in the wild and murderous talk to be expected from them in the circumstances. It is testified by witnesses whose character the defense does not attack, that these men vented freely all sorts of threats to kill Goebel. Indeed, a reading of the evidence makes it impossible to doubt that the expediency of killing Goebel, the virtue and duty of killing him, methods of killing him, constituted a large part of the conversation of this mysterious mob, which slept in the State House and lounged in its corridors and in its grounds with revolvers and Winchesters in full view.

Did Caleb Powers intend this to be an armed mob? He says it was a band of peaceful citizens, come peacefully to protest and to testify before the contest-boards. There is unrefuted and unimpeached testimony to the contrary. In a letter he wrote to the adjutant-general of the state, requesting him to issue orders to two reluctant mountain companies to join in that descent upon Frankfort, Powers says: "We must have those men and guns. We are undertaking a serious matter, and win we must." In a letter which Powers' brother John wrote to a Powers henchman, Militia Sergeant Ricketts, of Coalport, there are these words: "Come to town Wednesday with all the men up there prepared to leave. Say nothing about it. Let the men know they are to leave, but keep 'quite.' Bring what guns you can. Shotguns; C [Caleb] would rather they be brought Wednesday, just after night. Wear a citizen's suit of clothes." Again, a

young woman, then a Miss Snuffer, with whom Caleb Powers talked while in the mountain region collecting "protesters," testifies that he called on her, that he said "they were going to fight rather than be robbed. During the time he took a pistol from his pocket and said that was his business there now. I asked him if he would not hate to be killed, and he said yes, and I asked him if he would not hate to kill anybody, and he said yes, but he would rather do it than be robbed. He said that before he would be robbed he would go in there and kill them himself."

Dismissing the testimony of all the witnesses assailed by Powers and his associates, and taking only their own testimony and that of witnesses above suspicion—the letters of Powers and Taylor, the testimony of Miss Snuffer and John Black and Captain Hawn and D. D. Hill and several others—we cannot avoid the conclusion that Powers, and Taylor, who was backing him up, though somewhat nervously, in all he did, were contemplating armed resistance to the constitutional authority of the Legislature; that they were firmly convinced of the justice of their cause, of their title to that which the face of the returns gave them; that they proposed to defend that cause by inaugurating civil war. It is a question for moralists when and where the moral right to resist constituted authority begins; these men may have been right, may not have been prejudiced by ambition in thinking they had done less cheating than the Goebelites; but, when they now come forward and deny that civil war was ever at any time their purpose, are they not in jeopardy of being placed in the same category with those witnesses against them whom they accuse of perjury? The attempts of Taylor and Powers to deny this established fact of contemplated violence is one reason why their defense against the other charge, the conspiracy to murder Goebel, falls short of the expectations of their friends. The first principle of a successful defense is complete frankness. Innocence that strives to conceal cannot loudly complain if it creates the impression of guilt.

We find, then, that toward the end of January, Taylor and Powers, especially Powers, were filling the streets of Frankfort with armed men who breathed threatenings and slaughter against Goebelites and Goebel, that Powers and Taylor still further electrified a surcharged atmosphere.

The contest-boards decided that under the law they had no authority to go back of the face of the returns; they so reported to the Legislature, and the Legislature appointed committees from its own body to hear the contests promptly filed with it by Goebel and the other Goebel candidates for state offices. The main body of the mountaineers withdrew, leaving, however, for a purpose which has not been explained by the defense, no less than two hundred of their number to continue to lounge threateningly about the State House corridors and grounds. The contests were "up to" the Legislature, and everybody knew what the Legislature would do as surely as Goebel remained alive to nerve it to disregard the ominous Taylorite preparations which had overawed the contest-boards.

On the morning of January 30th, Caleb Powers left for western Kentucky. He says that his purpose was to assemble there and bring down to the capital another body of protesters and witnesses to testify before the Legislature committee. It is cited by his friends as proof how determined he was to be law-abiding that he was thus assembling witnesses when, in the then state of factional fury, it was a foregone conclusion that the Goebel Legislature would eject the Taylorites from the state offices and would seat the contesting Goebelites. The opponents of Powers, however, take the view that this absence on a patently useless mission was deliberately and criminally opportune.

