

Stielow and Green

NEW YORK

SEPTUAGENARIAN Charles B. Phelps, a highly respected resident of Orleans County, New York, lived in his farmhouse about one mile south of West Shelby with his housekeeper, Margaret Wolcott. Across the road, in the Phelps tenant house, lived Charles F. Stielow, a farm laborer, with his young wife, two children, his mother-in-law, and young brother-in-law, Nelson Green. These tenants had come to the farm about March 15, 1915.

At five o'clock on the morning of March 22, 1915, Stielow arose as usual to do the chores at the Phelps place. When he stepped out of his home, he found on his doorstep Miss Wolcott, stretched dead and bloody in the snow, clad only in a nightgown. Stielow rushed over to the Phelps house, entered the open kitchen door, and found Mr. Phelps unconscious on the floor. Stielow immediately alarmed the neighbors. Sheriff Bartlett of Albion was summoned and the Medina police notified. Phelps was rushed to a hospital in Medina, but he expired without regaining consciousness. He had been shot three times.

Phelps was known to have kept cash about the house and it was supposed that robbery was the motive for this atrocious murder. The contents of bureau drawers in Mr. Phelps's room were strewn about and his money was gone. Both Phelps and Miss Wolcott had been shot by a .22 revolver.

District Attorney Knickerbocker arrived on the scene at an early hour, gathering facts, and awaiting a bloodhound of Charles Scobell. The hound picked up a scent and followed it to a nearby stream, where it was lost. The dog was unsuccessful in going farther.

As usual in cases of this type, many clues were furnished to the authorities, which they endeavored to check. The Board of Supervisors authorized the expenditure of money to secure the services of detectives. Rewards for the arrest and conviction of the murderer were posted.

On Friday, March 26, 1915, the coroner's inquest was

held. Stielow and Green testified that at about eleven o'clock on the night of the murder they heard cries near their house. They arose from bed and looked out of the door but didn't see anyone. They then went back to bed again. A neighbor, Miss Irma Fisher, said that she heard four shots at about eleven o'clock, screams, and the moaning cry, "Charlie, I am dying, let me in," but thought that it was only a quarrel in a family living to the south; and since it soon quieted down, she thought no more of it, until she learned of the murder the next morning.

The Newton Detective Agency of Buffalo, of which George Newton was the head, was intrusted by the county authorities with the task of tracing the murderer. It seemed strange that Miss Wolcott's screams and pleas were so distinctly heard by Miss Fisher, and made no more impression upon the persons in the tenant house. The detectives examined the tenants closely, and discovered that, on the night of the murder, there was a .22-caliber revolver and also a rifle in the tenant house, despite the sworn statements of both Stielow and Green at the coroner's inquest to the contrary. These weapons were found in the possession of Raymond Green, a brother of Nelson. Upon this discovery, the authorities felt warranted on April 21, 1915, in taking both Stielow and Green into custody. Albert H. Hamilton, as expert for the state, said that the four bullets taken from the bodies of Phelps and his housekeeper had been fired from the revolver owned by Stielow. As their investigations proceeded, the authorities became more and more convinced that Stielow and Green knew more about the crime than they had admitted.

When the prisoners were placed in jail, detectives were stationed there also, disguised as fellow prisoners, in an endeavor to learn just what the prisoners knew of the crime.

On the evening of the day of the arrest, Detective Newton received from Stielow a signed statement, denying any connection with the crime. Two days later, April 23, in the county jail, in the presence of Sheriff Bartlett, Under-sheriff Porter, District Attorney Knickerbocker, and Detectives Newton and Wilson, Stielow was said to have confessed

that he and Nelson Green had committed the murder to get Phelps's money. Many of the statements were made after consultation with Detective Newton in the jail hall. A written statement, including the confession, was placed before Stielow, but he refused absolutely to sign it, saying that it was not true.

