

Willard Powell

IOWA FEDERAL

IN 1908, Willard Powell, known to turfmen as "the Waco Kid," lived in Denver, Colorado. He owned horses and with them followed the racing seasons from California to Colorado, through Oklahoma and Texas, to Louisiana and Florida. His path in life crossed that of Henry Stogsdill, to his great misfortune.

Henry Stogsdill owned a store and was in the business of stock trading at Cabool, Missouri. One day in March, 1908, he was on his way to examine some stock when a friend, William Scott, came running after him and said, "Would you go and help me make some money if it didn't cost you anything?" Stogsdill replied, "Of course, we are always out for a dollar." Scott then introduced an old acquaintance of his, Billy Connors, who said he had a cousin in Denver by the name of Frank Maxwell, secretary to a group of millionaires. His employers had misused him and Maxwell wanted to get even by getting some of their money, which he knew he could do if he only had the backing of someone with substantial means. Stogsdill was asked to help by going to Denver personally. They said it would not cost him anything and it was intimated that if Maxwell succeeded in his scheme Stogsdill would get a share of the profits. Stogsdill approved the idea and accompanied Scott and Connors to Denver, where he met Maxwell, who explained the scheme. Stogsdill was to meet the millionaires in a hotel room and to bet with them on a private horse race to be run on the outskirts of Denver. Maxwell was going to give Stogsdill \$5,000 cash to be used in the betting. As secretary to the millionaires, Maxwell would be permitted to be stakeholder in an adjoining room and as money was brought to him he would slip more into Stogsdill's pockets for further betting. It was planned that when the millionaires had been induced to put up \$20,000 or more, the race would be run, a race which, Maxwell said, he would have so fixed that the millionaires' horse would lose. Stogsdill was told, however, that he would have to have something to prove to the millionaires that he was a

man of means and a worthy person for them to deal with. Scott prepared a letter which Stogsdill signed and mailed to his bank at Cabool, Missouri, asking for \$10,000. The bank refused to send this amount. Thereupon Stogsdill was persuaded to return to Cabool for his money, accompanied by Scott. He got only \$3,000, and this by mortgaging all his property. With this money they returned to Denver, met the millionaires at a hotel as planned, and the betting began. Those present were Lovejoy and two other millionaires, whose names Stogsdill did not remember, Scott, Maxwell, and Connors; and they were later joined by one Tom Rogers, who had charge of the race horses.

The first afternoon the millionaires bet thousands of dollars, and Stogsdill matched them from funds stealthily supplied by Maxwell from the stake as planned. Late in the afternoon the betting session was adjourned until the following day. Next morning Maxwell told Stogsdill that he had learned that the millionaires were going to offer \$10,000 to start the day off and that he had only succeeded in obtaining \$7,000. He pleaded with Stogsdill to loan him \$3,000 for the day. This Stogsdill did, and so his money went into the pot. Shortly after the betting started this second day, and the \$10,000 wagers were taken, one of the millionaires, Lovejoy, demanded a count of the stake, saying that he was \$500 short, and that he must have counted out too much on one of the last bets. There was an uproar. Stogsdill saw that if there was a count then, the trickery of Maxwell and himself would be exposed. He was in a quandary, when someone suggested that Maxwell keep the money intact and that they all go out and have the race run. They agreed that the money could be counted after the match—the betting sheet showed the amount that should go to the winner.

Thereupon, the whole group drove out in buggies beyond the city limits of Denver and held the race in a secluded lane. At the start, the horse backed by Maxwell and Stogsdill got off to a lead—but just before the end of the race the jockey, Murphy, fell off on his shoulder and was apparently badly injured, bleeding from nose and mouth. The million-

aires' horse won, placing Stogsdill and Maxwell in a difficult situation, for they realized that as soon as the stakes were turned over to the winners, it would be found that they had not actually put up nearly as much money as they had pretended.