The legislative contest committees were to convene at 2:30 p. m. on that January 30th. It was generally assumed that they would quickly hear the testimony as to the Taylorite Republican frauds, would wave aside or minimize the testimony as to Goebelite

frauds, would report to the Legislature in favor of the contestants, who would be sworn in probably before the sun went down.

At 11:30 that morning, as Mr. Goebel was on his way across the State House grounds to the chamber of the Senate, of which he was a member, he was shot down and mortally wounded by a bullet which, it is now admitted by all, came from a window of the private office of the secretary of state—that is, from Caleb Powers' private office.

As soon as the county authorities recovered from the wild confusion into which they and the whole town were thrown, they hastened to the State House to begin an investigation of the assassination. They found the State House grounds guarded by militia; they were denied admittance; beyond professions of willingness to assist, and those expressions of regret and horror which might or might not have been perfunctory, they got no assistance whatever from the encitadeled tenants of the State House toward solving the mystery of the assassination. Nor was any serious attempt made by the officials within those military lines to find out who had committed the crime, though they remained there more than a month. If the present theory of the defense as to the crime is valid, those officials must have known who shot Goebel within a few hours after he fell. Yet Youtsey, the man they now accuse, was not even questioned by Taylor or by Powers, or, so far as the testimony shows, by any one within those lines. Six weeks later, Taylor, still holding out as governor, issued pardons to Caleb Powers and to several others not accused and not likely to be accused, and Powers ventured through the militia lines and tried to escape from the state in a militia uniform. Finally Taylor himself fled, first to Pennsylvania, then to Washington, thence to New York, and finally, fleeing from demands for his extradition, to Indiana, where he now lives, protected against extradition by the Republican governor of that state on the ground that he would not have a fair trial in Kentucky.

Obviously we have here an atmosphere of panic. The panic would be consistent with innocence—it would not be strange if innocent men, drawn by fate into such a frightful position, failed to conduct themselves with coolness and discretion. But, over and above the panic, is there not guilt? The acts cited, hardly more conspicuous than a score of others of which they are typical, show men conscious at least of acts which cause appearances to be desperately against them.

But now the question arises, guilt of what? Guilt of conspiracy to murder Goebel? Or, guilt of having gone far toward plotting a civil war?

At first blush it would seem that Powers' contention that the assassination of Goebel was the last thing he and Taylor could have in common sense desired, seems valid and almost convincing. As the event proved, that assassination destroyed the last hope of Taylor and Powers of retaining the offices to which they were elected on the face of the returns. But, on the other hand, with Goebel alive, what hope could they have had, except in a civil war, when he controlled the Legislature? And is there not plausibility in the contention of the prosecution that Taylor and Powers saw in the death of Goebel—Goebel, the brains and the courage and apparently the whole amalgamating and nerving force of the new Democratic party—their one chance to win without civil war, to win through the disintegration of the Goebelites? Were not "good citizens" by the hundred, "leading men" of the Republican and old-line Democratic parties, saying openly that Goebel was a plague and a pest from which death alone could deliver Kentucky? Were not "leading citizens" saying that the death of Goebel would avert a civil war, would disperse his "rabble" and restore authority to the "better elements" which had so long, so peaceably—and so profitably—exercised it? Those who know Kentucky will understand what was being said and thought—Kentucky, where men still carry arms as they go about the streets as if we were in the middle ages; Kentucky, where the right of private vengeance is still hardly denied;

Kentucky, where the appeal to arms is as natural as is the appeal to courts in states where sensitiveness to "honor" habitually takes a less dramatic form.

