Criminal No. 475

IN THE

DISTRICT COURT OF APPEAL

OF THE

STATE OF CALIFORNIA

IN AND FOR THE

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

M. A. SCHMIDT,

Defendant and Appellant.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

RESPONDENT'S BRIEF

PART I.

STATEMENT OF FACT.

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Filed this 22 day of Jan, A. D. 1917.

W. D. SHEARER, Clerk.

By_____, Deputy Clerk.

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PART I.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the Superior Court of the state of California, in and for the county of Los Angeles, entered upon the verdict of a jury on the 12th day of January, 1916, adjudging the defendant, M. A. Schmidt, guilty of murder in the first degree, and sentencing him to imprisonment for life in the state prison at San Quentin, and

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from an order of the said court denying the defendant's motion for a new trial, made and entered on the 12th day of January, 1916.

On the first day of October, 1910, the Los Angeles *Times,* a newspaper published in the city and county of Los Angeles, in the state of California, of which General Harrison Gray Otis was the general manager, and his son-in-law, Harry Chandler, was the assistant manager, was being prepared for publication, and printed in a building situated at the northeast corner of Broadway and First streets, in the city of Los Angeles. The *Times* being a morning paper, a large part of the work of issuing it was necessarily done in this building during the night time, and at the hour of one o'clock a.m., of said date, there were upwards of one hundred employees engaged in this work in the building.

There were, in fact, two buildings, one immediately on the corner and the other on the northerly side of an alleyway which ran from Broadway easterly between the buildings, designated in the evidence, "Ink Alley," which were joined together at a point one story above "Ink Alley." Underneath the alley was a basement which opened into both buildings. In the basement, under the Broadway, or westerly end of the alley, there was a large iron tank, twelve feet long by three feet

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in diameter, which was used for the storage of ink. At the top and one end of this tank was a manhole into which the ink was conveyed by a pipe leading through the floor of the alley at the easterly end thereof. At the time in question, there were about ten barrels of ink in the tank.

At one o'clock in the morning of October 1, 1910, a terrific explosion occurred at a point in the alley about forty feet in from Broadway and immediately next the northerly wall of the southerly building. The sound of the explosion, as described by witnesses who heard it, was sharp and short. A large steel "I" beam, which, according to the testimony of the experts, must have been right under the focal point of the explosion, was cut cleanly in two; other beams, larger and smaller, were wrenched and twisted and broken; the walls and other portions of the building in the immediate vicinity of the focal point of the explosion were damaged; and in a very short time the building was gutted by fire. Eyewitnesses, both in and outside of the building, testified that at the time of the explosion the floors above "Ink Alley" were thrown up at this point and a column of fire, smoke and debris was blown up through the roof of the building to a considerable height. According to the unconflicting testimony of the witnesses,

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the damage done by the explosion itself was confined to a space of comparatively small diameter at the focal point in "Ink Alley" and upwards through the roof, and a hole about 4 feet by 8 feet in dimensions was torn through the floor of "Ink Alley," which was composed partly of steel structure, partly of concrete and partly of glass. The testimony describing the condition of "Ink Alley" and the portions of the floor of "Ink Alley" which were blown down into the basement, and the structural iron which formed a portion of the floor of the alley, and which described the column of fire, smoke and debris which was driven up through the floors of the building through the roof to the height of about two hundred feet, leads inevitably to the inference that the explosion must have been of dynamite or nitroglycerin, or some other high explosive. This testimony and inference are corroborated to the degree of demonstration by the testimony of eminent experts, some of whom qualified from long practical experience with dynamite, nitroglycerin and other high explosives, and others of whom qualified from a like experience, together with thorough technical education.

There were a few barrels of ink in "Ink Alley" at the time, but the uncontradicted testimony of the experts is that printers' ink

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will not explode unless perchance it is highly atomized and comes in contact with fire. The ink tank above referred to was found partially dislodged from its resting place between the walls of the basement, and the only evidence of violence found upon it was a large dent inward on the side exposed to the focal point of the explosion. In other words, no portion of the ink tank was blown out and there was no evidence of any explosion having occurred inside the tank.

Twenty-one persons were killed, either by the force of the explosion, or by falling debris, or by fire. Among the deceased was James Haggerty, with whose murder the defendant Schmidt is charged in the indictment. Mr. Haggerty's body was found lying underneath the portion of the "I" beam and debris which fell upon it at the time of the explosion, and was fully identified by persons who knew him intimately in his lifetime. There is no dispute as to his identity or the fact that his death was directly caused by the explosion.

Between 9 and 10 o'clock on the morning of the first of October, 1910, a suit case was found near the residence of General Harrison Gray Otis in the city of Los Angeles by the police of the city. One side of the suit case was slit open by one of the party, when a whirring sound immediately ensued, and the suit case

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was abandoned and the party took to flight. When they had reached a distance of some one hundred feet from the suit case a terrific explosion occurred, the sound of which was like that caused by dynamite or nitroglycerin, or some other high explosive, and which blew a large hole in the ground, stripped the leaves from surrounding trees and broke a number of windows in the neighborhood. At about the same time another suit case was found near the residence of F. J. Zeehandelaar, secretary and treasurer of the Merchants and Manufacturers Association, in the city of Los Angeles, which, upon being opened, was found to contain a number of sticks of dynamite, wrapped in containers, such as are regularly used by the Giant Powder Company of California, and having on them the impression of a rubber stamp containing the name of the Giant Powder Company and "80% nitrogelatine"; also some fuse with "Dupont Powder Company, detonating caps," attached to the end of it and inserted in the bundle of dynamite sticks, and an infernal machine composed of a small board with a dry battery fastened lengthwise upon it, one pole of which was attached to a brass ribbon clip fastened to the board, and the other pole of which was attached to a brass ribbon clip on the arbor of the alarm mechanism of a small, round

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alarm clock. This infernal machine was exactly like the ones used by J. B. McNamara and Ortie McManigal in the East. The clock's alarm mechanism had been set to escape at about one o'clock in the morning, but for some reason or other had failed to work. The connections of the battery were severed by the police, and the suit case with its entire contents was removed to police headquarters. Subsequently a portion of the dynamite found in this suit case was analyzed by the chemist of the Giant Powder Company and was found to be of exactly the same composition as the remainder of a batch of five hundred pounds of eighty per cent dynamite which the evidence clearly shows had been ordered and procured by the defendant, M. A. Schmidt, and his co-defendants, James B. McNamara and David Caplan, from the Giant Powder Company, at Giant, California, in the month of September, 1910, and cached by them in a vacant house, number 1622 Nineteenth avenue, in the city of San Francisco; and the wrappers were identified as exactly like those placed upon this powder by that company.

The evidence, uncontradicted save by the denial of the defendant Schmidt, shows that in the month of September, he wrote an advertisement for a launch to be used on the bay of San Francisco for about ten days, on the

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advertising blank of the San Francisco *Call,* and wrote a similar advertisement on the advertising blank of the San Francisco *Examiner,* which he left for insertion in these papers respectively, at their advertising department. This evidence consisted not merely of the testimony of witnesses who identified Schmidt as the person who left the advertisement for insertion, but also of a telegram written by the defendant Schmidt while en route to California and identified by two witnesses who saw him write it; enlarged photographs of the two advertisements and of the telegram; and most convincing and conclusive, testimony of Milton Carlson, the well-known handwriting expert of Los Angeles, and Mr. Isaacs, another handwriting expert of Los Angeles, and Messrs. Wood and Wocher, bank officers of long experience, of the city of Indianapolis, Indiana. After examination and comparison of the exhibits and reading the testimony of these witnesses, the court will pronounce this evidence a demonstration of the identity of the handwriting in all of them.

It was also shown that Schmidt wrote an order for the delivery of the powder, to J. G. Leonard, which he signed, "J. G. Bryson," dated September 20, 1910; and that he also signed the name "J. B. Leonard" to a receipt

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for the powder, dated September 23, 1910; and, by means of enlarged photographs and expert testimony, it was demonstrated that the order and the name "J. B. Leonard" were in the handwriting of Schmidt.

Schmidt was identified by a number of persons as the one who negotiated the sale of the eighty per cent dynamite with representatives of the Giant Powder Company; and also as having hired the launch "Pastime" in company with David Caplan; and also as having bought two sets of white enameled letters spelling the name "Peerless" which was afterwards seen on the launch "Pastime"; and also as having taken the powder aboard the launch bearing the name "Peerless" at the works of the Giant Powder Company, at Giant, California. He was shown to have been constantly in the company of J. B. McNamara in San Francisco at the Hotel Argonaut, and at the residence of one Lena Ingersoll, 3656 Twentieth street, San Francisco, and in other places.

It was also shown that subsequent to the explosion Schmidt disappeared from San Francisco and remained undiscovered until about the time of his arrest in 1915; and that during this period he went under several aliases in addition to those which it was shown he had gone under in San Francisco and Los

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Angeles; and that a short time prior to his arrest he made declarations clearly connecting him with participation in preparation for the *Times* outrage.

It being the theory of the prosecution that the blowing up of the *Times* building was but one of a large number of overt acts committed in the furtherance and execution of a criminal conspiracy to compel large employers of labor all over the United States to discontinue the so-called "open shop" policy and adopt the so-called "closed shop" policy, a large amount of documentary evidence was introduced, which was supplemented by a large amount of testimony of victims of some seventy-two explosions and other acts of violence, which were overt acts committed in furtherance and execution of the conspiracy. The greater portion of this documentary evidence consists of original letters and telegrams and carbon copies of answers to letters and telegrams, together with copies of a magazine known as the "Bridgemen's Magazine," all of which were found by the police of the city of Indianapolis at the headquarters of an organization known as the "International Bridge and Structural Iron Workers Association," located at the time in the American Central Life Building, in Indianapolis. These documents were taken in custody by the police

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from the files of the organization, found in the headquarters; were marked for identification, as will appear hereafter, and placed under proper guard in the Grand Jury room of Marion County, in the city of Indianapolis, Indiana. They were received by the district attorney of the county of Los Angeles from the immediate custody of the clerk of the United States District Court in Indianapolis. Testimony of former employees of the said organization was introduced on the trial, showing the general course of business pursued at the headquarters of the organization, with reference to its correspondence; and letters and other documents pertaining to the conspiracy which were introduced in evidence on the trial of this case were duly identified by the said employees. In a few comparatively unimportant instances letters received or sent were introduced upon evidence that they were found in the custody of the organization in its regular business files; but in all other instances the letters, telegrams and other documents were proved by persons having knowledge of the handwriting of the writers of letters received and having personal knowledge of the sending of the letters and telegrams sent, and of the identity of the other documents. It is sufficient in this brief preliminary statement of facts to say that these

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letters, telegrams, checks and copies of the magazine show the gradual development and execution of a colossal conspiracy which had its inception in about the year 1905 and was in full force and going on October 1, 1910, and was hatched and carried on by the chief officers of the organization and a few of its other members, in defiance of its constitution and the law of the land, to force the "closed shop" policy upon large employers of labor throughout the country by criminal acts of violence, involving the destruction of vast amounts of property at the risk, and some times at the cost of human life—a criminal conspiracy which has no parallel in the annals of modern jurisprudence.

This documentary evidence was reinforced on the trial by the testimony of some of the chief actors in the perpetration of the overt acts done in execution of the conspiracy; of many of the victims of these overt acts; of many persons incidentally drawn into the perpetration of these acts; by the introduction of numerous hotel registers, showing the presence of the conspirators who testified to the perpetration of these acts, in cities near the location of the properties destroyed, either under their own names or aliases assumed by them; by testimony verifying the location of dynamite stored by the conspirators; and by

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the identification of infernal machines, nitroglycerin cans, fuses, etc., used by these conspirators.

Numerous letters and telegrams were introduced, together with articles published in the "Bridgemen's Magazine," showing concluclusively the connection between the development of the conspiracy in the East and on the Pacific Coast; and showing conclusively that not only the Los Angeles *Times* but many manufacturing concerns and other employers of labor, as well as the Merchants and Manufacturers Association, in the city of Los Angeles, were special objects of the hatred and criminal purpose of the conspirators.

The evidence on the trial was developed in logical order and as nearly as possible in chronological order, through approximately eight thousand pages of testimony, and included approximately six hundred exhibits. We shall endeavor to quote enough of this evidence to illustrate the manner in which the conspiracy developed, going more particularly into details relating to the Pacific Coast, up to and including the destruction of the Los Angeles *Times* building and the attempted dynamiting of the homes of General Otis and Mr. Zeehandelaar. The review of the evidence

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will be confined to as small a compass as possible, but must necessarily consume considerable space. The far-reaching character of the conspiracy, its intimate connection with, and obvious menace to, the institutions of the country and its industrial prosperity, demand a careful treatment of the subject, though it may devolve upon the court a considerable amount of labor in the perusal of this brief.

INCEPTION OF THE CONSPIRACY, AND ITS DEVELOPMENT AND EXECUTION IN THE EAST.

[NOTE.—For convenience, all references to the Clerk's transcript in this brief will be made as follows: Cl. Tr. V. ——, p. ——; all references to the Reporter's transcript will be made as follows: R. Tr. V. ——, p. ——.]

As appears by a printed endorsement on the title page of its constitution, People's Exhibit No. 158 (Cl. Tr. V. 2, pp. 549, 599), the International Association of Bridge and Structural Iron Workers was organized February 4, 1896. The constitution was amended September 26, 1906, at Detroit, Michigan, to take effect January 1, 1907. The preamble of the constitution reads as follows:

> "It being a self-evident fact, fully demonstrated by past experience, that centralization and unity of action among the iron industry of this country is necessary in

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order to successfully deal with the ever-growing encroachments of organized capital, and the many grievances of which our craft is subjected to, which requires speedy adjustment, and upon the satisfactory settlement of which may hinge the welfare of all brothers in our craft; therefore, believing that this may best be obtained by united action and effort, thus forming a solid representative organization, each pledged to carry into effect the immortal injunction that 'an injury to one is the concern of all,' we pledge ourselves to make any reasonable sacrifice in order to uphold these principles, and to advance and perpetuate the Union."

The first three sections of the constitution read as follows:

"SECTION 1. This organization shall be known as the International Association of Bridge and Structural Iron Workers.

"SEC. 2. It shall consist of an unlimited number of bridge, structural and ornamental local unions, and members, and shall not be dissolved as long as there are two dissenting local unions.

"OBJECTS AND JURISDICTION.

"SEC. 3. The objects of the International Association are to encourage a higher standard of skill, to cultivate feelings of friendship among the craft, to assist each other to secure employment, to reduce the

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hours of labor, to secure adequate pay for our work, to discourage piece work by legal and proper means, to elevate the moral, intellectual and social condition of all members and to improve this trade."

It will be seen from the preamble and the first three sections that the objects of the organization were lawful and its principles were sound.

The only regular meeting of the association provided for by the constitution is an annual convention to be held on the third Monday of September at the place designated by the last preceding convention. A special convention could be called on motion of five local unions, no two from the same state, followed by a majority vote of the members of the association (sections 8 and 9). Section 19 provides that the officers shall be a president, first vice president, second vice president, secretary-treasurer and executive board of seven members—not more than one member from any one local union.

Section 27 prescribes the duties of the secretary-treasurer, and among them the following:

"At each annual convention he shall submit a complete printed report of the receipts and expenditures during his term of office. * * * The fiscal year shall begin July first and end June thirtieth. * * * He

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shall receive all money due the International Association for per capita tax, assessments and other sources, and issue receipts for same. He shall also make a monthly report of all money received and expended, and publish same in the Official Journal. He shall be the custodian of the funds of the International Association, and shall attend annual convention of same and all meetings of the Executive Board with necessary books and papers. He shall, with the approval of the Executive Board, employ such assistants as are necessary for the performance of his duties; such assistants must, as far as practicable, come from the ranks of the International Association. * * * He shall * * * perform such other duties as are generally required of a Secretary-Treasurer. He shall keep all money collected for death insurance in a separate fund, and maintain a complete account of the receipts and expenditures of the same in a separate set of books; the above shall also apply to the Official Journal. He shall open an office, which shall be used jointly by the President, Secretary-Treasurer and Executive Board. * * * The Secretary-Treasurer shall receive for the faithful performance of his duties the sum of eighteen hundred dollars ($1,800) per annum, payable in monthly installments."

Section 28 provides for the auditing of his books and accounts by a committee of three of the delegates-elect to the annual convention.

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Among other duties prescribed for the executive board are the following:

> "SEC. 30. The Executive Board shall decide all points of law, all grievances and appeals submitted to them in legal form, and their decision shall be binding until reversed by the convention; they shall have power to authorize strikes in conformity with this Constitution, examine the bonds of the President and Secretary-Treasurer and hold them in trust, and shall have general supervision over the International Association."

The duties of the auditing committee are more particularly described as follows:

> "SEC. 39. The duties of the Auditing and Finance Committee will be to investigate all claims and bills of the International Association and under no circumstances can a bill be voted on or considered before it is referred to the Finance Committee at convention assembled."

The sources of revenue of the Association are prescribed as follows:

> "SEC. 43. The revenue of the International Association shall be derived from the following sources:
>
> "1. Sale of monthly dues and initiation stamps.
>
> "2. Sale of supplies.
>
> "3. Advertising.

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"4. Interest on money in bank.
"5. General membership fees and dues.
"6. Assessments levied in accordance with provisions of the Constitution.

"SEC. 44. There shall be paid as per capita tax the sum of 40 cents per member per month on all members in good standing on the books. A valuation of fifty cents shall be placed on initiation stamps. Dues and initiation stamps shall be secured from Secretary-Treasurer and remittances made in accordance with above valuation."

Payment of revenues is prescribed as follows:

"SEC. 47. All money due Headquarters must be forwarded by the Financial Secretary of the Local Union on the first meeting night of each and every month, for the past month, and be made payable by express or post office money order, check or bank draft to the Secretary-Treasurer who shall receipt for same."

An official organ is provided for as follows:

"SEC. 94. There shall be published, monthly, at headquarters, an Official Journal, which is known as The Bridgemen's Magazine. The Secretary-Treasurer shall have charge of its publication, employing such assistants as are necessary. Such assistants shall, as far as practicable, be selected from the ranks of the International Association, and their appointment

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shall be subject to the approval of the Executive Board. The expense of maintaining the Official Journal shall be paid from a special fund. The Magazine shall be furnished members through the agency of their local union, and it shall be furnished to other subscribers at the uniform rate of $1 per annum.

"SEC. 95. All official communications sent out by the Secretary-Treasurer for the general information of the members of the International Association shall also be inserted in the Official Journal of the International Association. The Secretary-Treasurer shall make all rules and regulations as to the rates for advertising and all other matters pertaining to the publication of said Official Journal, subject to the supervision of the Executive Board."

The constitution contains provisions for the safeguarding of funds and their expenditure only for the purposes of the organization as follows:

"DONATIONS.