Stogsdill, suspicious that there had been some foul play in the race, which was supposed to have been spiked in his favor, pulled his Colt revolver and started for Connors and the jockey, Murphy. Connors threw up his hands, yelling, "Oh, my God, don't doubt me, don't doubt me"—and soon persuaded Stogsdill to put his gun away, saying quietly to Stogsdill that Maxwell, his cousin and stakeholder, wasn't going to pay the millionaires but that he was going to skip town with the money and go to Cabool to hide. Stogsdill looked around and, sure enough, Maxwell had disappeared. Connors then told Stogsdill to leave town as quickly and rapidly as possible. Just then the millionaires came up and Lovejoy, seeing Stogsdill's gun, drew his revolver and covered him. Passions rose rapidly. Hot words filled the air. Two determined men faced each other with pistols cocked. It was only through the intervention of the others that a real duel was averted and the antagonists were separated. The injured jockey seemed to recover and they all started toward town. It was later found that in appearance only was the jockey injured. He had carried a little sack of red liquid in his mouth which he burst when he faked being thrown from his horse. Stogsdill and Scott went to the station at once and took the first train home, there to await the arrival of Maxwell with the money—Stogsdill's own \$3,000 and his share of the money gotten from the millionaires.

A week passed and no word came from Scott, Connors, or Maxwell. Stogsdill knew that Scott was on the Blake farm near Sargent, Missouri, and wrote to him there. He got no reply until April 16, 1908, when he received a message suggesting that he could get back his money and more besides if he would help Scott in finding new victims for the swindle. While Stogsdill evinced some interest in this proposal, nothing came of it and he never got his money back.

Just about this time the authorities received rumors and

complaints that organized groups were swindling persons out of large sums of money at Council Bluffs, Denver, New Orleans, Seattle, and other cities. The United States mails were being used in the scheme, and the Post Office Department became interested. J. S. Swenson, one of the department's ablest and most astute investigators, was assigned to the case, and the facts which he uncovered astounded the nation.

In numerous cities, notably Council Bluffs and Denver, it was found that several sporting gentlemen banded themselves together in what was known as a "Millionaires' Club" for the purpose of operating fake horse races, wrestling matches, foot races, and boxing matches. The plan was to have one of their agents, a "steerer," induce someone with ready money, a so-called "mike," or "sucker," who was looking for something for nothing by extracting large winnings on a race or contest, to join with the club's secretary in betting against the club, the "mike" believing that the race or match was to be "thrown" in his favor. After the stakes were put up, with the club's secretary as stakeholder, the event was instead thrown to the club and the "mike" got a dose of his own medicine, just as did Henry Stogsdill. The stage scenery was arranged according to the standing and background of the prospective victim. John C. Mabray was found to be the master mind in the scheme. There was found in Mabray's trunk, which was seized at the time of his arrest in Little Rock, Arkansas, a documentary record of the operations of the gang, showing that millions had been collected by them and that nearly two hundred persons had assisted in one way or another in carrying out the swindle. A long list of victims and the detailed history of each transaction were found. In fourteen cities where the scheme was worked, post-office lock boxes had been rented.

Through this Mabray record about eighty participating agents were located as well as many of the victims. The results of the investigation were laid before a Federal Grand Jury in Iowa, which returned an indictment, on September 23, 1909, against the leader of the organization, John C. Mabray, and approximately eighty codefendants, for con-

spiracy to use the mails to defraud under Section 5480 of the Revised Statutes of the United States. Seventeen of those under indictment were called for trial before Judge Smith McPherson in the United States District Court, Southern District of Iowa, Western Division, at Council Bluffs, in the March Term, 1910. The prosecution was in charge of Col. M. L. Temple, assisted by George Stewart and Sylvester R. Rush. The seventeen defendants were represented by nine attorneys. George H. Mayne of Council Bluffs, Iowa, was the attorney for Willard Powell, one of those indicted. For ten days, various swindled victims, from all walks of life and every section of the country, told the court and the jury their tale of woe, each story having the same ending. The scheme had been most cleverly worked out, inducing persons to surrender their money, yet leaving them in such a compromising situation that they were not anxious to report the affair to the authorities. Henry Stogsdill, among the witnesses, told of his experience in great detail. The Government had induced William Scott, the fellow who had "steered" Stogsdill into the swindle, to turn state's evidence and tell the whole story, thereby corroborating Stogsdill's testimony, and also the stories of several other victims he had brought in. None of the persons guilty in the Stogsdill affair, however, was among the seventeen actually on trial, and the defense was prepared to ignore this particular testimony.

No evidence had been produced connecting Willard Powell with any conspiracy. The testimony of Joseph Walker of Denver, and John Sizer of King William County, Virginia, showed that Powell knew and associated with some of those clearly involved in the scheme, but there was no evidence connecting him with the criminal conspiracy now charged.