There is nothing in the circumstances of the assassination of Goebel, nothing in the character of Powers, strenuous, fiery, mountain-bred, nor in the character of Taylor, a Kentucky mountaineer no less aggressive, in speech at least, than Powers—nothing in the circumstances or in the character of the principals or of their ambitions and their methods of promoting those ambitions, to forbid the theory of the prosecution—the theory that Taylor and Powers wished the death of Goebel and conspired to make that wish effective.

But—this does not prove, does not have any vital bearing upon proof, that either Taylor or Powers actually did conspire. The politicians of all three factions had together so acted that an atmosphere of violence and murder was in the lungs of every man in Frankfort, of almost every man in the state. Those politicians were for the most part, by habit of mind and action, capable of murder. Few, indeed, of the older generation of them but had "killed their men." Goebel himself shot down Sanford in the streets of Covington. But it is another thing to say that Taylor and Powers had been so little freed by education from their early training of the mountain vendetta and bushwhacking murder that they would deliberately plot for others to kill the man who was about to wrest from them the high offices they had struggled so hard and so unscrupulously to get and had won on the face of the figures. Maddening though the taunts of the securely legal Goebelites must have been, and frenzying though the consciousness that under the Constitution Goebel and his followers could calmly and with all seeming of lawfulness eject them from offices to which they, whether rightly or wrongly, thought they had been chosen by the majority of the people, still they were human beings; and for an educated human being to arrange an assassination, he must have a streak of the monster in him—even if the man he purposes to cause to be slain is regarded by him and by multitudes as an enemy of God and man. The passions of the strife had transformed Goebel to his opponents into a fiend in human form; for Powers or Taylor to shoot him down personally would be for them to destroy their public careers; if he was to be killed, it must obviously be by hired assassins. Still—suspicion is more likely to be wickedly unjust than in any measure just. And in no circumstances is it proof.

III

The Legislature proclaimed the dying Goebel and his associates on the Democratic state ticket elected; Goebel was sworn in; when he died, on February 3d, the Democratic lieutenant-governor, a clean, able, honest young man who is at present the elected governor of the state, was sworn in as his successor. The Republican and anti-Goebel members of the Legislature had refused to participate in the electoral proceedings, in the hope of making a case for the Supreme Court of the United States. But the Supreme Court decided that it had no authority to interfere; and the Republican President of the United States refused to heed Taylor's frantic pleas for armed Federal interference. The Taylor-Powers government disappeared; the constitutional government was free to push the inquiry into the murder.

Powers and his associates severely criticize the Legislature for appropriating one hundred thousand dollars as a special fund to bring the murderers to justice. But their criticisms seem in fairness unreasonable. The appropriation was made when Goebel had just been shot down, when Taylor, with the militia hedging him at the State House, was to the suspicious and infuriated Goebelites in the attitude of defending and shielding the murderers. Finally, not fifteen thousand dollars of that fund has been expended.

Powers and his friends charge that the prosecuting Goebelites have prostituted the entire judicial system of Kentucky. But is not this exaggerated

and unwarranted? For example, Powers' own case has been acted upon three times by the Court of Appeals. Once the majority of the judges were Republicans. Yet that Republican court did not condemn wholesale the trial in the lower court and release Powers; it merely reversed, and that on error which might have crept into the fairest trial. The other times, with the majority of the court Democratic, the result was the same. Or, to go to the trial courts, an examination of their records shows that so far as the proceedings of the courts themselves from day to day are concerned, the judges interpreted the necessarily extremely liberal rules of evidence governing conspiracy cases for rather than against the defense; in not a single instance did a judge of a trial court do anything which judges and lawyers in all parts of the country would not admit was within the proprieties and the precedents. For the rulings which Powers and his friends most severely condemn, the trial judges had all-fours precedents in cases universally accepted as authoritative.