"SEC. 99. The funds of this Association having been raised for the protection and relief of its members, shall not be donated for any purpose except by a two-thirds vote of the International Association in convention assembled.

"SEC. 100. The funds of this organization shall not be donated or appropriated

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to pay the traveling expenses of any delegate to a convention of the International Association.

"FUNDS—HOW DEPOSITED.

"SEC. 101. The Secretary-Treasurer shall place all funds in a depository selected by the Executive Board to the credit of the International Association of Bridge and Structural Iron Workers. He shall be the custodian of the certificates or other evidence of deposit or investment. Funds so deposited shall not be withdrawn, except by approval of the President and Secretary-Treasurer and a majority of the Executive Board.

"DEFENSE FUND.

"SEC. 102. No moneys on deposit to the credit of the Defense Fund shall be expended in assisting Local Unions unless a written grievance has been presented to the Secretary-Treasurer and indorsed by a majority of the Executive Board prior to the request for aid. A majority vote of the Executive Board shall be required to expend moneys credited to the Defense Fund. No moneys in the Defense Fund shall be available for a period of five years from January 1, 1907."

It should be said, in passing, that there is nothing in the constitution, from title page to finis, from which any authority can be derived, either express or implied, to divert the

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funds of the association or devote the time of any of its officers or members to the furtherance or execution of a criminal conspiracy having for its purpose the intimidation of employers of labor, or compelling them to adopt the "closed-shop" policy by means of intimidation, or acts of violence against either persons or property; and the members of the association holding its offices of trust and authority who conceived, developed and executed the conspiracy which was proven on the trial of this case, did so in the face of the fundamental law of the association and by the unlawful diversion of its funds and in defiance of the rights of the honest and law-abiding artisans who composed its membership.

It is also to be observed that the provisions of the constitution above quoted, made it easy for the president, secretary-treasurer and executive board to arrogate to themselves complete control of the policy and funds, and to divert them to the purposes of the conspiracy, under the cloak and pretense of carrying out the ends and policy of the International Association.

For convenience, the International Association of Bridge and Structural Iron Workers will be hereinafter referred to as the "International."

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Originally the headquarters of the association were at Cleveland, Ohio. They were transferred to rooms 422, 424 and part of the basement of the American Central Life Building in Indianapolis, Indiana. It was stipulated at the trial that the letters, telegrams, copies of the "Bridgemen's Magazine," and other documents found by the police at the Indianapolis headquarters were stamped with a rubber stamp bearing inside the periphery thereof the initials "J C T" and "G E F" and "R J F"; and that as to all such documents bearing these stamps, J. C. Talbot, G. E. Freeman and Robert J. Foster would, if called as witnesses, testify respectively, that they were taken from the office of the International Association of Bridge and Structural Iron Workers at Indianapolis, either from the principal office, or from the vault under the control of the association, and from the files of the association at those places in the month of December, 1911. (R. Tr. V. 63, p. 4751 to 4754.) With a few comparatively unimportant exceptions, all of the letters, telegrams, checks, magazines, and so forth, were identified by the stenographers, or bookkeeper, employed by J. J. McNamara, secretary-treasurer at these headquarters, as having been received or sent and duly filed

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at the headquarters. As to the few unimportant exceptions, the fact that they were found in their proper place in the files kept at the headquarters was deemed sufficient proof of their identity.

In August, 1905, the International, through its officers, declared a general strike in the United States against the American Bridge Company, a large concern engaged in the fabrication and erection of structural iron and steel. Under date, July 6, 1905, Frank Buchanan, president of the International, wrote a letter to John J. McNamara, secretary-treasurer, at Cleveland, Ohio, which reads, in part:

> "If a majority of the Executive approves the strike should be ordered against the American Bridge Co. to force it to comply with No. 15s required rules all jobs where the A B Co has first contract for the erection should be put on strike I desire you notify Butler by wire to proceed at once to Phila and make an effort to settle peaceable with H. F. Lapland and also write Butler & McGovern They must be prepared to look after the interest of our Assn in the east when the strike takes effect." (Gertrude Kilrain, R. Tr. V. 51. p. 3776; People's Exhibit 163, Cl. Tr. V. 2. p. 637.)

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Under date, July 28, 1905, Buchanan, president, wrote to McNamara, secretary-treasurer, a letter which reads, in part, as follows:

"No. 15 of New Haven has called a strike today against the American Bridge Company for to force them to cause union men to be employed on the work they sublet to the Boston Bridge Co. This work consists of about 3000 tons of bridge work being done for the Hartford & New Haven Railway Company. From information gained, the Road Company contracted this work to the American Bridge Company, believing that Union men would be employed, not desiring to have any trouble with organized labor. After the American Bridge Co. secured this contract they sublet it to the Boston Bridge Company who have always been unfair to our Organization in the East and some are under the impression that the Boston Bridge Company is controlled by the American Bridge Company and that the American Bridge Company is using it as a subterfuge to employ non-union men.

"I was impressed by the expressions of the members of the Executive Board at the meeting of the week of May 1st. They were in favor of taking action against the American Bridge Company at the opportune time unless the work that they contracted for was being done in accordance with the rules of our organization in all

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localities. I made this statement to E. L. Warden Business Agent of No. 15 and told him if No. 15 became involved in trouble with the American Bridge Company, and was unable to force them to give them fair consideration in that locality, that No. 15 would have the support of the International Association to the fullest extent. In case No. 15 is unable to force a settlement, I ask your approval to call a general strike against the American Bridge Company's contracts * * * *." (Gertrude Kilrain, R. Tr. V. 51, p. 3777; People's Exhibit 164; Cl. Tr. V. 2, p. 639.)

On August 7, 1905, McNamara, secretary-treasurer of the International, telegraphed P. A. Dugan, business agent, Local No. 22, at Indianapolis, Indiana, as follows:

"Cleveland O. Aug 7-05. P. A. Dugan 406 King Ave Indpls. Executive Board orders general strike against american bridge co take effect Thursday Aug tenth order includes all jobs where American Bridge Co has first contract for erection. (Signed) J. J. McNamara." (Gertrude Kilrain, R. Tr. V. 51, p. 3777; C. Tr. V. 2, p. 606; Patrick Dugan, R. Tr. V. 50, p. 3720, 3721; Cl. Tr. V. 2, p. 606; Plaintiff's Exhibit 160.)

On August 9, 1905, John J. McNamara, secretary-treasurer, caused "Circular No. 30

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to Local Unions" to be mailed to all local unions, containing, among other things:

[On letterhead Headquarters International Association Bridge and Structural Iron Workers.]

"Cleveland, Ohio, Aug. 9th, 1906. CIRCULAR No. 30 TO LOCAL UNIONS. Dear Sir and Bro:—In connection with my telegram of the 7th inst will say that since the agreement entered into between our Association and the Erectors' Association, April, 1903, and which expired Jan. 1st, 1905, the American Bridge Company has shown a marked plan of discrimination against our New Haven organization.

"The officials of the above named company have repeatedly informed your officials that they would do no business with No. 15, and in the light of recent events they seem determined to back up their assertions.

"On July the 28th No. 15 of New Haven called a strike in their jurisdiction to obtain an agreement and also to force the American Bridge Co. to employ union men on work which they had sublet to the Boston Bridge Company.

"From the best information obtainable it appears that the New York, New Haven and Hartford Railroad awarded the contract for about 3000 tons of bridge work to the American Bridge Co., believing that union men would be employed as they did

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not desire to have any trouble with organized labor. After the American Bridge Company secured this contract they sublet the erection to the Boston Bridge Co., which company has always been unfair to our organization and some are under the impression that the Boston Bridge Co. is controlled by the American Bridge Co. and that it is being used as a subterfuge to employ non-union men.

"The Executive Board has approved of calling a general strike against this company to assist our New Haven Organization, and all work the erection of which the American Bridge Co. is responsible for should be stopped, whether it is by a subcontractor or the American Bridge Co. direct.

"No Local Union should allow any work to proceed under the subterfuge that it has been taken away from the American Bridge Co., as in the majority of cases this is but a move to out-wit our Local Unions.

"Information shall be forwarded from time to time as to the progress of this contest and it is to be hoped that our local Unions will act in such a way that a speedy settlement will be possible.

"Fraternally yours,

J. J. McNamara,
Sec-Treas."

(Exhibit 165. Kilrain and Talbot; R. Tr. V. 51, p. 3793; V. 66, p. 4980; Cl. Tr. V. 2, p. 642.)

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August 8, 1905, Frank Buchanan, president, wrote to McNamara, secretary-treasurer, at Cleveland, Ohio, saying, among other things:

[On letterhead of Headquarters International Association Bridge and Structural Iron Workers.]

Chicago 8/8/5

"Mr. J J McNamara
Cleveland Ohio

"Dear Sir & Bro

"I met Mr. Robert Vierling today who seems to be interested in the Paxton & Vierling Co of Omaha who is fighting No. 21 he led me to believe that matters may be adjusted and from information I gained from Bro O H Hill and Mr Vierling I am impressed the Omaha matters should be looked after without further delay as matters seem to be getting more complicated as time goes on. I have decided to go to Omaha tomorrow night and make an effort to settle this matter Thursday. This will delay my trip to headquarters until about Monday which will be about the time matters will begin to warm up with the A. B. Co. so keep the wires warm and if possible get all our members out who are working on a contract taken by the A B Co and I will try and be prepared to take up the hot end of it about the first of the week

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keep me posted on new developments in the mean time.

"With good wishes I remain Fraternally

"FRANK BUCHANAN."

(Kilrain and Talbot; Exhibit 166; R. Tr. V. 66, p. 4980; Cl. Tr. V. 2, p. 644.)

On November 9, 1905, Frank M. Ryan, president of the International, wrote to McNamara, secretary-treasurer, at Cleveland, Ohio, saying, among other things:

"Herewith please find a list of Am Br Co's properties. Please have copies sent to all Locals with a request over my signature to keep our men off construction work carried on under any of these firm names." (Haley and Talbot; Exhibit 468; R. Tr. V. 61, p. 4653; V. 66, p. 4985; Cl. Tr. V. 3, p. 1323.)

On February 2, 1906, John T. Butler, at Buffalo, N. Y., wrote to John J. McNamara, at Cleveland, Ohio, saying, among other things:

"I have not heard much from Rochester until yesterday I received a letter from Bro Earnest who informed me that the A. B. Co. are still working and he thought that the job would soon be in a position to do something with and he would write me against in a day or two, he says there is a bunch of men there who have been around Philadelphia one man name W.

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Hammen who they think carries a card from 13 look if such a man does belong there. I have not done much around Buffalo because the man who claims to be the whole cheese around here thinks we are not to be depended upon after my going away that time and not notifying him what to do it is to bad I did not leave the money with him when I went away. I gave him a piece of my mind, and would have given him something else if I was not pulled off him, anyway Joe I will not deal with him at all any more but will get all necessary information and forward same to you from time to time Say Joe I was informed last night that the Pittsburg Construction Co had notified our men that they would start the open shop issue today at the steel plant, West Seneca, if they do it will make it bad around here, * * *." (Haley and Talbot; Exhibit 170; R. Tr. V. 66, p. 4991; Cl. Tr. V. 2, p. 653.)

On February 27, 1906, John J. McNamara, at Cleveland, wrote to Frank M. Ryan, president, at New York, saying, among other things:

"The A. B. Co. has started a job in jurisdiction of No. 17 at Youngstown. Pete Smith wanted to know if I wanted to spend a few hundred dollars over there and I told him *no* not until I had taken the matter up with some one else farther. It appears as

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though they want you to furnish the funds and then get out and do the work.

"We should have some understanding as to the placing of some funds where they are needed. I do not desire to place any particularly here because it would give other locals a chance to kick and say if they were in Cleveland they could get assistance or something like that. We (the International) has spent $376 dollars here and loaned $200 more and between me and you I do not see a hell of a lot accomplished. I should like to hear from you on this point." (Haley and Talbot; Exhibit 471; R. Tr. V. 61, p. 4654; V. 66, p. 4985; Cl. Tr. V. 3, p. 1337.)

On March 4, 1906, John T. Butler, at Buffalo, New York, wrote to John J. McNamara, at Cleveland, Ohio, saying, among other things:

"I went down to Rochester Friday and made a careful search of the surrounds in regard to the A. B. Co. work in general the job at Brighton is about all up as far as the erecting and they are riviting now they have about 28 men working I will send you a list of their names. I believe some of them belong to Local 13 any way you look over the list now Joe Young Kinney the Supt leaves Rochester tonight Sunday for (Sayar, P. A.) to erect a job that is not far from Scranton so you had better notify Mike Hannon, all the time he was here he

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had a Pinkertonman alongside of him. Slept in the same house and if Kinney and his wife went out in the evening he was with him I tried hard to have him reached but did not succeed." (Note.—He further writes about plan of A. B. Co. to have large job turned over to Buffalo Structural Steel Co., and reports as to miscellaneous contracts and trouble.) (Haley and Talbot; Exhibit 472; R. Tr. V. 61, p. 4656; V. 66, p. 4997; Cl. Tr. V. 3, p. 1339.)

March 25, 1906, Moulton H. Davis, at Philadelphia, Pennsylvania, wrote to McNamara, at Cleveland, Ohio, saying, among other things:

"Only the A. B. Co. are makeing so much headway & there don't seem any chance to get anything done to prevent them.

"The fellows are afraid to do anything if they could get a chance after seeing the deal some of them got in N. Y.

"How would it be for getting some money in case there was some work done for the money.

"I never pay for anything until I have the goods in my hands. Local No. 13 has about 100.00 and that wont pay its next per capita and ref due in another week.

"They are makeing a howl for something to be done at each meeting. If we or I rather had a little money & the thing could be pulled off O. K. of course the money would be there if not nothing doing.

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I have told the Local Ex board I thought I could get them money if they could get buisy." (Wood and Talbot; Exhibit 538; R. Tr. V. 66, p. 5004; Cl. Tr. V. 3, p. 1523.)

April 1, 1906, *E. A. Clancy, at San Francisco, Cal.,* wrote to John J. McNamara, at Cleveland, Ohio, saying, among other things:

"The A. B. Co. has 2 jobs here one 1500 tons one 342 tons this is the small bank job I did not know who had it.

"The reason I did not leave for the north Mc was that the Santa Cruz job started Fri with some big snake that was pushing for them in the East some few years ago he has it contract he is started to erect his camp that is why I stayed here for awhile as yet I had my ticket bought. I leave for Santa Cruz tomorrow. We gave this fellow that is going to try and do this Santa Cruz job a merry time last week, he was trying to rent some tools and engines but we blocked him at every turn. The contractors here are with us with the exception of one and dont worry we will get him. Well Mc this fellow's name is (Lee) and leave it to us an Lee we will give him a merry time the trouble has just begun in this section of the country The District Council has taken a stand against McCarthys action and we are going to have a dam warm time here. The A. B. Co Mahoney, and McCarthy is going to get there bumps as sure as your name is Joe. * * * Well Joe this

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is all for this time but we are going to spend some money here in the next week so you will here from me soon." (Haley and Talbot; Exhibit 473; R. Tr. V. 61, p. 4656; Cl. Tr. V. 3, p. 1343, 1344.)

July 4, 1906, John T. Butler, at Buffalo, New York, wrote to McNamara, at Cleveland, Ohio, saying, among other things:

"Yours of the 2nd received and will see that it is carried into effect although I think that the Pittsburg Steel Co. are about through with their job here. but orders will be carried into effect. The election went through just as I planned although I did not expect to clean up so good. Olsen got 87 votes for President against Gallaghers 27, Meegan beat both Thomas and Bannister on the first Ballott receiving 3 votes more than both of them, our ticket also elected 2 Sectys Treas. and 3 Trustees so you can see how things stand around here; Mr. Scanlon tried hard to have that matter of Big Whitey hushed up and left in the hands of the old Ex Board but it was taken out of their hands and left in the hands of the New Board, and I think that something will be doing before long. I want to get the Delegates in No. 6. Scanlon is working hard for it he is going to quit the Hotel business so he told Meegan he claims he as got all he wants of it. I knew his finish went he went into it and he will be a failure in anything he starts into around

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here. he is trying hard to get around Meegan, telling him that he worked hard for him but Meegan is wise and I told Meegan straight to be careful of him. Olsen is my candidate for the convention if only one is sent and Meegan & Olsen if 2 is sent. I dont see how they can be beat under the circumstances, but I wish they had been elected last Friday then it would have been over with. I will take a trip down around Rochester to I heard on Friday that town is certainly up against it nearly all the work in their vicinity is being done by the A. B. Co. and it seems impossible to stop it. I have done everything possible with the means at my command but there are several more good big job around there starting and I cant do much unless Tools are furnished and another thing I am getting a little leary after what I heard the other night. I only wish I could prove the thing maybe I will before long anyway I will talk this over with you when I see you." (Haley and Talbot; Exhibit 474; R. Tr. V. 61, p. 4656; V. 66, p. 5018; Cl. Tr. V. 3, p. 1346.)

December 1, 1906, H. S. Hockin, business agent of Detroit Local wrote to John J. McNamara, at Indianapolis, Indiana, giving an account of work of the American Bridge Company in Detroit, saying, among other things:

"The car was standing on a high bank & I heard that one night (Friday night)

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the wind blew it off the car (that is the derick & engine) (well what are you laughing at)." (Haley and Talbot; Exhibit 264; R. Tr. V. 53, p. 3989; V. 66, p. 5035; Cl. Tr. V. 2, p. 899.)

October 17, 1907, John J. McNamara, at Indianapolis, Indiana, wrote to M. J. Hannon, at Scranton, Pennsylvania, saying, among other things:

"Relative to the A. B. Co. work in your territory wish to say I took the matter up with Ryan, in fact forwarded him your letter. He replied that he was going to have Webb of New York visit your locality and he informed me that he would take the matter up with Webb direct. I presume he has done so by this time." (Haley and Talbot; Exhibit 293; R. Tr. V. 53, p. 4017; V. 66, p. 5083; Cl. Tr. V. 2, p. 969.)

October 25, 1907, Frank C. Webb, at New York, wrote to Frank M. Ryan, at Indianapolis, saying, among other things:

"I left here Wed. Oct. 23, for Scranton per order from you and am sorry to report there is only one small job going right now, but learned they have a few small jobs in there jurisdiction and as near as I could learn about 15 men loafing, now the unfair work the holler was about is A. B. Co. and I would say three weeks would finish same, likely you know all about this as McCrea was there for a time when the job was

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about to start and then I would say was the time to do something, still if there was any chance of visiting this Foreman and pushers and following it up some one might get tired, and then, some of their own men are working on the job and if something dont drop they seem to be afraid others will follow but I think the Local might look after their own members, but things do certainly look blue one nice big job in the city and that scab. Hannon tells me the A. B. Co. are supposed to have a lot of machine shops for D. L. W. that will take between 6 mo. & a year, the way the present job has been going, and they have about 50 men as near as I could count. I don't know what to recommend for hardly know the workings of the International do not know how far some one wants to go, now after you gave me authority to draw on Headquarters I did so, but had not received it when I left but my wife tells me she forwarded me a letter to Scranton I left before it got there but have sent for it, and if there is any instructions, I may then judge better for Scranton.