With this evidence in his possession, District Attorney Knickerbocker presented the case to a Grand Jury, which returned separate first-degree-murder indictments against Stielow and Green. Stielow was brought to trial at Albion before Justice Cuthbert W. Pound of Buffalo, on July 11, 1915. He was defended by David A. White. Although the prosecutors took over eight days to submit all of the details of their testimony, the great issue of the trial was whether Stielow's alleged confession of April 23 should be received in evidence. Everyone agreed that if this were inadmissible the case against Stielow was very weak. Defense Attorney White sought to prove that Detective Newton had wrung some admissions from Stielow by intimidation and third-degree methods. Both sides submitted considerable evidence on the circumstances surrounding the making of the alleged confession and admissions said to have been made to the sheriff and other officials. Justice Pound admitted the testimony regarding the alleged confession, with testimony on both sides as to how it had been obtained.

In addition to the contention that this was not a voluntary confession, the defense was based upon the alibi that Stielow had not left his home at all during the night of the murder. His wife and mother-in-law supported the prisoner's testimony in this regard. To this was added the testimony of several persons as to Stielow's good reputation and character in the communities where he had lived previously.

In submitting the case to the jury, the Court said: "I will say very plainly to you at this time that if it were not for the introduction of the statement dated April 23rd, and like statements of the defendant admitting his guilt, it would be the duty of the court to direct you to render a verdict of acquittal." The case was given to the jury at 1.35 on July 23 and at 8.15 that evening, it was ready with its verdict—

guilty. Evidently, the jury believed that Stielow's confession had been voluntary. Justice Pound sentenced Stielow to electrocution in the week of September 5, following.

Nelson Green's attorneys advised him of the result, and on their advice he pleaded guilty to a charge of second-degree murder. He was sentenced to a twenty-year-to-life term in Auburn Penitentiary.

Attorney White appealed Stielow's conviction to the highest court of New York state, which, in a *per curiam* decision on February 22, 1916, unanimously affirmed the conviction. The date for his electrocution was set for April 9, 1916.

In the meantime, Stielow, in the death house at Sing Sing, made statements to the officials there which aroused their interest. He denied his guilt and said that whatever he had agreed to while in jail was to save himself from constant badgering by detectives. The officials instituted a private investigation which convinced them that a thorough investigation of Stielow's case should be made before his execution. On the eve of the execution, the Governor granted a stay, but after a motion before Justice Wheeler for a new trial was denied, the date for the death penalty was again set, for July 29, 1916. Mrs. Grace Humiston, attorney at law in New York, became intensely interested in the case. So did a society called the Humanitarian Cult. Further evidence that the confession was not voluntary, and that Stielow had a very immature mind, was submitted to Justice George W. Cole at Buffalo on July 19, 1916, in support of another motion for a new trial. On July 26, 1916, this motion was denied.

The following day, July 27, Warden Osborne's Sing Sing Welfare League forwarded \$42 to Mrs. Stielow so that she and her three children, the youngest of whom was born after her husband's arrest, might travel to the penitentiary to see their condemned husband and father. Farewells were said on Friday, the twenty-eighth. Charles Stielow was to die the following morning at 6.00 A.M. Appeals to Governor Whitman were unavailing.

Just after five o'clock on that Saturday morning, the telephone rang in the warden's office at Sing Sing, and Justice

Charles L. Guy of Brooklyn advised the officials, forty minutes before the scheduled time for the execution, that he was issuing a stay, so that he might consider the new evidence submitted before him. By this time a corps of attorneys had become interested in the case and were working feverishly to prevent the execution of one whom they considered innocent. Later the same day, about 7.00 P.M., Justice Guy issued a further stay, with an order to the District Attorney of Orleans County to show cause at Rochester on August 23, 1916, why a new trial should not be granted to Stielow.