The only criticism of partiality that can be thoroughly sustained is in the selection of juries. Making all allowances for the scarcity of qualified white Republicans not in Federal office, and therefore barred from jury duty, in the sections of Kentucky in which the trials were held, still one cannot escape the suspicion that the venires for those juries were not wholly by chance made up of an overwhelming preponderance of Democrats. In mitigation of this, it must be conceded that among the jurors of the first Powers jury there were one stanch Republican and six anti-Goebel Democrats, that on the third jury there was one strong Republican of the best character and standing, that the foreman of the second jury was a former schoolmate of Powers', and was not challenged by him either peremptorily or for cause. All three juries unanimously found Powers guilty and fixed the death-sentence upon him. So, when Powers and his friends assail the whole judicial system of Kentucky, they tempt a reaction of sentiment. The truth is, there is a case against Powers and Taylor, and whether or no the convictions of Powers have been unwarranted, they do not travesty justice.

It is probable that juries of fair men wholly free from the passion of Goebel and anti-Goebel would acquit Powers on the evidence presented; but it is also equally probable that equally fair juries would convict him.

The net result of the prosecution thus far is: One man, Youtsey, who confesses that he was a principal in the crime, is condemned to prison for life; another man, Howard, who admits participation in the crime and who, at the time of its committing, was a fugitive from justice for a cold-blooded murder, is serving a life-sentence; Powers, about to have a new trial; two obscure alleged conspirators, acquitted. In face of the records of the trials and the appeals, in face of the results just recounted, is it fair to denounce the whole system of justice in Kentucky?

The denunciation would not have been accepted as just by the country at large had not the Republican press of the country accepted without investigation the assertions of Powers and Taylor and their lawyers, and had not the "gold" Democratic press pursued the same course because so many of the leaders of the "old-line Democracy" of Kentucky were conspicuous gold Democrats. The fact that Goebel was a machine politician of an obnoxious type, has also been a largely determining factor in public judgment throughout the North upon the proceedings of the men who have prosecuted his alleged slayers. Passion and prejudice do not breed injustice in Kentucky alone.

IV

Let us now glance at the evidence submitted at these trials, at the case against and the case for Powers—it is also a large part of the case that would be made against and for Taylor, if the Kentucky authorities could get him extradited out of Indiana.

The case put forward by the prosecution is, in outline, as follows: That

Taylor and Powers, despairing of keeping their offices with the Goebelites having final say through absolute control of the Legislature, created at Frankfort conditions of violence and murder by bringing there armed bodies of their mountain followers. That they prepared to protect themselves from the possible consequences of Goebelite counter-violence by secretly assembling such of the militia as was Republican and could therefore be relied on to obey the orders of Governor Taylor. That they apparently hesitated for some time between civil war and murdering Goebel. That, for reasons known only to them, they abandoned a bold flinging down of the gage of civil war and, with some haste, as the time was short, made several attempts to procure assassins through Henry Youtsey, a young lawyer with a twelve-hundred-dollar-a-year job in the state auditor's office and an ardent Republican. That, finally, Taylor sent for and Youtsey instructed one James Howard, an outlaw Taylorite wanted by the authorities for trial for a deliberate murder in the mountains. That on the morning of January 30th, when Howard was to arrive from his mountain fastness and "do the job," Powers absented himself, on a pretext of innocent business which he had carefully arranged beforehand. That Howard and Youtsey went into Powers' private office, where were several guns, put there in readiness by Powers and by Youtsey, and that Howard or Youtsey fired the shot that killed Goebel. Howard says Youtsey fired it; Youtsey says Howard fired it.

The case put forward by the defense is, briefly, as follows: That the secret assembling of the militia was a wise guarding against possible outbreaks of the passions which had all Kentucky aglow and on the verge of flame. That the assembling and bringing to Frankfort of armed Republican mountaineers was for purposes of peaceful petition against the contemplated electoral crimes of the Goebelites, and that Powers took every precaution to prevent the mountaineers from using the guns without which they would not come. That Youtsey, his never too steady brain upset by the political excitement and by the prospect of losing his job with the ejection of the Taylor administration, got guns on his own account, and took advantage of the absence of Powers to use the secretary of state's office for the murder. That the confessions of the low characters who implicate Powers and Taylor were got by the Goebelites under threats of trying and hanging if "satisfactory" confessions were not made. That the testimony of such of the corroborating witnesses as are also low characters was got partly by duress, partly by perjury. That the testimony of the witnesses of good character who took the stand against Powers is unimportant, taken by itself, indicating nothing more than the intense feelings which the political situation had roused in Powers, Taylor, and every one else in the state, Republican, Goebelite and anti-Goebelite.