"McClintock Marshall have 6 spans to go up at Dalton for Northern Electric Railway, viaduct work. If I had known McCrea report from there it might have helped me to see if anything was wrong as things look I believe Mike is in earnest and is not drinking a thing Mike did seem to think the amount might be sent or given in his care and he sprung 300.00 at

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first and later I guess he see I was not in favor of it and then he thot there might be 200 sent in he claims he has some one on the out side and no one should know who it is, I agree with him there, 'if anything was done.' As for Gibbons he said it mattered not to him who handled the money. Kindly let me know how far you would go if you would advise following up these cases or letting them drop after one job.

"With best wishes to all concerned,

"Fraternally yours"

(Haley and Talbot; Exhibit 457; R. Tr. V. 61, p. 4646; Cl. Tr. V. 3, p. 1318.)

The foregoing quotations from correspondence between the co-conspirators will serve to show that the American Bridge Company was singled out as a victim; and the following depredations were proven on the trial to have been committed by the conspirators upon work of the American Bridge Company.

February 3, 1908, at Pelham, N. Y., George F. Davis, with others, loosed guy clamps on four guys holding the draw of the Scherzer drawbridge over East Chester Bay, causing the draw to roll forward into the bay. (George E. Davis, R. Tr. V. 55, p. 4120.)

April 13, 1908, George E. Davis dynamited material for use of elevated road in the freight yard of the Pennsylvania Railroad Company at Philadelphia. (George E. Davis, R. Tr.

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V. 55, p. 4155; James L. Wertz, R. Tr. V. 80, p. 6153.)

April 26, 1908, at Fall River, Massachusetts, George E. Davis dynamited two spans of the Slade Ferry Bridge over the Taunton River. (George E. Davis, R. Tr. V. 55, p. 4164.)

May 3, 1908, at Dayton, Ohio, Ed Clark dynamited a railroad bridge. (Ed Clark, R. Tr. V. 57, p. 4356.)

April 18, 1910, at Salt Lake City, under direction of J. E. Munsey, business agent of the iron workers at Salt Lake City, they caused a portion of the Utah Hotel to be blown up. R. D. Jones, R. Tr. V. 52, p. 5457; Elmo V. Smith, R. Tr V. 71, p. 5376.)

August 6, 1908, at Chicago, Illinois, at a point called Calumet, a bridge was dynamited and two or three stringers were badly bent and broken and the angle-irons were bent. The bridge was being constructed by the Blodgett Construction Company, of Kansas City, and the material for it was being furnished by the American Bridge Company. (Harry E. Burns, R. Tr. V. 79, p. 7004.)

It appears by the record that George E. Davis was an iron worker, member of New York Local No. 40, and was employed by Frank C. Webb, a member of the International Executive Board, by authority of Frank M. Ryan and J. J. McNamara, to produce a

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large number of explosions. (R. Tr. V. 54, p. 4094.)

Ed Clark was a member of Iron Workers Local No. 44, with headquarters at Cincinnati, Ohio. (R. Tr. V. 57, p. 4304.)

January 10, 1907, John T. Butler, at Buffalo, N. Y., wrote to John J. McNamara, at Indianapolis, reporting dissatisfaction among the members in Buffalo and vicinity because they are permitted to work for open shop concerns and not for McClintock-Marshall and continues, and saying, among other things:

> "quite a few of the members at the Falls seem to believe that our members at various Cities I mentioned are working for the Erectors. Of course I told them differant and asked them to write you any time when they want information, and not belive some Agent of the bosses. I was reelected Pres. and have got a board there who I think will take hold of things again in spite of the knockers. well Joe we got about 25 men to quit. Marshall McClintic job they were mostly laborers and men from around the Falls. I am making them all the trouble I can and will try and get the contract away from them. I have a Meeting to Morrow with the Manager and Supt of the Hydraulic Power Co. and will do my utmost to have them take the work from Marshall McClintic and give it to a fair Firm if we succeed it will be because McClintic cant get men enough to

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make a show. he brought in a New Man From Pittsburg named McCann for a pusher I understand that he used to carry a card from No. 3. I can not get the names of the rest but will not give up yet and will cause them lots of worry before they accomplish much." (Haley and Talbot; Exhibit 327; R. Tr. V. 61, p. 5038; Cl. Tr. V. 2, p. 1028.)

The "Erectors' Association" mentioned in this letter was an association of corporations, partnerships and individuals engaged in the fabrication and erection of structural iron and steel work, which was formed for the purpose of opposing unlawful efforts of the International to force upon them the adoption of the open-shop policy.

January 21, 1907, John T. Butler, at Buffalo, N. Y., wrote to John J. McNamara, at Indianapolis, saying among other things:

"Well Joe I have a man on the Marshall McClintic job as foreman he belongs to the Falls Canadian side and when things get moveing at all I will be in a position to turn a trick or two. That is if we dont succeed in getting that work away from McClintic. I had things well under way with Mr. Harper, Supt. of the Hydraulitic Power Co and Mr. Caddington Pres. Their chief advising engineer and may yet succeed in getting that work as it will last over a year, but both these gentlemen

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inform us that McClintic are not accomplishing anything and would be glad to be relived of the responsibility. I was crowding them pretty well when I got sick and will continue to do so in the near future as I have got a good man at the Falls in Jack Grist, and when I want to meet this foreman of McClintic I go direct to Grist house and meet him and not even our own members will be any the wiser." (Haley and Talbot; Exhibit 271; R. Tr. V. 66, p. 5040; Cl. Tr. V. 2, p. 926.)

March 18, 1907, John T. Butler wrote to John J. McNamara, at Indianapolis, saying, among other things:

"for two weeks the committee has worked hard and have bothered the McClintic Marshall Co. considerable, having succeeded in takeing off our 20 men in that time and stopping others from going to work from what I hear the job is badly crippled. they got the engineer arrested and fined 50 dols for working without liscense. also had Slim Arnold arrested for carrying concealed weapons. he had two guns on him which the police confiscated if this is kept up I belive they will begin to get tired of the scrap. there is a Man named Frank Lamphere running the job now he is a member of No. 6. I had a talk with McVey also Olsen and Meegan last week and Jim McVey went down to the

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Falls and spoke to Lamphere who claims that he is receiving 8 dols per day and straight time. but after talking the Matter over he agreed to quit the job Saturday night (Mar 16th) if he did they was about 8 more men who stated they would also quit if they do the job will be crippled again Grist is to wire me today if they did stay off or not I instructed Grist yesterday to get about 25 of the Newsboys banded together and give them 10 cents or a quarter apiece and have them follow this fellow Arnold and the Bunch of scabs from the job to the boarding house, hollering scab all the way. Once this is done it will be taken up string and maybe it will make them so obnoxious that they will not be able to get a boarding house anyway I have instructed them to try it) Sutton also informs me that Mr Mortiz the chief Engineer is near crazy at the slow manner in which the work is progressing and stated that young McClintic said they would be glad if the trouble was settled, but that they would be unable to procure steel if they broke away from the Erectors Aso. I have a man going to apply to Mertiz today for the position of Inspector if he lands it which I belive he will, why we wont do anything to them." (Haley and Talbot; Exhibit 270; R. Tr. V. 66, p. 5052; Cl. Tr. V. 2, p. 922.)

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March 19, 1907, George Hagerty, at Phillipsburg, N. J., wrote to John J. McNamara, at Indianapolis, saying, among other things:

> "Inclosed find bill for Twenty Dollars and receipted for same. Mr. Brophy & myself has been very busy and if a few men on McClintic & M. job at Bethlehem dont fool us will put the job on the bum in a few days." (Haley and Talbot; Exhibit 268; R. Tr. V. 66, p. 5053; Cl. Tr. V. 2, p. 915.)

March 21, 1907, George Hagerty, at Phillipsburg, N. J., wrote to John J. McNamara, at Indianapolis, saying, among other things:

> "Brophy & myself has been on the jump night & day on McClintic & M work in Bethlehem and we took about 60 men off and had them down to our Hall in Easton & gave them a good talking to we are to hold a mass meeting in Bethlehem Saturday things are in a bad shape as far as McClintic & M is concerned now that the fight is goeing on with McClintic & M here is the place to make them come to school and make them fair no trouble now to make this a union job but that must not be considered they must be fair all over Joe Carter for McClintic & M King snake is the busiest man in town trying to get the men back. I also had the pleasure of meeting Tom Laity & he said he would send me his transfer & book what shall I do also Wm Booth ex Secy of Quebec has

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a withdrawl card what shall I do with both." (Haley and Talbot; Exhibit 272; R. Tr. V. 53, p. 3998, 3999; Cl. Tr. V. 2, p. 931.)

April 5, 1907, George Hagerty, at Phillipsburg, N. J., wrote to John J. McNamara, at Indianapolis, saying, among other things:

"We are goeing to try and make the McClintic & M people as much trouble as possible Mr Marshall is making his Home in Bethlehem, you also state you are sending another representative here that sounds good and I assure you any assistance I can give or our members he surely will get it." (Haley and Talbot; Exhibit 275; R. Tr. V. 53, p. 4001; Cl. Tr. V. 2, p. 934.)

May 6, 1907, John T. Butler, at Buffalo, N. Y., wrote to John J. McNamara, at Indianapolis, about the Marshall McClintock and A. B. Co. jobs, and says, among other things:

"These men striking and walking around and meeting our fellows it breeds a certain amount of familiarity among them and loses out that feeling of animosity which should prevail." (Haley and Talbot; Exhibit 480; R. Tr. V. 66, p. 5058; Cl. Tr. V. 3, p. 1361.)

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July 12, 1907, John T. Butler, at Buffalo, N. Y., wrote to John J. McNamara, at Indianapolis, saying, among other things:

> "I will be in Indianapolis Thursday Morning July 18th to audit the Books. McClintic & Marshall job is at a stand still at the Falls and the Erie Bridge job is somewhat crippled 4 of the Bunch being in jail one of them Harry Daly the man who left No. 9 and went to work for McClintic being held under a charge of Murder and the others as Witnesses." (Haley and Talbot; Exhibit 482; R. Tr. V. 66, p. 5068; Cl. Tr. V. 3, p. 1364.)

November 10, 1908, Frank C. Webb, at New York, N. Y., wrote to John J. McNamara, at Indianapolis, a letter, in which he refers to the McClintock-Marshall job, at Hoboken, N. J., and says, among other things:

> "I believe that work is going up in a hurry over the river say six weeks do you think we can do something both there and in the South. Now you have seen it just get your friends advice on what he thinks of doing some effective work on the same. Monahan says he don't know whether it would be good to go ahead while this other proposition is working out, if anything I believe it might hurry it along if a good job was done." (Haley and Talbot; Exhibit 388; R. Tr. V. 66, p. 5068; Cl. Tr. V. 3, p. 1153.)

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April 16, 1910, Charles Beum, at Minneapolis, Minn., wrote to John J. McNamara, at Indianapolis, saying, among other things:

> "I have taken several views of different kind of work claimed in the millwrights new agreement. I also have the promise of the Detail & Erection sheets of Elevator Legs, Scale Hoppers Elevators Heads Boot tanks Garner Hoppers Shipping Hoppers and Receiving Hoppers and loading spouts I have the promise of all of these as soon as the job is finished I also have taken pictures of nearly all some erected and some not erected. I have a few of the pictures finish and will forward those with the films to you. I had one of each printed to see if the were of any good. the others I will forward to you as soon as I get them from the photographers, there is some I think I will have to take over as one day was very dark. * * * * What progress if any are you making with the McCline Marshall people in lineing them up." (Meyer and Talbot; Exhibit 215; R. Tr. V. 70, p. 5318; Cl. Tr. V. 2. p. 780.)

April 19, 1910, John J. McNamara, at Indianapolis, wrote to Charles Beum, at Minneapolis, Minn., saying, among other things:

> "I am forwarding in today's mail to the members of the Executive Board, the location and a description of some of their

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principal operations." (Meyer and Talbot; Exhibit 215; R. Tr. V. 70, p. 5318; Cl. Tr. V. 2, p. 782.)

April 19, 1910, John J. McNamara, at Indianapolis, wrote a letter addressed, "Circular letter to the Executive Board," as follows:

"Dear Sir and Brother:—From reports and information coming to headquarters, I have compiled a statement of the location and a description of some of the work of the McClintic & Marshall Company. I am enclosing you copy of same for your information. If you can call to mind any additional jobs of this concern that are not listed on the enclosed statement, I will be pleased to hear from you relative to same by return mail.

"Since writing you on the 14th instant, I have received word from Brother Young that the Boston Building Trades Council has called a strike on large elevator being erected at East Boston on account of non union iron workers. The steel is being erected by the New England Structural Steel Company, and 170 non union iron workers left the work. 150 of them applied for membership in Local No. 7, and Brother Young is hopeful of lining up the New England Company in the very near future.

"Trusting this information will be of some benefit to you, and with kind personal

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regards, I am" (Meyer and Talbot; Exhibit 217; R. Tr. V. 70, p. 5323; Cl. Tr. V. 2, p. 785.)

On April 27, 1910, Frank M. Ryan, president, at New York, N. Y., wrote to John J. McNamara, at Indianapolis, on the letterhead of the International, a letter which has been characterized as "Ryan's famous letter of distribution," in which he said, among other things:

> "In regard to the McClintock & Marshall jobs, Let Legleitner attend to the Jobs in his district, Let Butler attend to the jobs at Buffalo & Rochester, Hockin arrange for the Cleveland and Detroit, & Cincinnati jobs Morrin can attend to Mount Vernon.
>
> "Webb is now at So Bethlehem will also send him to Worcester Mass. Davenport Ia & Peoria can be handled by Hockin Chicago is at work on the jobs there. Let Cooley work on the bunch at Chalmette. I will take up the job at Jersey City with someone in 45. This should be started at once."

The persons named in this letter were members of the Executive Board as follows: Legleitner from Pittsburg; Butler from Buffalo; Hockin from Indianapolis; Morrin from St. Louis; Webb, former member from New York. (Meyer and Talbot; Exhibit 218; R. Tr. V. 71. p. 5387; Cl. Tr. V. 2, p. 792.)

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April 29, 1910, John J. McNamara, at Indianapolis, wrote to Philip A. Cooley, at New Orleans, La., saying, among other things:

> "Are McClintic and Marshall still at Chalmette? At the recent meeting of the Executive Board it was decided to pay particular attention to the work of this company, and an endeavor is to be made to break in on their force and if possible organize or secure as members the most competent of their men
>
> "This matter would, of course, have to be worked very quietly in order to be successful, and if this company is still at Chalmette, I should like to hear from you by return mail as to whether it would be possible to do anything toward lining up the men on the job. I should also like to know some details about the job as to size, tonnage, how long it will last, what it consists of, the number of men working, the foreman etc." (Meyer; Exhibit 222; R. Tr. V. 71, p. 5394; Cl. Tr. V. 2, p. 808.)

April 30, 1910, John J. McNamara, at Indianapolis, wrote to W. Bert Brown, at Kansas City, saying, among other things:

> "As per your favor of the 28th instant, 200 circular letters relative to reinforced concrete work have already been forwarded you. I am forwarding your letter on to President Ryan so that he may note that part of it which refers to the work of

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McClintic and Marshall in your city. He undoubtedly will give your letter the attention it deserves.

"You say that in your estimation it is pretty hard to handle this concern locally. It is not only pretty hard but it is impossible, for as long as they persist in their open shop policy toward our Association as a whole, it is out of the question for Local No. 10 or any other Local Union to attempt to do business with them as far as furnishing them men is concerned.

"On a large job like they have in your city, they may make all sorts of promises to get competent men and to start friction in our own ranks, but past experience has shown us that there is nothing to all their promises, and we will not consider any of them for a minute until such time as they agree to treat fairly with us." (Meyer and Talbot; Exhibit 221; R. Tr. V. 71, p. 5393; Cl. Tr. V. 2, p. 805.)

April 29, 1910, John J. McNamara, at Indianapolis, wrote to P. J. Morrin, at St. Louis, saying, among other things:

"Have you heard anything from the McClintic and Marshall job at Mt. Vernon, Ill., recently? I understand there was quite a commotion of some sort or other over there several days ago * * *

"President Ryan requests that you handle the Mt Vernon job. * * *

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"I should like to hear from you by return mail as to whether or not you are in a position to go into a matter of this kind for us, and if you do go to Mt. Vernon, I should like to hear from you relative to the matter mentioned in the first part of this letter in detail. Better still, secure newspaper clippings if it is at all possible." (Meyer and Talbot; Exhibit 223; R. Tr. V. 71, p. 5395; Cl. T. V. 2, p. 810.)

May 26, 1910, John J. McNamara, at Indianapolis, wrote to Paul J. Morrin, at St. Louis, saying, among other things:

"Brother Hockin reported to me as to his visit to your city. * * *

"McClintic's profit on the Venice job will be rather small, I presume. I guess the same applies to Mt. Vernon and I understand that he has any number of people at Kansas City who do nothing but stand around day and night and look wise." (Meyer and Talbot; Exhibit 238; R. Tr. V. 72, p. 5422; Cl. Tr. V. 2, p. 841.)

July 3, 1910, Murray L. Pennell wrote to John J. McNamara, saying, among other things:

"I understand McClintic and Marshall Con. Co. has the contract to put the elevation for the Interurban across the C & A tracks here, which is a large job, and we

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are going to see the Officials of the Interurban and see if we can do anything with them." (Meyer and Talbot; Exhibit 243; R. Tr. V. 72, p. 5446; Cl. Tr. V. 2, p. 857.)

July 5, 1910, John J. McNamara, at Indianapolis, wrote to Murray L. Pennell, at Springfield, Illinois, saying, among other things:

"Kindly keep me informed of developments in your locality. I shall endeavor to have a representative visit you before the twenty days are up.

"I am of the opinion that very little, if anything, can be done with the Traction Company as far as their contract with McClintic and Marshall is concerned." (Meyer and Talbot; Exhibit 243; R. Tr. V. 72, p. 5446; Cl. Tr. V. 2, p. 858.)

August 3, 1910, W. B. Brown, at Kansas City, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

"The letter from you regarding the McClintock & Marshall job had the desired effect. The whole executive board tendered their resignation last night, on account of this Job. They were not getting information enough." (Meyer and Talbot; Exhibit 132; R. Tr. V. 72, p. 5487; Cl. Tr. V. 1, p. 464.)