Prior to the Rochester hearing, which was held before Justice Adolph J. Rodenbeck in the latter part of September, 1916, exciting developments took place. As Stielow's plight became known, not only additional legal assistance but financial aid became available. This enabled the hiring of detectives to run down rumors concerning an itinerant peddler who had been seen in the Phelps home on the eve of the murder, and who was known to have had a large sum of money after that time. This was considered important on the theory that the best way to establish Stielow's innocence was to find the real murderer. The trail, opened by Mrs. Humiston, led to the peddler Erwin King, who had been arrested in Little Valley, Cattaraugus County, for another crime and who, before seven witnesses, including Surrogate George Larkin, a lawyer of experience and ability, who fully warned King of the possible consequences, made a full confession of his participation, with Clarence O'Connell, in the Phelps murder. This was on August 11, 1916. The Cattaraugus authorities turned King over to the Orleans County Sheriff. Two days later King repudiated his confession, saying that it had been made under duress. It was later learned that George Newton, the Buffalo detective who had obtained Stielow's confession, rode in the auto with King on the 110-mile ride from Little Valley to Albion, where he retracted his confession. Orleans County reëngaged Newton at this time to establish the truth of King's alleged alibi on the night of the murder.

Justice Rodenbeck denied the motion for a new trial, principally upon the ground that the evidence presented "might

with reasonable diligence have been discovered before the trial and that it is not in fact newly discovered evidence," would not raise a reasonable doubt in the minds of the jury, and that, therefore, it would not affect their decision. King's confession was dismissed from consideration by the Justice as being "only valuable as a psychological study," in view of his retraction and of affidavits that King was elsewhere at the time of the murder. As pointed out by the Justice, he was the tenth judge to pass upon, and to deny, a new trial for Stielow.

Justice Rodenbeck's decision was a devastating blow to Stielow, for his hopes for freedom had risen high when King confessed the slaying. Two weeks later, Stielow was taken to Albany, where the Court of Appeals sentenced him to electrocution during the week of December 11, 1916. This was the third time that he was sentenced to death. It was clear that the courts could find no mistake in the operation of the state's administrative and judicial machinery; yet there remained a conviction in the minds of many earnest citizens that a serious mistake had been made.

Executive clemency remained the only recourse, and the whole matter was fervently presented to Governor Whitman. Fortunately for Stielow, the Governor was an experienced criminal lawyer. Although he had refused to interfere, other than by granting temporary stays of execution, so long as remedies remained in the courts, now that these were exhausted, he set November 28, 1916, for a public hearing on the case. On December 4, following the hearing, he issued a statement, commuting Stielow's sentence to life imprisonment on the ground that, while he believed Stielow guilty, he could not escape the conviction "that there was a possibility, perhaps more than a possibility, that the defendant was not guilty."

ABOUT a month later, it came to the Governor's attention that King, who had been arrested for perjury and held in jail in Buffalo, was writing a series of incriminating letters to friends. The *New York World*, taking an interest in the

case, published the letters. The Governor had King brought to Albany for interrogation and became satisfied that King had guilty knowledge of the murder. However, public opinion in Orleans County, which had already spent nearly \$50,000 on the case, held King innocent and Stielow guilty. The Governor, who officially stated that no other criminal case where executive clemency had been asked, had so perplexed and distressed him as had this one, decided upon his own course of action in solving the problem. He requested, and received, from the Legislature a special appropriation of \$25,000 for an investigation. Mr. George H. Bond of Syracuse, a former District Attorney, an experienced criminal lawyer, and a leader of the state bar, was appointed a special deputy attorney-general for the purpose. Mr. Bond made a most thorough investigation, and his 200-page report to the Governor is a model of methodical and painstaking analysis. Mr. Bond began the investigation in the belief that Stielow was guilty.

Particular attention was given by Mr. Bond to the circumstances of Stielow's confession, the principal basis of his conviction, and to the facts alleged to have been confessed. In addition to the evidence of duress used upon Stielow by Detective Newton, it was found that a dictograph had been used to record the conversations of Stielow with Green, and even with his counsel. Neither the defense counsel, the presiding justice, nor the jury had known of these records. Mr. Bond had them produced, and not a single incriminating remark was found in them. One of the Newton Agency detectives, Sparacino, who spent nineteen days in jail with Stielow in the guise of a prisoner with instructions to get a confession or incriminating evidence, admitted that he did not succeed, that Stielow consistently denied knowing who committed the crime, and that Stielow said that the detectives had tried to get him to sign a statement which was a lie. In later commenting on this phase of the investigation, Governor Whitman said that the Stielow confession "seems to be discredited."