It is undoubtedly true that Youtsey has shown himself to be a miserable liar, with a dime-novel sense of the dramatic and a craving for notoriety. Nor can the prosecution deny that Howard, Noakes, Golden, Culton and Cecil, the men who make the alleged confessions, are low characters. But the obvious contention of the prosecution is that this is precisely the class of men among whom a conspiracy to assassinate would be formed, precisely the class among whom a scoundrel of higher grade would look when seeking persons to procure murder and to murder; that the testimony of these men must not be wholly rejected, but must be judged on its merits and, in so far as it is corroborated, believed; that any other course would mean license to conspire to murder, for who but the vile ever conspire to assassinate, and with whom but the vile do they ever conspire? And the prosecution contends that the corroboration of these alleged confessions is ample.

Again, it is undoubtedly true that, at a time when Powers and Taylor and their followers were being goaded into venting all kinds of wild talk, many remarks would be made which a witness who wished to lie could without any great ingenuity pervert into statements

of deliberate purpose to kill Goebel. But, on the other hand, it is not easy to believe that even the vindictive and unscrupulous men who prepared the case against Powers could so coach several creatures of low mentality that their testimony would come practically unimpaired from under many shrewd and searching cross-examinations, and would fit, each man's into the others', with that inexact exactness which is the characteristic of truthful human testimony. Also, the defense does not controvert or seek to controvert the evidence that Noakes and Golden and Howard and Cecil and Culton were political heelers in the Taylor-Powers machine, performing to the satisfaction of their leaders the humbler and dirtier tasks of "practical politics," and were trusted by their leaders up to the time of the complete overthrow of Taylor and Powers.

Again, it is undoubtedly true that Youtsey had not long been acquainted with Powers and was not an intimate of his, and that Youtsey was not an intimate of Taylor's—and it must be borne in mind that Youtsey's part in the alleged conspiracy is all but vital to the proof of it. But, on the other hand, the prosecution points out that political solidarity, strong in all machines, is peculiarly strong in Kentucky; that Youtsey was a strong Taylorite; that he had a job which was an extremely good one from his standpoint; that he was bright and vigorous and eager to be helpful, was, in fact, an ideal man for go-between—not too intimate with the principals, in case the plot should miscarry, yet well enough known to them to make him entirely trustworthy. In brief, the prosecution alleges that Youtsey was precisely the kind of self-hypnotizing enthusiast, ready to find anything right that served the "good cause," whom the adroit leaders of such enterprises find to be their best possible instrument.

The defense contends that there was no conspiracy; that Youtsey alone and of his own initiative either shot Goebel himself or induced Howard to do it, by falsely assuring him that Taylor wished it done, and by falsely guaranteeing to him that if he did do it, Taylor would protect him and would pardon him for his other murder. As proof that Youtsey had the murder in mind, the defense presents evidence that Powers, going into his office on January 27th, three days before the murder, was astonished by seeing Youtsey at the window, the shade down, the window up about six inches, a rifle across his knees. Powers says he asked Youtsey what he was doing, and that Youtsey answered, "Nothing much"; that he then demanded, "What do you propose to do with that gun?" that Youtsey said, "If trouble starts I expect to be prepared for that trouble." "I knew nothing of Youtsey," Caleb Powers' testimony continues, "and I went out of the office to go and get some one to go and talk with him." He says, and Todd, who was a clerk in Taylor's office, corroborates him, that he "said to Todd, 'Do you know that fellow Youtsey?' and he said, 'Yes,' and I said, 'I wish you would go into my office and talk to him. He is acting like a crazy man.' " Powers' and Todd's testimony goes on to relate that they both remonstrated with Youtsey, and that Youtsey yielded to them and put away the gun —as Todd testifies, behind a plank in that office where several other guns were concealed.