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August 6, 1910, John J. McNamara, at Indianapolis, wrote to W. B. Brown, at Kansas City, saying, among other things:

> "I do not know just how to take that part of your letter which states that the whole Executive Board tendered their resignation last night on account of the McClintic and Marshall job. As stated in a former letter, information on a matter of this kind will not do the Executive Board or No. 10 or anyone else any good." (Meyer and Talbot; Exhibit 132; R. Tr. V. 72, pp. 5487, 5488; Cl. Tr. V. 1, p. 466.)

The foregoing correspondence relating to the work of McClintock-Marshall Company, will suffice to show that this concern also was singled out as an enemy by the conspirators, and the following are instances of treatment which the concern received at their hands:

April 5, 1908, structural iron works being erected at Pier No. 58, North River, by McClintock-Marshall, was dynamited by George Davis. (R. Tr. V. 55, pp. 4150–4154.)

Corroborated by Captain William J. Deevy, captain of detectives of the first rank, with headquarters at Police Headquarters in New York. (R. Tr. V. 71, p. 5326.)

March 30, 1909, work on the viaduct at Hoboken, N. J., by McClintock-Marshall, dynamited by Ortie E. McManigal. (R. Tr. V. 74, pp. 5600–5604.)

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June 22, 1910, McClintock-Marshall work on viaduct at Cleveland, Ohio, dynamited by Ortie E. McManigal. (R. Tr. V. 74, pp. 5661-5679.)

J. B. McNamara was also concerned in this overt act. Corroborated by J. T. Loane. (R. Tr. V. 80, pp. 6133, 6138.)

July 1, 1908, work on bridge at Buffalo, New York, by McClintock-Marshall, dynamited by Ortie E. McManigal. (R. Tr. V. 73, pp. 5567–5574.)

Corroborated by J. A. G. Badorf. (R. Tr. V. 80, pp. 6158, 6163.)

And corroborated by Martin F. Quinlivan. (R. Tr. V. 79, p. 6070.)

July 9, 1910, work on viaduct by McClintock-Marshall, at Greenville, N. J., dynamited by Ortie E. McManigal. (R. Tr. V. 76, pp. 5755–5757.)

Corroborated by J. A. G. Badorf. (R. Tr. V. 80, pp. 6158, 6166.)

June, 1908, work on bridge dynamited at Cleveland, Ohio. (Robert W. Halliday, R. Tr. V. 80, pp. 6172, 6176.)

August 23, 1910, work on railroad bridge, Kansas City, Missouri, by McClintock-Marshall, dynamited by Ortie E. McManigal. (R. Tr. V. 76, pp. 5769, 5811 and 5818.)

Corroborated by C. J. Brubaker. (R. Tr. V. 88, p. 6826.)

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September, 1910, structural iron material furnished by McClintock-Marshall, at East Peoria, Illinois, dynamited by Ortie E. McManigal. (R. Tr. V. 77, p. 5871.)

Corroborated by R. H. Johnson. (R. Tr. V. 79, p. 6076.)

And corroborated by John H. Manning. (R. Tr. V. 79, p. 6086.)

March 27, 1910, foundry at Indiana Harbor, Indiana, by McClintock-Marshall, dynamited. (Frank Barker, R. Tr. V. 79, p. 6019.)

June 4, 1910, machine shop, McClintock-Marshall, at Davenport, Iowa, dynamited. (Louis E. Roddewig, R. Tr. V. 79, p. 6023.)

June 4, 1910, bridge at Peoria, Illinois, by McClintock-Marshall, dynamited. (R. J. Johnson, R. Tr. V. 79, p. 6076; John H. Manning, R. Tr. V. 79, p. 6086.)

October 22, 1907, John J. McNamara, at Indianapolis, wrote a letter to Frank M. Ryan, at Montreal, Canada, saying, among other things:

> "By referring to Hockin's report you will see that the Wisconsin Co. has a large job at Clinton, Iowa. This may be one reason why they are anxious to arrange matters so that they can employ members of the International in that particular locality. * * *
>
> "I am forwarding Webb check for $200 as per your communication. * * *

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"The matter of placing the Youngstown Construction Company on the unfair list was, according to the minutes of the Convention, referred to the Executive Board." (Exhibit 294; R. Tr. V. 67, pp. 5083, 5084, 5085; Cl. Tr. V. 2, p. 978.)

May 22, 1908, Frank C. Webb, at New York, wrote to J. J. McNamara, saying, among other things:

"Your letter to the Ex Board at hand am sorry to hear the conditions in Pittsburg in such bad shape it does not hardly seem possible that they should go broke in such short order if they were doing business carefully, I cannot understand how such financial conditions came about. The proposition of the reduction looks like some of Drew's work in the dark as that is just what he advocated in his circular letters, but if there is any way we can head off such a step think the Int had better take a hand in the move. The open shop conditions here with local contractors does not seem to improve any, with the work picking up a little all the time. I don't believe the bunch think of any thing now only fighting the open shop where ever it is mentioned." (Hadley and Talbot; Exhibit 348; R. Tr. V. 67, p. 5126; Cl. Tr. V. 2, p. 1061.)

The reference to Drew in this letter alludes to Walter Drew who was counsel and commis-

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sioner for the Erectors' Association, heretofore referred to, which had about forty members, among which were the McClintock-Marshall Company, Pittsburg Steel Company, Riter-Conley Manufacturing Company, Wisconsin Bridge & Iron Company, American Bridge Company, Post & McCord Company, Pennsylvania Steel Company, Hay Foundry, Lucius Engineering Company, Interstate Engineering Company, Youngstown Construction Company, Missouri Bridge & Iron Works, Heyl-Patterson Company. All of these concerns conducted their business on the open-shop policy, which was adopted by the Erectors' Association, by resolution, in January, 1906, and put into active operation May 1, 1906. (Walter Drew; R. Tr. V. 54, pp. 4026–4031.)

Mr. Drew further testified that the Russell Steel & Foundry Company, of Detroit, Michigan; Grainger Construction Company, of Louisville, Ky.; George W. Harvey Company, of Boston, Mass.; Whitehead & Kales, of Detroit; The McCain Construction Company, of Buffalo; Brown Hoist & Machinery Company, of Cleveland, Ohio; Albert Von Spreckelsen, a contractor of Indianapolis; the Pan-American Bridge Company, of New Castle, Indiana; the Berger Iron Company, of Akron, Ohio;

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the Pacific Coast Lumber Company, of Oakland, California; Boston Bridge Works, of Worcester, Mass.; Llewellyn Iron Works, of Los Angeles, California; Baker Iron Works, of Los Angeles, California; Lafayette Bridge Works, of Lafayette, Indiana; Lafayette Engineering Company; the Van Dorn Iron Works; the A. Stephens Company, of New York; were none of them ever members of the Erectors' Association.

The purpose of eliciting this evidence from the witness was to show that the attack of the conspirators was not directed solely against the forty odd members of the Erectors' Association, but against many other concerns and individuals carrying on business under the open-shop policy.

December 12, 1907, John J. McNamara, at Indianapolis, wrote to W. E. Reddin, at Milwaukee, Wisconsin, saying, among other things:

> "Sometime ago when Brother Hockin was at Rock Island Ill. he visited Clinton, Iowa and reported that there was a bridge about to be erected across the Mississippi River for the North Western Ry. He reported further that the material was being turned out by the Wisconsin Bridge Co. If it is possible for you to find out, I should like to hear from you as to whether it is the Wisconsin Bridge and Iron Co. or the

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Milwaukee Bridge Co. that has the job and should also like to know if you can get the information, as to whether the work is to be erected by the Railroad Company themselves or is to be sub-contracted." (Haley and Talbot; Exhibit 298; R. Tr. V. 67, p. 5105; Cl. Tr. V. 2, p. 989.)

December 15, 1907, W. E. Reddin, at Milwaukee, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

"The Wisconsin Bridge & Iron Co have the contract to erect that work at Clinton Iowa not the Milwaukee Bridge Co. Jim Malborough is going to be the man in charge of the job. They are shipping iron at present I understand and figger on starting the work the first of the year." (Haley and Talbot; Exhibit 299; R. Tr. V. 67, p. 5104; Cl. Tr. V. 2, p. 990.)

December 17, 1907, John J. McNamara, at Indianapolis, wrote to W. E. Reddin, at Milwaukee, saying, among other things:

"In response to your favor of the 15th inst. wish to say I am thankful to you for your information relative to the work at Clinton, Iowa, and to the conditions surrounding the work of the Wisconsin Bridge & Iron Co. I am forwarding your communication to President Ryan for his information. He is in Washington, D. C." (Haley and Talbot; Exhibit 299; R. Tr. V. 67, p. 5104; Cl. Tr. V. —, p. ——.)

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January 19, 1908, W. E. Reddin, at Milwaukee, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

> "I met Mr Jim Marlborough the Asst Supt for the Wisconsin Bridge Co. He was getting out the tool list for that job at Clinton Iowa he said there would not be anything doing at Clinton for three weeks or a month. * * *
>
> "He also said that at present that was about the only job that they had." (Haley and Talbot; Exhibit 330; R. Tr. V. 67, p. 5106; Cl. Tr. V. 2, p. 1035.)

January 21, 1908, J. J. McNamara, at Indianapolis, wrote to W. E. Reddin, Milwaukee, saying, among other things:

> "Your favor of the 19th inst relative to the Wisconsin Bridge Company at hand. I am thankful to you for your information and shall forward it on to our representative who is to visit Clinton, Ia. as soon as the work is ready to start. He will probably stop off in your city on his way up." (Haley and Talbot; Exhibit 330; R. Tr. V. 67, p. 5106; Cl. Tr. V. 2, p. 1037.)

October 7, 1909, W. E. Reddin, at Milwaukee, wrote to John J. McNamara, at Indianapolis, saying, among other things:

> "The Wisconsin has one span up at Green Bay Wis it is 110 miles from here. It is a very good job and I hope you will

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do what you can to handy cap them." (Haley and Talbot; Exhibit 440; R. Tr. V. 69, p. 5255; Cl. Tr. V. 3, p. 1284.)

October 13, 1909, John J. McNamara, at Indianapolis, wrote to W. E. Reddin, at Milwaukee, saying, among other things:

"I note your statement relative to the Wisconsin Co. work at Green Bay and will be guided accordingly." (Haley and Talbot; Exhibit 440; R. Tr. V. 69, p. 5255; Cl. Tr. V. 3, p. 1285.)

November 29, 1909, W. E. Reddin, at Milwaukee, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

"Enclosed you will find a clipping from a Green Bay paper sent to me" (Gallagher and Talbot; Exhibit 154; R. Tr. V. 70, p. 5273; Cl. Tr. V. 1, p. 533.)

The clipping referred to is an explosion produced by J. B. McNamara November 21, 1909, on the Wisconsin Bridge & Iron Company's work at Green Bay, Wisconsin. (Martin J. Morgan, R. Tr. V. 79, p. 6031.)

May 16, 1910, Frank K. Painter, at Omaha, Nebraska, wrote to John J. McNamara, at Indianapolis, saying, among other things:

"The Wisconsin Bridge Co has six men in here up to date but have not started any

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work yet. Think I'll get up an entertaining committee & go down and entertain them." (Meyer and Talbot; Exhibit 113; R. Tr. V. 72, p. 5415; Cl. Tr. V. 1, p. 423.)

May 18, 1910, John J. McNamara, at Indianapolis, wrote to Frank K. Painter, at Omaha, Nebraska, saying, among other things:

"Let me know what kind of a job the Wisconsin has in your city, how large it is, what shape it is in and how long it will last." (Meyer and Talbot; Exhibit 113; R. Tr. V. 72, p. 5415; Cl. Tr. V. 1, pp. 424–425.)

July 15, 1910, Frank K. Painter, at Omaha, wrote to John J. McNamara, at Indianapolis, saying, among other things:

"Local 21 feels as though the International should have a man here looking after these two scab jobs the Wisconsin Bridge Co. & the Pittsburg and I will say on the Caldwell & Drake I haven't left a stone unturned I have done everything in my power—and I have the Building declared unfair by the Building Trades * * * I got eight of his iron-workers off and had him tied up for 10 da but he has imported a number more of 'Scabs' in." (Meyer and Talbot; Exhibit 146; R. Tr. V. 72, p. 5472; Cl. Tr. V. 1, pp. 503–504.)

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August 1, 1910, Frank K. Painter, at Omaha, wrote to John J. McNamara, at Indianapolis, saying, among other things:

> "The Wisconsin Bridge Co has large arch light all around their building & special Police." (Exhibit 147; R. Tr. V. 72, p. 5485; Cl. Tr. V. 1, p. 506.)

February 18, 1907, John J. McNamara, at Indianapolis, wrote to C. F. Schermerhorn, at Carbondale, Pennsylvania, saying, among other things:

> "In continuation of my letter of the 5th inst., wish to say that at the last meeting of the Executive Board, the President was instructed to secure all possible information relative to the operations of the Phoenix Bridge Company, and endeavor to adjust any grievance that might exist. Failing to reach an adjustment, he is empowered to use his own judgment as to what would be done and what time was the most favorable for to put into execution any plans that may be devised. I should like to hear from you as to conditions at Carbondale and Towanda, and I sincerely trust that you will consider the contents of this communication strictly confidential." (Haley and Talbot; Exhibit 265; R. Tr. V. 66, p. 5043; Cl. Tr. V. 2, p. 910.)

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May 18, 1908, Frank C. Webb, at New York, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

> "Yours of May the 11th at hand and contents noted. Hannons reports also arrived O. K. have not read them all as yet but was surprised I did not know he was still working for Association but will look the matter up this week. I want to look up the Sklyn case first as I wrote him I attended No. 37 meeting Friday we found it fairly well attended and after my remarks they voted to call the men off the Phoenix job, the girders are all in and drove 10 men working on rocker draw so far it was raised with lighter now they are putting up traveler At Summerset they have not started as yet they have an inspector there that is slaughtering the shop rivets before they erect any of same, am watching this job I s'pose you heard No. 37 was looking for Pres. Ryan, Oh well.
>
> "That recommend you see from D. C. to reduce expense was turned down by No. 52 they want to go further do away with D. C. altogether, No. 40 laid over for one week, have not heard the rest, will write more next." (Haley and Talbot: Exhibit 347; R. Tr. V. 63, p. 5124; Cl. Tr. V. 2, p. 1057.)

This correspondence shows that the Phoenix Bridge Company had been singled out for treatment.

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June 15, 1908, an attempt was made to dynamite the work done by the Cincinnati Bridge Company on a viaduct at Somerset, Massachusetts, by George Davis. (R. Tr. V. 55, p. 4198.)

It is unnecessary for the purposes of this brief to follow out the correspondence with reference to overt acts further than has already been done.

The following is a list of explosions and depredations produced by members of the conspiracy, which are referred to at different points in the correspondence:

March 3, 1908, Filer Avenue Bridge of the St. Louis and San Francisco Railway, of St. Louis, Missouri. (Theodore L. Coleman; John E. Garrett; R. Tr. V. 71, pp. 5373, 5347, respectively.)

March 18, 1908, Elevated Railroad, at Chicago, Illinois, work of Pittsburg Construction Company. (E. J. McGivena; R. Tr. V. 62, pp. 4718, 4720.)

March 25, 1908, drawbridge of the Raritan River, work of Pennsylvania Steel Company. (George Davis; R. Tr. V. 55, pp. 4135–4139.)

August 6, 1908, Harrison Avenue viaduct, at Cincinnati, Ohio, work of Grainger Construction Company; an explosion produced by Ed Clark. (R. Tr. V. 57, p. 4304; V. 58, pp. 4355–4359–4457.)

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Corroborated by Frank Eckhoff. (R. Tr. V. 54, p. 4038.)

August 9, 1908, viaduct, work of Missouri Bridge & Iron Company, at St. Louis, Missouri. (John T. Garrett; R. Tr. V. 71, p. 5347.)

March 18, 1909, Indiana Harbor, Indiana, material furnished by Pittsburg Construction Company, dynamited. (E. J. McGivena; R. Tr. V. 62, pp. 4718, 4724.)

May 9, 1909, viaduct, work of Pittsburg Construction Company, at Cincinnati, Ohio, dynamited by Ed Clark. (John W. Ghilon, R. Tr. V. 79, pp. 6058, 6059.)

May 24, 1909, viaduct work of Pittsburg Construction Company, at Cincinnati, Ohio, dynamited by Ed Clark. (John W. Ghilon, R. Tr. V. 79, pp. 6058, 6060.)

August 12, 1909, viaduct, work of Pittsburg Construction Company, Cincinnati, Ohio, dynamited. (John W. Ghilon, R. Tr. V. 79, pp. 6058, 6062.)

July 9, 1909, girders and columns of structural iron, manufactured by Whitehead & Kales, Detroit, Michigan, destroyed by explosion. (James T. Whitehead, R. Tr. V. 64, pp. 4825–4826.)

December 29, 1909, Utah Hotel, Salt Lake City, Utah, dynamited. (R. D. Jones, R. Tr. V. 72, pp. 5456–5461.)

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July 21, 1910, power plant of Omaha & Council Bluffs Railroad, at Omaha, Nebraska; an explosion produced by Ortie E. McManigal. (R. Tr. V. 76, pp. 5781–5782.)

Corroborated by Patrick Cullen. (R. Tr. V. 71, p. 5344.)

July 4, 1910, building under construction by Berger Iron Company, at Akron, Ohio, dynamited. (Edward J. Quinn, R. Tr. V. 80, p. 6112.)

April 13, 1908, elevated railroad, structure of the Rapid Transit Company, at Philadelphia, dynamited. (James L. Wertz, R. Tr. V. 80, p. 6153.)

June 2, 1908, material of Van Dorn Iron Works, at Cleveland, Ohio, dynamited. (Robert W. Halliday, R. Tr. V. 80, p. 6172.)

June 26, 1909, material for railroad bridge furnished by Seaboard Construction Company, Steubenville, Ohio; an explosion produced by J. B. McNamara, testified to by Ortie E. McManigal. (R. Tr. V. 73, pp. 5610–5623.)

Corroborated by William B. Fortune. (R. Tr. V. 79, p. 6008.)

February 17, 1908, bridge of C. N. W. R. R., at Clinton, Iowa; explosion produced by Ortie E. McManigal. (R. Tr. V. 73, p. 5561.)

Corroborated by August Seiffert. (R. Tr. V. 79, p. 6027.)

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May 31, 1906, warehouse building under construction by Pittsburg Construction Company, at Newark, New Jersey, dynamited. (Lee Trawer, R. Tr. V. 79, p. 6034.)

September 25, 1906, bridge under construction by Pittsburg Construction Company, Cleveland, Ohio; attempt to dynamite, dynamite and clock found near derrick car. (Lee Trawer, R. Tr. V. 79, p. 6034; John W. Ghilon, R. Tr. V. 79, p. 6058.)

September 30, 1906, lift bridge under construction by Pittsburg Construction Company, at Whiskey Island, Cleveland, Ohio, dynamited. (Lee Trawer, R. Tr. V. 79, p. 6034; John W. Ghilon, R. Tr. V. 79, p. 6058.)