Mr. Bond made a careful study of the ballistic testimony, and engaged the leading experts of the state to make ob-

jective tests. He had bullets fired from the Stielow pistol, and then had enlarged photographs made of the bullets as well as of the bullets taken from the bodies of Phelps and Miss Wolcott. The difference was readily apparent. The experts, Mr. Bond, and the Governor concluded that the trial testimony of Mr. Hamilton that the death bullets had come from the Stielow pistol was clearly erroneous. The Governor commented: "It is apparent to any expert, or to a careful observer, that the bullet taken from Mr. Phelps was not fired from Stielow's revolver, but differs in markings from those fired out of the Stielow revolver." It appeared, moreover, that the Stielow revolver had not been fired for some years.

Mr. Bond further demonstrated that Stielow's supposed description of the shooting of Miss Wolcott was a physical impossibility; that the footprints upon which the scent was started could not have been those of Stielow, who was near and had patted the dog when the hunt began, and that the dog did not follow Stielow's tracks made when he notified the neighbors of the crime; that Miss Wolcott, who would doubtless have recognized Stielow in the Phelps house, would hardly have run to his house for protection; that Miss Irma Fisher was mistaken in her report of the supposed repeated prayers of Miss Wolcott to be let in by Stielow, for another resident of the Fisher house remembered no such events and it was physically impossible for a woman with a bullet in her heart to continue such pleadings; that Detective Newton, Sheriff Bartlett, and Undersheriff Porter not only varied their accounts of Stielow's alleged statements from time to time but that the "confession" merely recorded the rumors of how the murder had occurred, rumors which on investigation of the facts were completely exploded.

Probably the most important development during Mr. Bond's investigation, however, was the fact that in December, 1917, Erwin King made a second full and voluntary confession, implicating himself and Clarence O'Connell, a convict in Auburn. O'Connell fired the fatal shots; Miss Wolcott's presence in the house was unknown to them, and she was shot as she ran out of the kitchen door. They fol-

lowed her, found her dead, and returned to complete the looting. King supplied many details which indicated to Mr. Bond, who was now more familiar with the facts than anyone else, that he was unmistakably connected with the crime. King even accounted for the money taken from Phelps, an omission which had always baffled the authorities in connection with Stielow. King was ready to plead guilty to the charge of murder and to be sentenced. He was arraigned before Justice Wesley C. Dudley. Since a plea of guilty would be inconsistent with the jury verdict then standing (i.e., the Stielow verdict), Justice Dudley, in accordance with the law, ordered that a "not guilty" plea be entered, and that the matter be submitted to the Grand Jury. Mr. Bond and his assistant, Charles E. Waite, spent nearly two weeks presenting the matter to the Grand Jury. Convinced that a strong *prima facie* case of murder against King and O'Connell had been presented, the special prosecutors were greatly surprised when the Grand Jury advised the court on December 21, 1917, that it had nothing to report. In informing the Governor about this result, Mr. Bond said that local sentiment was still firm in the belief that Stielow was guilty and that no further public money should be spent to prove that a mistake had been made.

Upon receiving Mr. Bond's report in the spring of 1918, Governor Whitman became convinced that there was gross error in the convictions of Stielow and Green. The fact that Mr. Bond, who in the early days of the investigation thought Stielow guilty, had become thoroughly convinced of his innocence, profoundly impressed the Governor. He commuted Stielow's sentence and on April 16, 1918, ordered him released from the penitentiary, as an innocent man. The same action was taken with respect to Green. Each was free again, after three years' imprisonment and untold agony. Green, now twenty-two years old, returned to farming; and Stielow, aged forty, rejoined his wife and family, and is understood now to be employed in a garage in Buffalo.