At first glance, this seems a strange mildness on Powers' part; but, when the fierce agitation of those days is considered, the improbability tends to disappear. On the other hand, Youtsey, testifying to the same occurrence, relates that he found Powers at the window with the gun, et cetera. The conclusion formed in an unprejudiced mind is that, whether or not Powers tells the truth, Youtsey lies. Indeed, the strongest point in Powers' favor throughout is Youtsey's testimony—for a cheaper romancer never mounted the witness-stand.

The defense has not admitted, indeed has not dared admit, the conditions in the State House in those days immediately preceding the murder. But enough of the truth has come out, from unimpeachable testimony, direct and

circumstantial, to enable the construction of the theory that must be true if Powers and Taylor are innocent of conspiracy to assassinate Goebel. That theory would be that Youtsey, in dread of losing the best job he ever had, and inflamed by the talk of violence and of murder all around him, became convinced that the expedient and the right thing to do was to kill Goebel; that his threats to do it were, in the general agitation, not especially noted and not vigorously discouraged; that he finally either did it himself or got Howard to do it; that, after the murder was done, Powers and Taylor, partly because they were in a panic, partly because they looked on the assassination as a crime not without mitigating features, acted as if they wished to be the beneficiaries by that crime, and so put themselves in the position of seeming to be its authors; that they were so absorbed in the problem of their own fate that they overlooked the fact that they were shielding the murderer. Such is, apparently, the only tenable theory on which Powers and Taylor can be regarded as innocent of the murder.

For Powers and Taylor to allege that they are wholly without responsibility for the death of Goebel is as impossible fair-mindedly to entertain as is the prosecution's profession that it has not overstepped the bounds of justice and of respect for decency. For Powers and Taylor to allege that they did not contemplate violence at Frankfort is as absurd as for Goebelite to pretend that Goebel's more daring, more sagacious and more successful use of the habitual methods of Kentucky's practical politicians had not driven Taylor, Powers and their followers to a desperation in which any sort of extreme measure would seem to them justifiable. For Powers and Taylor to allege that they could not hope to gain anything by the death of the man who was regarded with something akin to dread even by his own intimates, and whose cool audacities under the most punctilious forms of law frightened even his lieutenants, is as far from the truth as it is for Goebelite to put forward as truth all the silly imaginings of Youtsey or all the windings of the confessing alleged conspirators.

Was Youtsey the instrument of men deliberately plotting? Or was he the accidental outcome of the highly electrified conditions created in the State House by the struggle of Taylorite and Goebelite? Have the self-accused conspirators who testify against Powers been frightened and bribed into lying, or coerced and bought to tell the truth?

Those are questions for a jury to settle, with the witnesses themselves before it. All that we can say here is that Powers and Taylor and their friends have been unjust to the judicial system of Kentucky in their not unnatural eagerness to clear themselves: that the prosecutors of Powers and Taylor have given a color of justification to those exaggerations by seeking to strengthen with injustice the cases which they undoubtedly believe to be just. And finally, have we not discovered enough of the truth to give us firm ground for the belief that nowhere in this republic is there a breed of citizen-monsters, and that no great state of this Union can be wholly conquered by barbarism, even under the imperious drive of the strongest passions that assail the supremacy of reason and justice?

If Powers and Taylor are innocent of conspiring to murder Goebel, they at least have the consolation of feeling that the hardships they have endured since March, 1900, have not been wholly undeserved. If they are guilty, they can congratulate themselves upon being still alive and upon having raised up for themselves a host of friends who regard them as martyrs. But martyrs they are not. And if their original cause was just, and if they had patiently submitted to the Constitution and the laws of their state instead of arranging to right a wrong, real or fancied, with a civil war, they might to-day be, the one, governor, the other, secretary of state, put in those offices by a majority of the outraged electorate too great for fraud to expunge.