August 1, 1910, unloading rig of Heyl-Patterson Company, at Superior, Wisconsin; explosion produced by Ortie E. McManigal. (R. Tr. V. 76, pp. 5786, 5796, 5797.)

April 5, 1910, plant of Pan-American Bridge Company, at New Castle, Indiana; explosion proven by Jesse D. Smith. (R. Tr. V. 75, p. 5681.)

March 27, 1909, building under construction by George W. Harvey Company, at Boston, Massachusetts; explosion produced by Ortie E. McManigal. (R. Tr. V. 74, pp. 5593–5597.)

October 15, 1908, bridge under construction by L. T. Shoemaker & Company, Holyoke,

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Massachusetts; explosion produced by Ortie E. McManigal. (R. Tr. V. 73, p. 5583.)

June 25, 1907, building of Russell Wheel & Foundry Company, at Detroit, Michigan; explosion produced by Ortie E. McManigal. (R. Tr. V. 73, pp. 5530–5539.)

The foregoing is but a partial list of the explosions produced over the country by the members of this conspiracy. No more striking instance of the cruel relentlessness of these lawbreakers can be found in the record than the persecution of Von Spreckelsen. We do not wonder that the details of the treatment received by him at their hands struck fear to the defendant's heart as they were related by Von Spreckelsen to the jury, and are specially commented on in the defendant's Opening Brief. Where the shoe pinches, we hear a cry. It requires no argument to satisfy this court that the proof was competent, relevant and material, as a part of the *res gestae* of the conspiracy, and as going to show that it was being furthered and prosecuted by men possessed by, as our statute designates, "an abandoned and malignant heart."

Albert Von Spreckelsen's testimony will be found in the R. Tr. V. 79, p. 6092. In the year 1909, he was a general building contractor and had been engaged in that business for about 18 years. In that year he had under

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construction at Indianapolis, for the Shriners, Murat Temple, which was a composite of brick and steel and the largest of its kind in the state. He was also erecting a public library for the Indianapolis School Board, at Mt. Jackson, a suburb of that city; also a fireproof telephone exchange for the Bell Telephone Company.

As far back as 1905, Von Spreckelsen was building a cathedral on Meridian street, in Indianapolis. This was known as the "Cathedral of St. Paul and Peter."

In the year 1907, while the cathedral was in course of erection, Mr. Von Spreckelsen met Eugene A. Clancy in company with John J. McNamara and Patrick Dugan. They were looking around the building, which was a tall one, the ceiling being 56 feet high. After their examination of it, they walked over from the building towards the residence of a Mr. Winters, talked for some time and then introduced Mr. Dugan to the witness.

In 1909, J. J. McNamara, then secretary-treasurer of the International, had a number of conversations with Mr. Von Spreckelsen, the substance of which was that he wanted Mr. Von Spreckelsen to unionize his men. When he refused to do this, and ordered them out of the office, J. J. McNamara said to him.

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"We will get you yet." (R. Tr. V. 79, p. 6095.)

Later on the witness had another conversation with Jack Douglas, superintendent of the Iron Workers, and J. J. McNamara, at the headquarters in the American Central Life Building, in Indianapolis. The same subject was hashed over and Mr. Von Spreckelsen offered to unionize the Murat Temple if they would let him finish the rest of the work "open shop." Mr. McNamara would not agree to this, and being asked, "Why wouldn't you treat me the same as you are treating some of the other contractors at Indianapolis?" he replied, "We are jockeying for position; we have got that much out of him; we want a little more out of you; we will go back to him and make them come to time." (R. Tr. V. 79, p. 6096.) At this meeting Mr. Von Spreckelsen absolutely refused to unionize all his work.

As a result, one night, October 25, 1909, Mr. Von Spreckelsen was awakened by a racket in the back yard, the children came screaming into the house and said it was a fire, his wife was screaming, and looking into the hall, he supposed the house was on fire. He ran out

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and found the barn and garage a mass of flames. He testifies:

"Q. State whether there was any evidence of the effect of an explosion there? A. Well, one of the mares was—one of the family horses was out in the back yard, or in one of the neighbor's yards, her eyes was hanging out of her head, and tongue hanging out half cut off; the police got there by that time, I ordered them to shoot her, put her out of her misery, and at that time people commenced to tell me there was an explosion, noise; * * *" (R. Tr. V. 79, p. 6096.)

"Q. Now, if you observed anything of the effects on any of your work next morning, state what it was. * * *

"A. A quarter to six my door bell rang again and my engineer was down at the door * * *

"I got some information from him, and then I didn't go back to bed any more; I got up and dressed and went over to the mill. * * *

"That was my planing mill about two blocks from my residence, * * * and I found the back end of the mill blown out. * * *

"There evidently was an explosive of some kind placed between the mill building proper and the shaving house; they were only about two feet apart; the shaving house, there was absolutely nothing left of it but kindling wood. (R. Tr. V. 79,

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p. 6097.) The whole back end of the mill was blown out, one end of the wall of the lumber shed blown out. * * *

"I went home to breakfast. Afterwards I went to my office, and about half past 7 the telephone rang, and one of my superintendents called me up, * * *

"I got some information from him.

"Q. Then where did you go? A. Public Library at Mt. Jackson.

"Q. That is the Public Library that you were then constructing? A. That I was then building. * * *

"Found out that my window frames were shattered; they were put up in a pile and there had evidently been an explosion placed in the end of the window frames, and we found a lot of kindling wood; that was about all that was left. * * *

"Then I got in my machine, went out to Irvington to the telephone exchange, saw the condition of that job.

"Q. Tell the jury what that condition was. A. The side wall—it was a partly fire-proof building, and partly frame. The side-wall was blown completely out of the telephone, or the room where the wires all ran in there, I suppose where they have the switch boards; the south wall was blown completely out; the roof was hanging; the front wall was bulged; the rear wall was bulged; the center wall was a 13-inch brick wall, it had a hole, I suppose eight or ten feet long and three feet high

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blown through it, and on the other side I had about 3,000 feet of timber that we used in the reinforced concrete work piled up against the wall, and the force of the explosion blew a hole through the wall practically shattered every one of those four by four pieces, broke them in two and three and four pieces. I left orders with my superintendent to shore up the roof to keep it from hanging any more—* * *

"A good deal of window glass was broken in the neighborhood.

"Q. That is the neighborhood of the telephone exchange? A. Yes sir.

"Q. That is in Irvington, in a thickly populated residence district? A. Residence district. Some of the brick from the south wall was blown through the residence next to it, blown through the frame walls of the residence. * * *" (R. Tr. V. 79, pp. 6098–6099.)

"Q. And the place where you lived. state whether there were any residence around you. A. Oh, that was very closely built up. It blew practically all the windows out of the rear end of my house and the rear half of the two sides. * * *

"The two houses on each side of me, each had some glasses broken.

"Q. How close were those houses to the explosion?

"A. 150 feet, and it set fire to the barns on the other side of the alley. * * *

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"Q. And you are now a farmer, are you? A. Now farming." (R. Tr. V. 79, p. 6100.)

We might have quoted from many letters, introduced in evidence, which passed between J. J. McNamara, secretary-treasurer, and Frank M. Ryan, president; Frank C. Webb, executive member and member of Local No. 40, of which the dynamiter, George E. Davis, was also a member; H. S. Hockin, executive member and dynamiter; and various others of the conspirators, relating to the work of the conspiracy; showing payments for jobs done and loans and donations to pay for jobs to be done in the future; but the limitations of this brief have deterred us from doing so. A very clear conception of the method pursued will be afforded by a brief summary of the testimony of George E. Davis, dynamiter, and Ortie E. McManigal, dynamiter. Even this must be very limited; but the court will bear in mind that it is the purpose of this brief simply to illustrate the scope and character of the proof of the overt acts done in the eastern part of the United States in furtherance and execution of the conspiracy.

George E. Davis testified that his occupation was that of a bridge and structural iron worker from the year 1907 to date. In that year he was working in New York City and

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stopping at 913 Sixth avenue with Mrs. O'Connell; he was a member of the International and of Local No. 40, which was affiliated with the International. At that time one McCarthy was president and Charlie Massey was business agent of the local. Frank Webb was a member of the local executive board and also of the International Executive Board. (R. Tr. V. 54, p. 4094.)

The board consisted of seven members; Webb was executive member from the eastern district. Witness had known Webb for some three years personally.

In the year 1909 Davis had a conversation with Frank Webb, at Webb's house at 120 Third street, just off of Third avenue, in which Webb asked him how he would like to make some Christmas money. (R. Tr. V. 54, pp. 4095–4096.)

> "And on the morning, I think the 19th of December, Frank Webb and me went to Philadelphia, and to the hall. * * *
>
> "Q. By whom was this job at Harrison being done?
>
> "A. It was done by Brann & Stuart. * * *
>
> "Q. Well, do you know of your own knowledge whether Brann & Stuart Company which was erecting this job was an open shop concern? * * *
>
> "A. Yes sir, it was." (R. Tr. V. 54. p. 4098.)

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On pages 4099 and 4100 the witness describes how Cunnane procured the dynamite, and gave him a suitcase full of it, together with directions what car to take to get to the Broad Street Station in Philadelphia. In further conversation, Cunnane asked him what he was getting for this job:

> "I told him $200, and he says, 'You are working too cheap, as I pulled off a job out here,' and he says they—'I gave my men $150 apiece, and I had a good bunch of money for myself.' That he had four men with him besides himself. Asked me who was going to be with me. I told him no one, I was going to do it alone. He says, 'You are working too cheap.'
>
> "Q. Was anything said about paying Cunnane for the dynamite? * * *
>
> A. Frank Webb paid him right in my presence $50, and he says, 'If I get you any more I will want $100 a suit case.'" (R. Tr. V. 54, p. 4101.)

From Philadelphia Davis went up to Harlem and met Frank Webb at his house and told him that he had the dynamite and was going to do the job that night. Webb said:

> "Well, we will make the job yet before Christmas." (R. Tr. V. 54, p. 4101.)

That was on the night of December 23d. There were about forty pounds of dynamite in the dress suit case. (R. Tr. V. 54, p. 4102.)

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Davis left 123d street, Harlem, at about 9 o'clock; reached the job, which was an overhead structure at Harrison, N. J., and set the dynamite in what is called "a set of girders." (R. Tr. V. 54, p. 4102.) Set it on the pier and against a girder.

There was also a girder lying loose on top of the bridge. The first fuse failed to burn; the second fuse produced the explosion in about twenty minutes when Davis was about 200 yards away. (R. Tr. V. 54, p. 4103.)

Davis returned to New York and says:

> "The next morning I got two newspaper clippings out of the Journal and the World, as Webb had instructed me to always get clippings whenever I done a job, that he reported that way." (R. Tr. V. 54, pp. 4103–4104.)

On the 24th of December Webb paid Davis $50.00 for the dynamite and the trip to Philadelphia and back, about twenty, and there was $130.00 left, which Webb gave him, a hundred dollar bill and three tens. The three tens Davis handed to Webb, saying, "You can have that for a Christmas present." (R. Tr. V. 54, p. 4104.)

At about that time Davis and Webb had another conversation at the saloon under Frank Webb's house as follows:

> "He asked me if I wanted to continue this kind of work, and I told him yes. He

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says, 'I will have to hold off and see about it.' * * * 'The International Association have a convention in Washington, D. C.' * * * 'I' * * * 'have to wait until after that to see if I am re-elected, or was to continue working.' * * * after that—'I will let you know how I come off. We will have to hold off until after this convention.' " (R. Tr. V. 54, p. 4106.)

Davis and Webb next discussed the feasibility of dynamiting the Blackwell Island bridge, known as the Queensborough bridge, in New York. In the course of that conversation Webb said:

"I believe it would be a good idea for us to get hold of letterheads of some detective agency or of the National Erectors Association, and have letters typewritten on them, and for me to drop a couple on jobs after I do them. Perhaps the reporters would find these and they would give us a write-up and it would look as if these people was doing it, and trying to blame the organization for doing it." (R. Tr. V. 54, p. 4107.)

Asked for the definition of "organizing work," Davis answered:

"Organizing work was meant work of destruction such as I was doing.

"Q. What was the organizing fund? A. Well, that was appropriated to pay us for the work we did." (R. Tr. V. 55, p. 4108.)

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At pages 4110 and 4111, Davis describes the examination made by himself and Frank Webb of the Blackwell Island bridge, and relates further conversation about getting "it," and says:

> "He told me he had heard from J. J. McNamara, and as they were a little bit short of funds that he thought $950 was all they could pay for destroying that bridge, and I told him I wanted $1500 any way. * * * and he thought he could get $1500 from McNamara—or more money." (R. Tr. V. 55, p. 4111.)

On pages 4111, 4112, 4113, 4114, 4115 and 4116 Davis relates further conversation with Webb of an examination of the Blackwell Island bridge, and states that about the 15th of January he had a conversation with Webb as follows:

> "He told me that he heard from J. J. McNamara, and that $1500 would be forthcoming, * * * He says, 'You can go ahead and prepare to do it and get your dynamite.'" (R. Tr. V. 55, p. 4116.)

On pages 4116, 4117 and 4118 Davis describes further examination of the bridge, and says at page 4118 that he told Webb:

> "I told him I had looked at the Sixtieth street side of the bridge, and about this power house with these men in it, and I told him if I destroyed that bridge I would

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kill some or all of them, and I wouldn't do it. We let the matter rest then for,—well, four or five days, and again he came to me and he says, 'The old man, Frank Ryan' * * * wants us to get that job' He said he had a letter from him." (R. Tr. V. 55, p. 4118.)

The upshot was that no attempt was made to "get" the Blackwell Island bridge.

At pages 4120 to 4128 Davis describes the depredation of the Jack-knife bridge at Pelham, N. Y., February 3, 1908, heretofore referred to in this brief. At page 4129 he testifies:

"Q. Were you paid anything for this job? A. Dugan gave us money on two occasions. * * *

"A. When he got $50 that night, he gave—he came in and said he only had $50, as they couldn't get hold of the rest of it, and he started to hand me $15, in the presence of the people there, and I slapped his hand, and told him,—asked him what was the matter, had he lost his head. He says, 'Are you sore?' I says, 'No, but this is no place to pull off anything like that.' I left and went home then.

"Q. If I understand you rightly, you were afterwards paid for it?

"A. Yes sir; I was paid $15, and $20 at another time." (R. Tr. V. 55, p. 4129.)

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Davis testified that this job was being done by the American Bridge Company, which was working "open-shop." (R. Tr. V. 55, p. 4129.) And the Blackwell Island job was work of the Pennsylvania Steel Corporation, running open-shop. (R. Tr. V. 55, p. 4129.)

On February 22, 1908, Davis was present with Webb, Harry Burns and Mike Gibbons at a social gathering, and was there introduced as George O'Donnell. Being asked how many names he had, he replied, "Only one that I am going to keep, and that is George O'Donnell." (R. Tr. V. 55, p. 4130.)

He afterwards testified at various times that he registered at hotels under the name, "George O'Donnell." A number of the hotel registers mentioned by him were produced in evidence with the registration, "George O'Donnell," in his handwriting therein. Late in February or early in March, Davis and Webb went to Easton, Pennsylvania, and met one Nilan, who went with them to Allentown, Pennsylvania, at which place the following conversation took place:

> "Then I asked Nilan if I could get any dynamite off of him and he says, yes, we could get plenty of it as there were several quarries around there, or he says we can either buy it, and I told him the chances are I would need considerable of it and for

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him to make arrangements to get it somewhere. He says, well, the best thing we can do is to steal it, I believe. I says, all right, anyway to get it. So we went back to New York and I stayed there that evening." (R. Tr. V. 55, pp. 4131–4132.)

"I told him to make arrangements to get it and then we made up a kind of secret code so that in case I wanted to wire him to have it for me or telephone him, that it wouldn't be so everybody would know what we meant. I told him if I wanted so many sticks of dynamite I would say so many spools of thread, and if I wanted caps, I would say so many buttons, and fuse, why, so many yards of silk. There were several silk mills in there and we thought that wouldn't sound bad to do it that way. So I went back in New York and met Frank Webb." (R. Tr. V. 55, pp. 4133–4134.)

A little later, Webb told Davis to go ahead and get the dynamite and do the job out at Perth Amboy, N. J. (R. Tr. V. 55, p. 4135.)

Later Davis telegraphed Thomas Nilan, at Easton, Pennsylvania, saying, "Get me forty spools of thread," meaning forty pounds of dynamite, and "a box of buttons," meaning caps, and "about a hundred yards of silk," meaning a hundred feet or coil of fuse. (R. Tr. V. 55, p. 4137.)

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Later he got the dynamite, caps and fuse and carried them in a suit case to Perth Amboy. (R. Tr. V. 55, p. 4138.)

He reached the bridge at Perth Amboy at about ten o'clock at night, and describes in detail the manner in which he placed the charge in a batter post, lit the fuse and started across the bridge when the explosion occurred. (March 10, 1908; R. Tr. V. 55, pp. 4138–4140.)

The dynamite which he used was sixty per cent. He met Webb the next day and says:

> "The next day I reported to him with clippings up in his house, and he told me he had already saw it in the Journal and World himself." (R. Tr. V. 55, p. 4140.)

The clippings were from newspapers.

> "Q. Were you paid for this job? A. I drawed $100 before I went over to get this dynamite, and he gave me another $100 after I turned the clippings in to him.
>
> Q. What did you pay for the dynamite? A. It cost us 18 cents a pound. I gave Nilan $10 for this.
>
> Q. Well, that netted you how much? A. Well, I paid my expenses over and back. It netted me perhaps—well, $150." (R. Tr. V. 55, p. 4141.)

About the 12th or 14th of March, 1908, Davis had a conversation with Webb about doing

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a job on work at Bradshaw, Maryland, in which Webb said:

> "He told me the American Federation of Labor was going to hold a convention in New York at the Hoffman House, later on in the month, and he says, 'We want to do something, or make a noise about that time.' And he told me about this Bradshaw, Maryland job. * * *
>
> "He told me Frank Ryan was coming in. * * *
>
> "Frank Ryan was president of our organization, of the Bridge & Structural Iron Workers." (R. Tr. V. 55, pp. 4141, 4142.)

Later on Davis met Webb in New York, and Webb said to him:

> "He told me to go ahead and do this job at Bradshaw, Maryland." (R. Tr. V. 55, p. 4142.)

The work was a bridge in the course of construction by the Youngstown Construction Company, which was running open-shop, and Webb wanted Davis to blow up a traveler which the company was using in construction work.

> "And I told him I didn't know how much damage I could do to it. Well, he says, 'Make a noise any way and let them know we are alive.' And so I went over and got my dynamite, to Easton, Pennsylvania, then. * * * met Nilan again, and

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> he got the dynamite for me, about 50 pounds. * * * I gave Nilan $40 for it." (R. Tr. V. 55, p. 4143.)