THE miscarriage of justice in the Stielow and Green cases was due to too keen a desire on the part of the prosecuting

officials to pin the crime upon a person they believed guilty, without adequate observance of the many factors which pointed to innocence. Stielow in a way started his trouble by falsifying at the inquest the facts concerning his possession of the pistol and rifle. This was due to the well-meant fears of the womenfolks of his family, who thought it dangerous to admit having had guns on the premises. Stielow at first refused to move the guns, asserting that they had nothing to do with the matter. Had they been left where they were, the chances are that suspicion either might not have been directed toward him or would have been promptly diverted, for examination would have shown that the pistol had not been fired for years. But after moving the guns to the barn, where for some days they were perfectly visible, he followed family advice and gave them to Raymond Green for safe-keeping and then denied that he had had guns. This falsehood was discovered. From this point on, according to Mr. Bond's report, the case was built up against him largely by Detective Newton. Nelson Green is described as practically half-witted, and Stielow himself, as of inferior mentality. It did not take much skill to work upon their minds, and shortly after their arrest, April 21, what were called "confessions" had been extracted from them¹—though Stielow had self-control enough to refuse to sign his. Mr. Hamilton undertook to prove to the jury that the bullets which had caused the deaths came from Stielow's revolver. Had all this evidence corresponded with the real facts, the jury might well have been justified in convicting Stielow. But it was not true. In the month between the murder and Stielow and Green's arrests, they had no money and lived as usual, a circumstance which should have received more attention. Green's plea of guilty after Stielow's conviction was made on legal advice to save him from the electrocution which awaited Stielow. Mr. Bond demonstrated by his scrupulous investigation that every material fact in the alleged confession of Stielow, in so far as it was not patently obvious, actually could not have occurred, and that the bullets could not

¹ One is reminded of State's Attorney Homer S. Cummings' explanation of how such things are done (*supra*, p. xviii).

possibly have been fired from Stielow's revolver. Had the authorities been more eager to establish the truth than to establish Stielow's guilt, in which most of them probably honestly believed, they would have noticed the innumerable leads and clues which refuted Stielow's connection with the affair. The footprints were not Stielow's; the dog paid no attention to Stielow; the description in the "confession" of the salient facts inside and outside the house and the recital of the supposed facts leading up to and following the murder, including the shooting of Miss Wolcott, was manifestly wrong. Stielow was a peaceful individual, and had acted in the most natural manner. Had Stielow been the guilty man, Miss Wolcott would not have sought the protection of his house.

But the general public interest outside Orleans County which the case aroused was apparently responsible for King's escape. Public opinion in the county was incensed at the intervention of the so-called "uplifters" who sought to expose the county's maladministration of justice. Even Mr. Bond, who, as Deputy Attorney-General, directly represented the Governor and who was of the same political party as the local administration, could not, with all the evidence of King's guilt, persuade the 1917 Grand Jury to indict King for the murder, although the vote was divided. A defense mechanism had been set up in Orleans County to prevent the undoing of the Stielow mistake; and though there could not have remained the slightest doubt of King's guilt and Stielow's innocence after the evidence which Mr. Bond disclosed, the press and public apparently rationalized their stubbornness by invoking the great expense that the county had already incurred (the newspapers overlooked the fact that the state had promised to bear the expense of King's trial), the fact that a jury and ten judges had not found Stielow innocent, probably the fact that Stielow's sentence had already been commuted to life imprisonment, and possibly the belief that the Governor could even pardon Stielow. These considerations undoubtedly had much to do with the Grand Jury's yielding to public opinion and refusing to vote an indictment against King. At all events, Stielow and

Green were still alive, and the Governor, acting on Mr. Bond's recommendation and his own study of the facts, determined to do what was still possible by restoring these innocent men to liberty. It had cost the state and private agencies large sums to establish the truth, funds which greater initial care in Orleans County might have saved. But at least the maximum wrong was prevented by the narrowest of margins. Compensation was never made to either Stielow or Green.

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10. Acknowledgments: Hon. George H. Bond, Syracuse, N.Y.; Mrs. Grace Humiston, New York City.