The well-founded expectation on the part of Mr. Mayne, Powell's attorney, that Judge McPherson would direct a verdict of acquittal for Powell, was shattered on the seventh day of the trial, just before the closing of the prosecution's case, by the recalling of Henry Stogsdill. He pointed out Powell in the court room as being the "Tom Rogers" who was present in Denver during his experiences there. Stogs-

dill could not give the date of the race any more exactly than that it occurred sometime between March 20 and April 10, 1908, or about the first of April. He did not remember the name of the hotel at which he had registered, but with great positiveness he identified Powell. When Mr. Mayne, on cross-examination, tried to shake Stogsdill's identification of Powell, he testified, "He is the identical man that was there. He is the man." Stogsdill had been attending the trial, he said, and had seen and recognized Powell among the defendants.

This recalling of Stogsdill at the last minute placed the defense at a great disadvantage, since Stogsdill could not fix very definitely the date when he was fleeced, and the only other witness who had testified about this swindle, "Steerer" Scott, had already been dismissed by the court and had left Council Bluffs. The exact date of the transaction was the vital point as to Powell, for his defense was an alibi to the effect that he was in Havana, Cuba, in March, 1908, and that he returned to Tampa, Florida, toward the end of that month, and did not arrive in Denver until after the middle of April. Edward Rice and G. A. Millsap, race-track men, testified that they were in Cuba with Powell and returned to Florida with him about the first of April. J. E. Woods, a horse trainer, said that he was in Denver when Powell arrived with his horses by train about the middle of April.

None of the defendants except Powell produced any witnesses. The case of fifteen of the defendants went to the jury. It returned a verdict of guilty for fourteen of them, disagreeing on one man. In finding Powell guilty, the jury elected to believe Stogsdill's positive identification rather than the testimony of the alibi witnesses.

On March 21, 1910, Judge McPherson sentenced Powell, with the others, to the maximum penalty under the statute, two years in the penitentiary at Leavenworth and a fine of \$10,000.

THE Stogsdill identification had come so late in the trial of the case, and the association of Powell with the Stogsdill

swindle was such a surprise, that the defense did not have an opportunity to obtain further evidence to substantiate the alibi in time to have it introduced before the end of the trial. Soon after the conviction, the hotels of Denver were canvassed by defense counsel, and it was found that Stogsdill, Scott, and Connors had stopped at the Brown Palace Hotel on March 19, 1908. Calculating from this date, according to Stogsdill's own testimony, the race must have occurred on March 28, 1908. The new evidence positively established this date. Certified copies of the passenger lists of the SS. *Mascotte* showed that Powell, Rice, and Millsap had gone from Tampa to Havana on March 10, 1908, and had returned to Tampa on that boat on March 26, 1908. Further, a number of postal cards from Powell to his mother, mailed in Havana from March 12 to March 26, were produced. Affidavits of reputable citizens confirmed the fact that Powell returned from Havana to Tampa the latter part of March and stayed in Tampa until April 8 or 10, when he left for Denver with his horses. He arrived in Denver, April 19 or 20.

This evidence clearly established the truth of Powell's alibi, and the error of Stogsdill's identification. All of the new evidence was submitted to Judge McPherson, who, according to the Attorney-General's published report, became satisfied that it was a case of mistaken identity and recommended a pardon. The Attorney-General concurred in this recommendation and on July 12, 1910, President Taft granted Powell a full pardon.

There is nothing extraordinary about this case of mistaken identity, except the brazenness and cleverness of the scheme for parting victims from their money and the evidence of the number of people whom cupidity can lead into a swindler's trap. Stogsdill was doubtless honest in his identification of Powell and was probably persuaded to his conclusion by his disappointment in not finding any of his "millionaires" or their unreliable "secretary" among the defendants. Powell evidently looked like Rogers. Fortunately

for Powell, he had sufficiently ample funds and able counsel to conduct a thorough investigation and obtain documentary records to establish by dates the fact that he could not have been in Denver at the time of the Stogsdill affair. Not all victims of erroneous identification are so fortunate. By speedy work of all those concerned in righting the wrong, Powell remained in the penitentiary less than four months, though his total detention was much longer. Powell was first caught in the mesh because of his associations, but his ultimate conviction was more his misfortune than his fault. Nobody really can be blamed for it; certainly not the prosecution. Stogsdill's mistake turned the wheels of justice against Powell.

BIBLIOGRAPHY

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2. *United States Attorney General's Report, 1912*, p. 337.
3. *Des Moines (Iowa) Register and Leader*, March 10-21, 1910.
4. Acknowledgment: George H. Mayne, attorney at law, Council Bluffs, Iowa.