Davis then went to Baltimore, carrying the dynamite in his suit case with him in a passenger car. He says he always carried this stuff in this way. (R. Tr. V. 55, p. 4144.)

He blew up the traveler, as he describes in detail at page 4145, on March 25, 1908. When he reported to Webb, Webb told him he must have done a pretty good job because he held up Frank Ryan's train. He was going up from Washington, D. C., to attend the convention of the A. F. of L. He said he had to laugh about it. (R. Tr. V. 55, pp. 4146–4147.)

And subsequently, at New York, Webb introduced Davis to Ryan, saying, "Here is the fellow that delayed your train." Ryan said, "This is no place to talk." They went to a barroom and Ryan said:

> "You must have done a pretty good job at Bradshaw, as there were several trains tied up ahead of me. And he says, 'If you meet me now on the street or anywhere,' he says, 'don't recognize me.' I says, 'No, I won't, as I even don't recognize Frank Webb unless he speaks to me first.' " (R. Tr. V. 55, p. 4147.)

At that time no dynamiting was being done in New York. (R. Tr. V. 55, p. 4148.)

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On March 29, 1908, Davis had a conversation with Webb, who said:

> "He told me to go ahead and dynamite the Chelsea piers in New York, that Frank Ryan wanted us to start in New York and dynamite." (R. Tr. V. 55, p. 4150.)

On April 4th, Davis had a conversation with one Tunnings, concerning the Chelsea pier job, in Davis' room, 913 Sixth avenue. Tunnings promised to help him on the job. Davis then went to Allentown and brought more dynamite from Nilan. He told him that he had stolen 1400 pounds of dynamite and had plenty of it, and "enough fuse to reach from here to Philadelphia, and plenty of caps." Davis got two coils of fuse, about fifty feet long each, a box of caps and fifty pounds of dynamite. (R. Tr. V. 55, pp. 4150, 4151.)

The McClintock-Marshall Company was doing the Chelsea pier work and running open shop. (R. Tr. V. 55, p. 4152.)

The pier was No. 58 North River, known as the Chelsea Pier. (R. Tr. V. 55, p. 4152.)

Davis describes, in detail, how he and Tunnings dynamited this pier on the night of April 5, 1908. (R. Tr. V. 55, pp. 4152–4154.)

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On the following day Davis went up and reported to Webb and got the balance of the money. He testifies:

> "Q. Did you get the money? A. He had always advanced me money. I had $100 coming for that. I drew $100 in the meantime. * * *
>
> "He asked me how we came out, and who was with me, and I told him I took Rudolph Tunnings along with me." (R. Tr. V. 55, p. 4155.)

April 10, 1908, Davis had a conversation with Webb about work being done by the American Bridge Company in the Pennsylvania freight yards, at Philadelphia. (R. Tr. V. 55, p. 4155.)

They went to Philadelphia together and on the train Webb said:

> " 'There is a job down here in Philadelphia that I want you to get, and we will dynamite that unbeknownst to Cunnane.' He says, 'We have sent Cunnane $500 to do some work, there, with and he hasn't done anything with it;' " (R. Tr. V. 55. pp. 4155–4156.)

The American Bridge Company was running an open shop. On arrival they examined the work together, and Webb asked Davis what he thought about it. Davis said it would be an easy matter to get the job and Webb

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said, "Go ahead and get it." (R. Tr. V. 44, pp. 4156, 4157.)

He subsequently gave Nilan fifty dollars for the dynamite, and on the night of April 13, 1908, Davis placed half of the dynamite in the shoe of a derrick and the other half in a pile of girders. The force of the explosion blew in the window of a saloon around the corner. (R. Tr. V. 55, p. 4158.)

About the 17th of April, 1908, Davis and Webb had a talk in New York about doing some sort of work in the New England states on "unfair jobs." (R. Tr. V. 55, pp. 4162, 4163.)

Webb gave Davis one hundred dollars to go and look over a job at Providence, Rhode Island, and another at Fall River, Massachusetts, and another at Somerset, Massachusetts. At Providence, Davis stopped at the Hotel Perrin, where he registered. This register was introduced in evidence and Davis' registration was proved. (Exhibit 308; R. Tr. V. 55, p. 4163.)

He returned to New York and reported to Webb what he had seen. He said:

> "He instructed me to dynamite the Slade ferry job, after I had related the way things were as that was nearest completed; he said he wanted me to get that job." (R. Tr. V. 55, p. 4165.)

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"He asked me in the conversation how I was fixed for money; I told him I had spent considerable of the hundred dollars he gave me, and I told him I had to pay Nilan various sums of money for dynamite, each time, he had better give me some more money, and he gave me another hundred dollars; he told me to go over and get my dynamite and do that job." (R. Tr. V. 55, p. 4165.)

"Q. Did he tell you where this money was coming from?

"Yes, sir. * * * He told me it came from the International Association." (R. Tr. V. 55, pp. 4166, 4167.)

Davis took a large suit case and procured seventy or seventy-five pounds of dynamite from Nilan, which he took to Fall River where he stopped at the Wilbur House and registered under the name of "George O'Donnell." This registration was proved. (R. Tr. V. 55, pp. 4167, 4168.)

From there he telegraphed Webb to send him more money by telegram to George O'Donnell, and Webb sent him fifty dollars. (R. Tr. V. 55, pp. 4169, 4170.)

On the night of April 26, 1908, he dynamited the county highway bridge by placing the dynamite in the batter post of the bridge. (R. Tr. V. 55, pp. 4172, 4173.)

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He left the bridge and when about three blocks away heard the explosion. (R. Tr. V. 55, p. 4174.)

On April 28, 1908, Davis saw Webb in New York and reported the explosion, saying that he could get no clippings because no papers were printed at Fall River on Saturday night or Sunday. (R. Tr. V. 55, p. 4175.)

Subsequently they bought some Fall River papers in New York, from which they took clippings. Davis was paid two hundred dollars for this job. (R. Tr. V. 55, p. 4176.)

Davis turned in newspaper clippings concerning his jobs to Webb, pursuant to Webb's instructions. Webb told him that he had instructions to send clippings to J. J. McNamara, International Secretary. (R. Tr. V. 55, pp. 4176, 4177.)

Davis next had a conversation with Webb about dynamiting Scherzer drawbridge over the Bronx river at 149th street, New York. (R. Tr. V. 55, p. 4177.)

He says:

> "He told me, he says, 'I want you to go ahead now and get the dynamite; we are going to start and clean up New York,' and I told him that if he wanted me to start in and do that, that I wouldn't make trips every time, I would get a good supply this time when I went over, get as much

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> as I could, as I could save money by getting enough to do two or three jobs in one trip, where I would have to go at a lot of extra expenses; he told me all right, to go ahead and do that, he says, 'Get what dynamite you want, and this Scherzer drawbridge would be the next.' He gave me $200 to go out and see Nilan this time." (R. Tr. V. 55, p. 4178.)

At Allentown, Pennsylvania, Davis got from Nilan two suit cases full of dynamite, about 240 sticks of 60 per cent dynamite. (R. Tr. V. 55, p. 4179.)

Nilan helped him carry the stuff to Jersey City. (R. Tr. V. 55, p. 4180.)

And Davis got a hansom cab in New York and carried the stuff up town. (R. Tr. V. 55, pp. 4180, 4181.)

On the 9th of May, 1908, Davis and Tunnings made an abortive attempt to dynamite the Scherzer bridge. (R. Tr. V. 55, p. 4181.)

Being obliged to flee, Davis threw the suit case full of dynamite, into the river, and later, one day, Webb asked him if the suit case would sink, to which he replied that he didn't know, and Webb said, "Was there any marks on the grip that will identify it?" Davis replied there was not and says that later in the day they finally got a paper which told about finding the suit case of dynamite with

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one hundred three sticks in it. (R. Tr. V. 55, p. 4184.)

It can serve no purpose to even give a summary of the balance of Davis' testimony, as what has been given will serve to illustrate the method pursued by the conspirators.

The following registrations in hotel registers by Davis were proved:

> Wilbur House. "The Wilbur, Fall River, Mass., Thursday, April 23, 1908, George O'Donnell, N. Y." (People's Exhibit 307; R. Tr. V. 55, p. 4254; Cl. Tr. V. 2, p. 996.)
>
> "Hotel Perrin, Providence, Rhode Island, Sunday, June 14, 1908, George O'Donnell, N. Y." (People's Exhibit 308*a*; R. Tr. V. 55, p. 4255; Cl. Tr. V. 2, p. 997.)
>
> "Hotel Perrin, Providence, Rhode Island, Monday, June 15, 1908, George O'Donnell, N. Y." (People's Exhibit 308*b*; R. Tr. V. 55, p. 4255; Cl. Tr. V. 2, p. 998.)

Ortie E. McManigal, another dynamiter, testified, in detail, of having produced 15 explosions, as follows:

February 17, 1908, at Clinton, Iowa, work for the C. & N. W. R. R. being done by the Wisconsin Bridge & Iron Company. This job was done by McManigal under the direction of H. S. Hockin. (R. Tr. V. 73, pp. 5548–5564.)

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Corroborated by August Seiffert. (R. Tr. V. 79, p. 6027.)

July 1, 1908, at Buffalo, New York, bridge under construction by McClintock-Marshall Company. (R. Tr. V. 73, p. 5567.)

Corroborating witnesses: (J. A. G. Badorf, R. Tr. V. 80, p. 6158; Martin F. Quinlivan, R. Tr. V. 79, p. 6070; McManigal's testimony, R. Tr. V. 73, pp. 5567–5574.)

October 15, 1908, Holyoke, Massachusetts, bridge under construction by L. F. Shoemaker. (R. Tr. V. 73, p. 5583.)

March 27, 1909, building under construction by George W. Harvey Company, at Boston, Massachusetts. (R. Tr. V. 74, pp. 5593–5597.)

March 30, 1909, Hoboken, N. J., viaduct under construction by the McClintock-Marshall Company. (R. Tr. V. 74, pp. 5600–5604.)

Corroborating witness Mathew J. Griffin. (R. Tr. V. 80, p. 6118.)

April 19, 1910, Mt. Vernon, Illinois, power house for McClintock-Marshall Company. (R. Tr. V. 74, pp. 5638, 5652.)

Corroborating witness Ernest Patterson. (R. Tr. V. 80, p. 6125.)

June 22, 1910, Cleveland, Ohio, viaduct by McClintock-Marshall Company. (R. Tr. V. 74, pp. 5661, 5679.)

Corroborating witness J. T. Loane. (R. Tr. V. 80, pp. 6133, 6138.)

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July 9, 1910, Greenville, N. J., viaduct by McClintock-Marshall Company. (R. Tr. V. 76, pp. 5755–5757.)

Corroborating witness J. A. G. Badorf. (R. Tr. V. 80, pp. 6158, 6166.)

July 15, 1910, McKee's Rock, Pennsylvania, trestle work by McClintock-Marshall Company. (R. Tr. V. 77, pp. 5761, 5762.)

July 21, 1910, Omaha, Nebraska, power plant, Omaha & Council Bluffs Railroad. (R. Tr. V. 76, pp. 5781, 5782.)

Corroborating witness Patrick Cullen. (R. Tr. V. 71, p. 5344.)

August 1, 1910, Superior, Wisconsin, unloading rig, Heyl-Patterson Company. (R. Tr. V. 76, pp. 5786, 5796, 5797.)

August 23, 1910, Kansas City, Missouri, railroad bridge, McClintock-Marshall Company. (R. Tr. V. 76, pp. 5769, 5811, 5818.)

Corroborating witness C. J. Brubaker. (R. Tr. V. 88, p. 6826.)

September 4, 1910, Peoria, Illinois, material, Lucas Bridge & Iron Company. (R. Tr. V. 76, p. 5818; V. 77, pp. 5858, 5867.)

Corroborating witness Hugo Lucas. (R. Tr. V. 79, p. 6014.)

September 4, 1910, East Peoria, Illinois, material, McClintock-Marshall Company. (R. Tr. V. 77, p. 5871.)

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Corroborating witnesses: (R. H. Johnson, R. Tr. V. 79, p. 6076; John H. Manning, R. Tr. V. 79, p. 6086.)

June 25, 1907, Detroit, Michigan, building, Russell Wheel & Foundry Company. (R. Tr. V. 73, pp. 5530, 5539.)

If time permitted, it would be interesting to trace the testimony of McManigal, detailing the manner of purchasing and caching dynamite in large quantities in places where the dynamite was subsequently found by witnesses who testified thereto, thus corroborating McManigal. It would also be interesting to show the hotel registrations testified to by McManigal, which were identified and introduced in evidence at the trial, thus corroborating McManigal's testimony, that he did stop at these hotels while preparing to do his jobs, or at the time he caused the explosions. For the convenience of the Court, a list of all the hotel registers will be given later in this brief, with their exhibit numbers, to enable the Court, if it so desires, to see the testimony of witnesses concerning any given registration; but, as before stated, it is the purpose of this opening statement to give only such outline of the evidence concerning the overt acts in furtherance of the conspiracy committed in the East as will be sufficient to satisfy the Court that the jury was justified in finding

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the existence of a conspiracy and the gradual course of its execution towards the Pacific Coast.

The following testimony of McManigal is of importance as showing the origin of the infernal machine with the clock device, one of which was found at the house of Mr. Zeehandelaar.

About April 5, 1910, McManigal had a conversation with H. S. Hockin. Referring to Hockin, he says:

> "He asked me what I was doing and I told him I was working on a few odd jobs around town at that time for a man named Costello; he says, 'I got a job coming up down at Mt Vernon, Illinois, McClintic-Marshall Company has got the contract for the Mt Vernon car shops. I will go down that way and see how everything is, and I will wire you when to come down to Indianapolis and in the meantime I will send Brice up to your house and give you some of those infernal machines and have him demonstrate them to you.'
>
> Q. Whom did you understand that he meant by the name of Brice? A. J. B. McNamara.
>
> Q. Did he say anything to you at that time as to the discontinuance of the use of dynamite in relation to the infernal machine? A. He said they were going to use glycerin now, that he thought it was more destructive and had more—more effective

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in explosions than dynamite was; that it was a little quicker and stronger." (R. Tr. V. 74, p. 5638.)

McManigal later received a telegram, "Come to Indianapolis." He went and met Hockin there at the Lorraine Hotel on the morning of April 16 or 17, 1910, at about 6 o'clock. He registered at the Lorraine Hotel as "O. E. McManigal." (People's Exhibit 543; the exhibit shows registrations, "April 16, 1910, H. S. Hockin, Detroit, Michigan," assigned to room 225; and, "O. E. McManigal, Chicago, Illinois," assigned to room 106.)

Testifying to the conversation with Hockin, he says:

"Now, did you afterwards meet another person?

A. Yes sir.

Q. Who was that? A. J. J. McNamara.

Q. Now, not J. B. but J. J. McNamara I understand you to say?

A. J. J. McNamara; yes sir." (R. Tr. 74, p. 5640.)

The three went up to the American Central Life Building, and into J. J. McNamara's office, the office of the International. McManigal testifies:

"Well, Hockin wanted to know, and J. J., also asked me, if a man had been there and left the infernal machines with

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me, and I told him that he had and I had them in my suit case, and I opened up the suit case, wanted to know if I thoroughly understood or if he demonstrated them to me; I told him that I thought I had—I think that I understood it thoroughly. Each one of them then took a clock and was showing me the infernal machine, showing me how it operated, according to the same way that Brice—Mr. J. B. McNamara—had demonstrated to me at the house. Hockin then commenced looking up the train route as to whether I could get Mt Vernon, Illinois * * * and could find no other way, that I would have to go to St Louis and then come back in to Mt Vernon. * * *

Q. And did McNamara produce anything at that time, during that conversation? A. Yes sir.

Q. What was that? A. He went to a cupboard that is in the hallway, comes off the public hallway, in his office there, opened the door and got a suit case out of it, came back into the room where Hockin and I were, opened it up and showed me that there were four quart cans of nitro-glycerin in there packed in sawdust.

Q. Is this hallway a part of the private office? A. Yes sir.

Q. And did he tell you what that was in those cans? A. Yes sir.

Q. What did he say? A. He said this was soup, meaning nitro-glycerin. * * *

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Hockin asked me how I was fixed financially, and I told him I was a little bit short, and he advanced me $25 then. * * * " (R. Tr. V. 74, pp. 5640, 5641.)

As already stated, McManigal produced an explosion at Kansas City on August 23, 1910 (R. Tr. V. 76, pp. 5669, 5811, 5818), on a bridge under construction by McClintock-Marshall Company. C. J. Brubaker, who was timekeeper for McClintock-Marshall Company, testified with regard to this explosion:

"I went to the work next morning, yes sir.

Q. Tell the jury what you found, what you saw? A. Well, we had two girders there sitting on the ground, probably about 75 yards from the bridge. They were sitting close together, and that morning when I went down, why, I discovered that they were five or six feet apart, and there was a hole blew in the one that was large enough for me to crawl through; the other one was damaged a little bit, but not very much. * * * they weighed from 18 to 20 tons. * * * " (R. Tr. V. 88, p. 6827.)

"They were about between 7 and 8 feet deep, we call it. * * *

Q. Now, Mr. Brubaker, did you discover anything in the vicinity of that explosion, anywhere near the vicinity? A. Yes sir.

Q. Now, tell the jury what you discovered? A. About a couple of days after

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that we discovered three clocks—three alarm clocks. * * * There were three clocks, and a can of glycerin. The three clocks were connected or attached to a little board about—well, from 10 to 12 inches long and about four inches wide, with battery, and the board still connected, and right—well, the first—* * *" (R. Tr. V. 88, p. 6828.)

"The clock was about 150 yards from the bridge; the glycerin was, well, I suppose it was just about two feet from one of the clocks. * * * " (R. Tr. V. 88, p. 6829.)

"And what was the condition where they were found, whether the ground was open or not? A. Oh, no, it was high weeds, about 6 or 7 feet high.

Q. This was in summer, what kind of weeds were they? This was low ground? A. River bottom there; yes sir.

Q. I ask you to look at the device here, consisting of a clock and battery, which is marked People's offer 567; state whether the clock and battery that was found was similar to the one I now hand you.

Mr. Coghlan: We object to that as calling for a conclusion of the witness, not relevant, competent or material, and having no foundation, and proving absolutely nothing. You might as well say that because one clock ticks all clocks are admissible in evidence.

Mr. Noel: It is the similarity of the device.

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MR. COGHLAN: And the battery is not admissible; it has to be traced to something.

MR. KEYES: This is identified by McManigal.

THE COURT: One counsel at a time.

MR. COGHLAN: He is being asked now whether this is similar to something he saw there; what relevancy can that bear to this case?

THE COURT: Overruled.

A. Well, yes sir, the clock is similar to that.

MR. COGHLAN: And what is the number of that clock?

MR. NOEL: The number of the exhibit, to which you refer, is People's Exhibit 567? Is that right? A. Yes sir. * * *

MR. NOEL: I understand that all three of the clock devices that you found were similar to this one? A. Yes sir." (R. Tr. V. 88, pp. 6829, 6830.)

McManigal testified that he met J. J. McNamara in his office at headquarters and saw a man by the name of Cook, who was employed in the office. Cook testified that he saw McManigal there at that time. On the same day, McManigal went with J. J. McNamara to a store where McNamara had a temporary carrying case made, to carry a ten-quart can of glycerin, and gave the case to McManigal; and also a peculiarly made carrying case, which he had made at Berford's store, with instructions

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to go to Pittsburg and get another dozen clocks; and go over to Rochester and get 20 quarts of nitroglycerin and come back to Indianapolis as soon as possible. (R. Tr. V. 76, pp. 5801, 5803.)

> "Q. And did he say why he wanted you to come back as soon as possible? A. Yes sir.
>
> Q. What was that? A. That he was going to make a little touring—election touring before the election comes off at Rochester, he would be leaving Indianapolis along about the 18th or 20th of the month. He was going to Chicago, Milwaukee, Omaha, Kansas City, and he would be in Kansas City about the 22d or 23d of the month. He wanted to have an explosion come off at Kansas City before he got there." (R. Tr. V. 76, p. 5804.)

McManigal went to Pittsburg, Pennsylvania, registered at the St. Charles Hotel, August 12, 1910, under the name of "J. W. McGraw, Cleveland, Ohio." This register was marked in evidence, "People's Exhibit 76." (R. Tr. V. 76, pp. 5804, 5805.)

McManigal bought a dozen Tattoo Junior clocks there and then went to Rochester to get the dynamite from the place where it was cached, but found none there. (R. Tr. V. 76, pp. 5805, 5806.)

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He then threw away the wooden carrying box made at Berfords and took with him the regular carrying case containing the dozen Tattoo Junior clocks and went back to Beaver, Pennsylvania, and from there to Toledo, Ohio (R. Tr. V. 76, p. 5806); from there he went to Detroit, where he got 10 quarts of nitroglycerin, which was buried in the field at that place. (R. Tr. V. 76, pp. 5807, 5808.)

From Detroit he went to Indianapolis, registered at the Oneida Hotel under the name of "O. E. McManigal, Cleveland, Ohio." (R. Tr. V. 76, p. 5808.)

This register was identified and received as "People's Exhibit 555." (R. Tr. V. 76, p. 5813.)

He then visited the McClintock-Marshall work, taking twelve quarts of nitroglycerin which he buried near there. He then bought three 4-quart varnish cans at a paint store and took them down to the swamp where he poured the nitroglycerin he had with him into the three 4-quart varnish cans and buried the empty cans. (R. Tr. V. 76, pp. 5813, 5814.)

On the 23d of August, 1910, McManigal took seven photographs of the McClintock-Marshall work in question. On the 21st of August, 1910, McManigal had a conversation with the watch-

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man at work. He visited the work the following Monday and says:

"I was around the job and late that afternoon I started to set an explosion, but when I got near the work I heard a rustling in the weeds. I had two cans—no, one can of nitroglycerin and three infernal machines wrapped in a parcel, and I heard this rustling in the weeds there, and I just set the can of glycerin down, with the package and infernal machines in the weeds, and covered them up and left there; went over in the railroad yards, watched around there for awhile, and I could see watchmen around there, and I didn't go back to the job no more that night.

Q. When did you next visit the job? A. The next day. * * * I tried to locate the can of nitroglycerin,—one can of nitroglycerin, and three infernal machines, which I had the night before, and I couldn't locate them. I went back in the swamp and I found the other two cans that I had buried in the swamp, and I placed them at another place, so I would be sure I knowed where they were that night, when I came back.

Q. And did you go back that night? A. Yes sir. * * * I had another infernal machine in my suit case, which I took along with me that evening. I went back and I got the two cans—four-quart cans of nitroglycerin, but I seen the watchmen and everything was clear and I went in between

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two large girders, which you see one photograph of, and set them on the inside, between those two girders. Connected the one infernal machine to both cans of nitroglycerin. The explosion was set to come off at 9:30 that night. That was the night of the 22d or 21st, or 22d of August.

Q. 1910? A. 1910, yes sir. I was standing in front of the hotel at the time the explosion should take place, and waited there until 11 o'clock, and there was no explosion took place that night. * * *

Q. * * * did you ever visit the scene of the job again? A. Yes sir. * * * the next afternoon.

Q. And what did you discover when you arrived at the work? A. I walked around this job casually, and as I come to these two large girders I seen there hadn't been no damage done to them. As I passed there I seen the two cans were still setting there and the infernal machine still setting on them. I walked down around and came back and slipped in between the two girders and picked up the infernal machine and put it under my coat and walked down towards the river.

Q. What did you do with the nitroglycerin? A. Left it setting there. * * * I had an electric ampmeter in my pocket and I tested the battery and I found the batter was too weak to explode the cap. I took the battery off the board and went up in the city and got another battery, and

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had it tested out to be sure it was a good live one. Went back to the river and fastened this battery on the board and tested it there by exploding a cap, and after I had—was sure it would explode a cap I retimed it for 9:30 that night, and went back and set it in these cans that were still between the two girders. Went back up in the city and was outside the hotel when the explosion took place at 9:30 that night." (R. Tr. V. 76, pp. 5816, 5817, 5818.)

In the testimony of a timekeeper, Brubaker, that the explosion occurred at this work of McClintock-Marshall on the 23d of August, 1910, and that he found infernal machines in the vicinity, the description of which tallies exactly with the description of the J. B. McNamara infernal machines which McManigal testifies he used in producing the explosion, is absolute corroboration of the testimony of McManigal. Indeed, if the court could find the time to go through the record in this case in detail, it would be struck with the marvelous detail and certainty of corroboration not only of McManigal, but also of George E. Davis, Ed Clark, Dugan and others of the conspirators who testified at the trial.

Another important piece of corroboration is found in the testimony of R. H. Johnson, general manager of the Peoria and Pekin

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Union Railway, Terminal Road, at Peoria and Pekin, Illinois. (R. Tr. V. 79, p. 6076.)

He testifies to a conversation between Smythe and H. S. Hockin, of Detroit, Michigan, member of the Executive Board of the International, and himself, regarding McClintock-Marshall and the bridge under construction by them, in which Hockin said McClintock was a scab firm and unfair and said that, "They wanted union labor employed upon the job." Johnson told them he had already let the contract and it was beyond his control. (R. Tr. V. 79, p. 6077.)

Smythe and Hockin said that "there had better be union labor employed on the job or there would be something doing, that there would be hell to pay in Peoria, if there wasn't. * * * " That was in January or February, 1910. (R. Tr. V. 79, p. 6078.)

On June 4, 1910, there was an explosion occurred in the railroad yards. (R. Tr. V. 79, p. 6079.)

This was where the bridge material was stored. Johnson visited the scene of the explosion, which occurred Saturday night, on the following Tuesday. He described the material as girders stored along the railroad track near Sanger street about 1,000 feet from the bridge, girders ninety feet long and about

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eleven or twelve feet high, of very heavy material; and says two of them were blown and wrecked, evidently by an explosive placed between them. (R. Tr. V. 79, p. 6080.)

Mr. Johnson testifies that there was another explosion on Sunday night, September 4, 1910, at about 10:30 p.m. on that work. (R. Tr. V. 79, p. 6081.)

Two or three girders were badly damaged; holes were blown through two of them. (R. Tr. V. 79, p. 6081.)

> "Q. Now, state whether you personally saw or found any explosives or infernal machines there at that time? A. Well, the first thing my attention was called to, when I got there, was a discovery that had been made by one of our yard clerks. * * * It was a can of nitroglycerin and an alarm clock evidently, and a small battery, one of those dry cells attached to a board, connected up by wires and so forth. The can had been made empty at that time, but had been taken down into the swamp or between the track and the river, and the contents practically all dumped out.
>
> Q. Now, I hand you a can, marked People's offer 302, please look at that can and any marks that you may see there—any identification marks—anywhere—and state whether that is the can that you found at that time? A. Yes sir, that is the can." (R. Tr. V. 79, p. 6082.)

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The can was received in evidence as People's Exhibit 302. (R. Tr. V. 79, p. 6082.)

> "Q. Now, Mr. Witness, I hand you a device consisting apparently of a clock and battery here, which is marked People's Offer 304. Please look at that and state whether that is the clock and battery that you found on the work at that time? A. Yes sir; that clock and battery is one that I saw about 200 feet from where the holes were blown in the girders, but this charge was, of course, one that did not go off." (R. Tr. V. 79, p. 6083.)

The device was received in evidence as People's Exhibit 304.

Mr. Johnson also testified that he saw some cans that were found afterwards close by. They were round cans, about eight or ten inches deep and six or eight inches in circumference. (R. Tr. V. 79, p. 6083.)

Ortie E. McManigal testified:

> "Q. Now, what instruction did he give you with regard to Peoria—did J. J. McNamara give you at that time? A. He then said, 'Well, I should get ready to take some glycerin to Peoria,' that he wanted to have an explosion to come off there as soon as possible, either next Sunday or Monday night, that he thought I had better take about 20 quarts and make a trip over there and he would telegraph Smythe

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to meet me—Ed Smythe, to meet me at the train.

Q. And did you afterwards leave for Peoria? A. Yes sir.

Q. Did you carry the nitroglycerin with you? A. Yes sir.

Q. Did he tell you upon what particular work he wanted the shots placed at Peoria? A. Yes sir. * * * He said he wanted about—to get enough glycerin there at Peoria, so that he could have 7 or 8 shots come off there, he would like to have—and I would have to arrange it so that I could use the least machines as I possibly could, try them out and see how many explosions one machine would make, and that I should be sure to string out a lot of it in the East Peoria yards upon the McClintock-Marshall material, and also have some explosion over at Lucas' shop over in Peoria." (R. Tr. V. 77, pp. 5858, 5859.)

When McManigal reached Peoria with the nitroglycerin, he was met at the job by Ed Smythe, who was business agent for the Peoria local. They took a car over to East Peoria and McManigal took the 10-quart cans of nitroglycerin out of the carrying cases and buried them in the weeds near the East Peoria yards and then returned to Peoria. (R. Tr. V. 77, p. 5859.)

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From Peoria he went to Indianapolis on the 1st of September, where he registered at the Oneida Hotel under the name of "O. E. McManigal," on that day and on the day following. The register of the hotel with these registrations was received in evidence as Exhibits 554*b* and 554*d*. He saw J. J. McNamara at the Oneida Hotel. McNamara gave him four infernal machines, saying that he had just returned from Cincinnati and thought that the four machines, which he had made up himself, would be enough for an explosion over at Peoria (R. Tr. V. 77, p. 5862), and instructed McManigal to try them out and see how many caps one machine would explode. McManigal told him that a good place for that would be in the Orchard, at Peoria. McNamara told him to come up to the office the next day, in the morning, for 10 quarts more of nitroglycerin, which would make 30 quarts in all for the Peoria job. He wanted the job to come off as soon as possible, either Sunday night or Monday night. Saturday morning, September 3d, McManigal went to J. J. McNamara's office and got 10 quarts of nitroglycerin. McNamara instructed him to

> "Tell Smythe to go somewheres so he will—at the time the explosions come off so that he could prove an alibi in case he

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was picked up at Peoria after the explosion." (R. Tr. V. 77, p. 5864.)

McManigal went to Peoria with 10 quarts of nitroglycerin, four infernal machines and fulminating caps. At about that time J. J. McNamara paid McManigal a little over $300.00 for the Kansas City job and expenses. (R. Tr. V. 77, p. 5866.)

Subsequently, McManigal met Ed Smythe in the Orchard in East Peoria. He took out the infernal machine, with the caps, to find out how many caps one machine would explode. He connected up three caps first and let the clock work, and it only exploded one cap. He then tried it with two caps and only one exploded. He then told Smythe that there would only be four explosions there that night. He then said to Smythe, "Where are those cans I told you to get?" Smythe went back in the brush and weeds and brought a big bunch of cans like fruit jars. McManigal refused to use these, saying,

> "I won't try it, I might drop a little bit of a drop on the edge of that can and when I pressed that lid down that cause a friction and there will be an explosion. I guess I will just let the soup in the big cans and I will put a machine on each one of them." (R. Tr. V. 77, p. 5867.)

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McManigal then told Smythe that the explosion might come off that night, and instructed him to take his wife and go to the show and retain the stubs of the tickets so that if he was picked up after the explosion, he could show that he had been at the theater. (R. Tr. V. 77, p. 5868.)

McManigal set two explosions in the East Peoria yard material and went to Peoria and set one explosion in the Lucas job under a derrick. The nitroglycerin which he had left he took to the shop and put between the jaws of the big riveting machine. (R. Tr. V. 77, pp. 5869, 5870.)

The clocks were all set to come off at 10:30 that night. McManigal went to the Murray Hotel and waited. He heard three explosions, two at the Lucas shop and one in the East Peoria yards. He then left for Chicago at 12:01 over the Chicago & Alton. (R. Tr. V. 77, p. 5870.)

It appears from this testimony that one of the infernal machines set at East Peoria failed to work, and the infernal machine testified to by Mr. Johnson, as found by the yard clerk, which was produced in evidence, is the best kind of physical corroboration of McManigal's testimony.

We have already pointed out in the testimony of Davis and McManigal the require-

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ment by J. J. McNamara that as the various jobs were done by the various dynamiters they should furnish newspaper clippings descriptive thereof. We now call the attention of the Court to the following reference to the same subject.

February 3, 1908, Patrick F. Farrell, at New York, wrote to J. J. McNamara, at Indianapolis, enclosing a newspaper clipping from a New York paper, and saying, among other things:

> "Enclosed find clipping from this mornings Journal showing what the *high wind* that prevailed here done Saturday night." (Haley and Freeman; Exhibit 332; R. Tr. V. 67, p. 5111; Cl. Tr. V. 2, p. 1038.)

This evidently refers to the depredation produced by George E. Davis and others, by dropping the draw of the Scherzer bridge over Eastchester Bay, at Pelham, New York, which was under construction by the American Bridge Company.

November 29, 1909, W. E. Reddin, at Milwaukee, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

> "Enclosed you will find a clipping from a Green Bay paper sent to me." (Gallagher; People's Exhibit 154; R. Tr. V. 70, p. 5273; Martin J. Morgan; R. Tr. V. 79, p. 6031; Cl. Tr. V. 1, p. 533.)

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This refers to the explosion produced by J. B. McManigal under the direction of J. J. McNamara, at Green Bay, Wisconsin, on a car of material for work under construction by the Wisconsin Bridge & Iron Company, November 21, 1909.

April 26, 1910, John J. McNamara, at Indianapolis, wrote to Eugene A. Clancy, at San Francisco, saying, among other things:

> "How is everything in the Golden Gate City? Have you taken up any of the matters referred to you by the Executive Board as yet, namely; investigation of conditions at Portland, Seattle and Los Angeles? * * *
>
> "Your friend from 'Slowtown' is still on the go. I understand he has been sending you some newspaper clippings. Have you received any from him recently?" (Meyer and Freeman; People's Exhibit 220; R. Tr. V. 71, p. 5390; Cl. Tr. V. 2, p. 803.)

May 3, 1910, P. A. Cooley, at New Orleans, wrote to J. J. McNamara, at Indianapolis, which letter contained a postscript as follows:

> "P. S. Relative to clippings will state that whenever I was able to round across any of any account I allways send them to headquarters. I am inclosing you one in this letter." (Meyer and Freeman; People's Exhibit 139; R. Tr. V. 71, p. 5399; Cl. Tr. V. 1, pp. 484–485.)

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August 3, 1910, Fred Mooney, at Duluth, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

> "We have had some real Dynamiters here not the kind we had a year ago but the real thing was done. The damage was not great but it was luck that the : leg landed where it did otherwise the Budge would have come down which would have been large damage. I am enclosing clipping." (Meyer and Freeman; People's Exhibit 262; R. Tr. V. 72, p. 5485; Cl. Tr. V. 2, p. 898.)

This refers to the nitroglycerin explosion produced by McManigal on work of Heyl-Patterson for the P. & R. Coal Company, at Superior, Wisconsin, August 1 or 2, 1910.

July 15, 1910, J. J. McNamara, at Indianapolis, wrote to H. W. Legleitner, at Pittsburg, saying, among other things:

> "From a little note I just noticed in the Indianapolis paper, I presume you will have some news clippings for me in the next day or so." (People's Exhibit 131; R. Tr. V. 71, p. 5472; Cl. Tr. V. 1, p. 462.)

This refers to the nitroglycerin explosion produced by McManigal, under the direction of J. J. McNamara, on trestle work of the West Side Belt Line, under construction by McClintock-Marshall Company, at McKee's Rock, Pittsburg, July 15, 1910.

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With respect to this explosion, McManigal testified that he produced it with nitroglycerin. He says:

"On the night of the 14th of June, why, about 9 o'clock, I set the explosion to come off at 2 o'clock, the morning of the 15th, on the pier just at McKees Rock over the overhead track-way that goes over on Carlson Street at McKees Rocks. * * * Steel construction work, pretty well finished—nearly finished. * * * (R. Tr. V. 76, p. 5762.)

"I went to the St. Charles Hotel, paid my hotel bill, and left over the Pennsylvania Railroad, leaving Pittsburg about 11 o'clock, for Indianapolis.

"Q. Did you obtain any clippings of newspaper articles of this explosion? A. No sir. * * * I went to J. J. McNamara's office. * * * Telephoned to him when we would get in town, telephoned to his office. * * * Always telephone to the office before coming up, for fear I would come in contact with somebody else there.

"Q. Did you see anyone in the office of J. J. McNamara at that time, in addition to J. J. McNamara? A. Yes sir. * * * J. B. McNamara. * * * Going into the office of J. J. McNamara, J. B. McNamara was sitting there and he says, 'I see you are wanted in Pittsburg.' I says, 'How is that?' He then showed me the Indianapolis paper with a small account in it of an explosion at McKees Rocks, 2 A. M. in the morning, and J. J. asked me if I had had

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that explosion; I told him, 'Yes, I set one there last night.' He wanted to know how many I set; I told him one. I only had one machine left. Well, he says, 'That is very good.'" (R. Tr. V. 76, pp. 5763–5764.)

"Well, Mr. McManigal, what did you observe there with reference to J. B. McNamara? A. I noticed that he was all well dressed there, and I asked him where he was going, or if he had just come from somewhere; he said he was going. I asked him where he was going; he said, 'I am getting ready to go to San Francisco.' 'Is that so?' 'I wish you could go along with me.' J. J. McNamara says, 'No, nothing doing.' He says, 'I will have to have one of you fellows here, so if there is anything comes off out on the coast, that I can have an echo in the East, and besides that, I have got four or five jobs in sight now, and I could keep you busy around here.'" (R. Tr. V. 76, pp. 5764, 5765.)

This conversation occurred in the forenoon of July 15, 1910. McManigal further testifies:

"J. B. McNamara then went to J. J. McNamara's desk and picked up a telegram and handed it to me and I read it; it was from San Francisco and signed 'Gene.' * * * I asked J. B. 'Who is Gene?' He says, 'Eugene Clancy, business agent of the Local in San Francisco.'" (R. Tr. V. 76, p. 5765.)

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This telegram appears in the record as People's Exhibit 23.

> "Sanfrancisco Calif July 11–12 1910. Mr J J McNamara 422 American Contl Life Bldg, Indpls Ind. Lay Clancy Vaughan Elected delegate has Jim left for here if not have him come at once will I go North if you say I will go wire me at once. Letter follows give Ryan my regards received letter about Sheet Metal Workers decision and it was fine." (Cl. Tr. V. 1, p. 305.)

"Jim" referred to in the telegram means J. B. McNamara.

The foregoing testimony affords a striking example of the class of small details in a criminal enterprise which are pregnant with meaning and of great importance. In the first place, we note how persistent J. J. McNamara was that his instructions to obtain newspaper clippings descriptive of the overt acts should be obtained by the men who committed the acts, for, although McManigal left McKee's Rock at about 11 o'clock and had set the explosion for 2 o'clock the following morning, yet almost the first thing McNamara asked him was if he had obtained clippings. In the second place, we note that J. B. McNamara, who, as we have already pointed out, was going to the coast to give them a "dam good cleaning up," was dressed and ready for departure;

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and, when he suggested that he would like to have McManigal accompany him, J. J. McNamara objected and gave as his first reason for objecting that:

> "I will have to have one of you fellows here, so if there is anything comes off out on the coast, that I can have an echo in the East." (R. Tr. V. 76, p. 5765.)

What better evidence could be asked in proving the fact that the conspiracy was nation wide and that overt acts committed on the coast, that is, the explosions in Seattle and Oakland, and the *Times* building, in Los Angeles, were overt acts of the conspiracy? The court will keep in mind that the purpose of this conspiracy was not to vent spite upon any one corporation, or individual, but to force upon the employers of the country the discontinuance of the open-shop policy and adoption of the closed-shop policy. The method pursued by the conspirators was intimidation, by means of acts of violence, endangering life, destroying property; and it was J. J. McNamara's idea that this intimidation would be more effective if, when some overt act of violence was perpetrated on the coast, he could produce "an echo" of the explosion at some point in the east, thereby demonstrating to the employers of labor of the country that the conspiracy was not a local matter, and its execu-

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tion was not to be confined locally, but that the whole country was to be visited by its scourge.

Eugene Clancy was business agent of the local in San Francisco, which was a member of the International. His activities in that capacity seem to have been very satisfactory to Frank Ryan, J. J. McNamara, Herbert S. Hockin, and the others, who were directing the conspiracy; for, from the year —— down to the time of the blowing up of the *Times* building, he was also a member of the Executive Committee of the International and represented a large territory, which included the Pacific Coast. We now propose to call the attention of the court to Clancy's connection and activity with the conspiracy.

We have already referred to the evidence showing that in 1905 the Executive Board of the International ordered a general strike against the American Bridge Company, to take effect August 10, 1905.

On April 1, 1906, Eugene A. Clancy, at San Francisco, California, wrote a letter to John J. McNamara, at Cleveland, Ohio, saying, among other things:

> "The A. B. Co. has 2 jobs here one 1500 tons one 342 tons this is the small bank job I did not know who had it. * * * We gave this fellow that is going to try and do this Santa Cruz job a merry time last week, he was trying to rent some tools and engines

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but we blocked him at every turn. * * * The District Council has taken a stand against McCarthys action and we are going to have a dam warm time here. The A. B. Co. Mahoney, and McCarthy is going to get there bumps as sure as your name is Joe. * * * Well Joe this is all for this time but we are going to spend some money here in the next week so you will here from me soon." (Haley and Talbot; People's Exhibit 473; R. Tr. V. 56, p. 5012; Cl. Tr. V. 3, pp. 1343, 1344, 1345.)

February 16, 1907, John J. McNamara, at Indianapolis, wrote to Eugene A. Clancy, member of the executive board, at San Francisco, saying, among other things:

"I am under the impression that as soon as you reach home, Steve Davern will approach you. He was connected with the Ashtabula affair. He wrote to me asking if I could see my way clear to grant him financial assistance, and I replied that I failed to see how I could do so. Davern stated that he was desirous of going to Mexico, and that he did not want to go to work in Frisco. I wrote him that I thought the case was not as serious as he thought it was, and that it would be perfectly safe for him to go to work in your city, and that you could undoubtedly place him on some work where he would be safe.

"Davern is a friend of mine, a good Union man, and I think you will find him

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O. K. The only trouble is, he has lost a little of his nerve." (Haley and Talbot; People's Exhibit 266; R. Tr. V. 67, p. 5047; Cl. Tr. V. 2, p. 912.)

On March 10, 1907, Eugene A. Clancy, at San Francisco, wrote a letter to John J. McNamara, at Indianapolis, saying, among other things:

"I seen Davern and he is as sore as hell at you because you did not give him the change. I told him if you did it would be up to you to make good with us. I told him if he wanted any money to write and ask the Ex Board for it not McNamara as he was only one. then he said you gave it to others. I told him I knew it but we did not allow that any more. He is working with McGlory & Turner here in town." (Haley and Talbot; People's Exhibit 269; R. Tr. V. 67, p. 5050; Cl. Tr. V. 2, p. 917.)

March 29, 1907, John J. McNamara, at Indianapolis, wrote to Eugene A. Clancy, at San Francisco, saying, among other things:

"Sometime ago I wrote you relative to some correspondence I had with Brother Steve Davern about expenses, etc. in connection with the Ashtabula affair. I received a letter from him yesterday enclosing receipts for transportation amounting to $84.75. He wants me to present them to the Executive Board and states that it was on your suggestion that he forwarded them

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to me. I should like to hear from you relative to same at your earliest convenience." (Haley and Talbot; People's Exhibit 274; R. Tr. V. 53, p. 4000; Cl. Tr. V. 2, p. 933.)

April 18, 1907, John J. McNamara, at Indianapolis, wrote a letter to each member of the Executive Board, saying, among other things:

"On April 16 I forwarded draft for $1000 to Brother Farrell, the Secretary-Treasurer of the New York District Council as a donation from the International Association. Sometime ago Brother Steve Davern, a member of No. 17 left Cleveland owing to the Ashtabula affair. He wrote me from San Francisco asking me to assist him financially. I replied that it would be impossible to comply with his request. He complained to Brother Clancy and was informed that the Executive Board was the only party that could consider any such proposition; that the Secretary-Treasurer had no authority in such matter. Brother Davern then forwarded me two receipts for transportation, one for $26.75 and the other for $57.50 with a request that he be reimbursed for same. The total amount is $84.25. I should like to hear from you in your next letter to Headquarters as to whether you approve of the payment of the above amount." (Haley and Talbot; People's Exhibit 278; R. Tr. V. 67, p. 5055; Cl. Tr. V. 2, pp. 939, 941.)

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October 6, 1907, John J. McNamara, at New York, wrote to each member of the executive board, saying, among other things:

> "Andy Brandt is doing some work over in Jersey. If you will remember, sometime ago No. 45 was given $200 to use on this work, but No. 11 claims the scab work is in their territory, that the work in No. 45's is fair and they would like to have a similar amount of financial assistance as was given to No. 45. Their anxiety to do something at this time, they say is because a large pier job of 6000 tons is to be let in a few days & they want to cripple the other work before contract is let so that Brandt will not get it. The pier job is in Jersey City. There is a meeting of the Executive Board of the 5 Locals this, Sunday afternoon. I shall attend, see some one from No. 45 and ask what if anything was done with the $200. No. 45 got Clancy & Webb favor making donation of $200 to No. 11 if investigation will bear out their statements. Clancy & I have decided to have Webb make investigation tomorrow. It will only take one day. If Webbs report is favorable would you favor donation? Let me know at once. Write headquarters. I leave here tonight." (Haley and Talbot: People's Exhibit 291; R. Tr. V. 67, p. 5078: Cl. Tr. V. 2, pp. 964, 965.)

The Bridge Men's Magazine for March, 1907, at page 151, publishes a letter from

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Charles Smith, of Local No. 17, Cleveland, Ohio, describing the death of Robert Burler, of Ashtabula, Ohio, who was shot by foreman Ryle at the time of an assault on Ryle. (People's Exhibit 498.)

Under date of October 26, 1909, Eugene A. Clancy wrote to John J. McNamara, saying, among other things:

> "I was at Salt Lake and Jones Co started Monday morning with 6 snakes Jack Jones a brother of the boss with an engineers card and I am sure an iron workers card from No. 31 running the engine and kind a bossing he has a fellow first name Charley a kind of a pusher * * * well I had a long talk with Jack Jones. Dick Jones the boss shook hands with me and left the job, but they are nothing to it but open shop all over he says and Frisco he has nothing there. Seattle and Portland open shop and they think they are nothing to it. now Munsey is going to get busy with you at once and they are going to get busy also, the other big job they got in Salt Lake is for the Modern Steel Co he also told me they have a big job in Denver, he told also he would give the local men work if they would work open shop, now this job has got to be attended to * * *" (Haley and Talbot; People's Exhibit 448; R. Tr. V. 70, p. 5261; Cl. Tr. V. 3, p. 1303.)

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November 17, 1909, J. J. McNamara, at Indianapolis, wrote to J. E. Munsey, at Salt Lake City, Utah, saying, among other things:

> "I have not heard very much from Brother Clancy since his return to San Francisco * * *
>
> "I note your statement relative to the Jones Construction Co. and trust you will keep me posted. After leaving Salt Lake City, he wrote me that he had gone over this particular job with you and that I would probably hear from you relative to what was to be done. He did not make his letter very plain, but I think I understood what he meant. I think you will agree with me that the less we write about matters of this kind, the better it will be for all concerned, at least, I find that a very good course to follow in this section of the country and I presume the same rule would apply equally well in your locality." (Gallagher and Talbot; People's Exhibit 151: R. Tr. V. 70, p. 5269; Cl. Tr. V. 1, pp. 524, 527.)

November 22, 1909, J. J. McNamara, at Indianapolis, wrote to J. E. Munsey, at Salt Lake City, saying, among other things:

> "I have not had a word from Clancy since he returned to Frisco.
>
> "I expect to see President Ryan in a day or so, and will let him go over the entire correspondence from you relative to the

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Jones Construction Co. He can then make a recommendation in the matter for the consideration of the Executive Board. I believe this will be the better and quicker way to handle the matter." (Gallagher and Talbot; People's Exhibit 152; R. Tr. V. 70, p. 5273; Cl. Tr. V. ——, p. ——.)

April 26, 1910, John J. McNamara, at Indianapolis, wrote to Eugene A. Clancy, at San Francisco, saying, among other things:

"How is everything in the Golden Gate City? Have you taken up any of the matters referred to you by the Executive Board as yet, namely: investigation of conditions at Portland, Seattle and Los Angeles? * * *

"Your friend from 'Slowtown' is still on the go. I understand he has been sending you some newspaper clippings. Have you received any from him recently?" (Meyer and Talbot; People's Exhibit 220; R. Tr. V. 71, p. 5390; Cl. Tr. V. 2, p. 803.)

May 1, 1910, Frank M. Ryan, at New York, wrote to John J. McNamara, at Indianapolis, saying, among other things:

"What has Clancy done or recommended in regard to organizing work at Los Angeles Has he sent in a report since he returned Home" (Meyer and Talbot; People's Exhibit 224; R. Tr. V. 71, p. 5396; Cl. Tr. V. 2, pp. 812, 813.)

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May 4, 1910, John J. McNamara, at Indianapolis, wrote to Eugene A. Clancy, at San Francisco, saying, among other things:

> "I received a letter in yesterday's mail from President Ryan asking as to what report, if any, you had made to headquarters as to the propositions that were submitted to you by the recent meeting of the Executive Board. He referred particularly to Los Angeles, and I would like to hear from you at your convenience relative to this matter." (Meyer and Talbot; People's Exhibit 230; R. Tr. V. 71, p. 5402; Cl. Tr. V. 2, p. 823.)

May 29, 1910, Eugene A. Clancy wrote to President Frank M. Ryan, saying, among other things:

> "I am going to Los Angeles Tue Eve the letter you wrote me about it I had received a few from there myself. I also have been receiving many from Seattle to come there on the reinforcing and help them get it I received word that one of our men in Spokane is doing the work on a 14 story job with laborers he took a transfer to No. 14 I am going north at the end of June and put in some time there if it is satisfactory to you our election takes place in June. I could then get away for a few weeks. I hear Cassidy is still howling about us in Portland. I received a telegram from the J. R. Bowles Co for a bunch of shop men for Portland he has an open shop there I

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have not sent them. I have met this fellow and he is a very nice man but he will do no business with Cassidy well Frank this is all for today wishing you continued success I am yours sincerely

E. A. CLANCY.

P. S. Well Pop the next time I hope to see you I will be a member of the Knights of Columbus I was voted in last Tuesday eve. I am very much pleased over it.

GENE"

(Haley and Talbot; People's Exhibit 541; R. Tr. V. 70, pp. 5318, 5321; Cl. Tr. V. 3, pp. 1532, 1533, 1534.)

June 3, 1910, E. A. Clancy, at Los Angeles, wrote to John J. McNamara, at Indianapolis, saying, among other things:

"I have been here 5 days now and they have started here the greatest strike any part of the country had in a long time. all the shop men of the Union Iron Works and Baker Iron Works Llewellens Iron Works are quitting and we are about to start a new local here. the structural Men on the outside are coming in great 14 of them from one job is coming up tonight all the Machinists Molders Pattern Makers are out and they are helping each other fine. The State Building Trades Council have a man here A. Johansen he used to be with the Wood Workers in Chicago also Stewart Reid of Chicago. Now Joe what we want here is Hockin the greatest opportunity is

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here now. I can not stay here Joe it is impossible but I have things going fine. Frisco is behind this move heart and soul and we are going to put some money in here the State Council is going to put an assessment on so you see that means weekly so now is the time. The Painters Teamsters the Carpenters have a man here all ready I mean the Carpenters have now the Painters & Teamsters and the Iron Workers will have men here and all the other Trades also the Plumbers have a man here also I wish I could stay Joe but Hockin is the man take it up with Ryan at once the best man for the position. I hope Frank is at the office when this arrives so he will send Hockin at once I leave here tomorrow night for Frisco hoping you and Frank takes action on this at once I beg to remain

Yours Sincerely

E. A. CLANCY.

P. S. will send a full detail report tonight. GENE."

(Haley and Talbot; People's Exhibit 130; R. Tr. V. 72, p. 5423; Cl. Tr. V. 1, p. 459.)

June 7, 1910, E. A. Clancy, at San Francisco, wrote to John J. McNamara, at Indianapolis, saying, among other things:

"On my visit to Los Angeles I beg to report the following. * * * we are going out for Funds in this city and I know we are going to get it the Fight is on in Los Angeles and we are going to win * * *

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The Iron Worker never had a better chance to do what they have been wanting to do in that city so I again say send Hockin at once it means 200 men to us he will make his salary if not in money in good for the Iron Worker." (Meyer and Talbot; People's Exhibit 119; R. Tr. V. 72, p. 5428; Cl. Tr. V. 1, pp. 430, 439.)

June 7, 1910, J. J. McNamara, at Indianapolis, wrote to Frank M. Ryan, at Chicago, saying, among other things:

"Clancy seems to be very anxious that Hockin goes to Los Angeles, and on June 4th I received the following telegram:

'Los Angeles. Leave here for Frisco. Hockin should be sent here. Important. Men coming in local fast. Signed, E. A. Clancy.'

"He wrote me that he was going to make a similar recommendation to you, but I cannot see the wisdom of such a course being pursued. Hockin has had too many things to look after recently, and as a matter of fact, things have not been attended to as promptly as they should have been." (Meyer and Talbot; People's Exhibit 240; R. Tr. V. 72, p. 5436; Cl. Tr. V. 2, p. 848.)

June 10, 1910, Frank M. Ryan, at Chicago, wrote to John J. McNamara, at Indianapolis, saying, among other things:

"Referring to Clancy's letter, wherein a request is made for Hickin to go to Los

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Angeles, I am of the same opinion as yourself, that there is sufficient work for Hickin back this way.

"It appears to me that Clancy should be able to find a man in California who would be capable of doing the necessary work in and about Los Angeles. Wish you would wire him that it would be impossible for Hickin to go there; till him to appoint some competent man, and we will send him credentials.

"The money required to send a man from here there and return will pay the expenses of an organizer for several weeks, and therefore the money would be spent to better advantage." (Meyer and Talbot; People's Exhibit 241; R. Tr. V. 72, p. 5440; Cl. Tr. V. 2, p. 850.)

June 17, 1910, J. J. McNamara, at Indianapolis, wrote to Eugene A. Clancy, at San Francisco, saying, among other things:

"Your telegram to hand. Am enclosing you check for $100.00 as per your request. Was glad to hear that you are going to Los Angeles a second time." (Meyer and Talbot; People's Exhibit 257; R. Tr. V. 72, p. 5428; Cl. Tr. V. 2, p. 891.)

June 25, 1910, J. J. McNamara, at Indianapolis, wrote to Eugene A. Clancy, at San Francisco, saying, among other things:

"Just a line from Indianapolis relative to our St. Louis friend, J. H. Barry. When

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I took up the matter with him of his going West to Los Angeles to assist in some organizing work, he signified his willingness to make the trip. * * *

"I received a letter from him in this morning's mail in which he stated positively that he would make the trip, but that he would need some little time to clean up a few matters that he had in hand at the St. Louis end that he did not want to drop at the present time. I am very glad that Brother Barry has signified his willingness to go into this matter, for I do not know of a better selection and I feel positive that everybody in Los Angeles and on the Coast will be pleased with your choice and feel positive in saying in advance that Jack will deliver the goods." (Meyer, Haley and Talbot; People's Exhibit 258; R. Tr. V. 72, p. 5449; Cl. Tr. V. 2, p. 892.)

July 5, 1910, E. A. Clancy, at San Francisco, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

"Dear Sir & Bro

"I am glad that J. H. is going to come west I know he is the proper man he has had a long experience in organizing work further he is a good mech they will give him a job at once let me know when he is going to start west" (People's Exhibit 259; R. Tr. V. 72, p. 2471; Cl. Tr. V. 2, p. 894.)

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July 12, 1910, Eugene A. Clancy, at San Francisco, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

> "Say what about Barry is he started yet he ought to be here soon we need him on that work drop me a line and let me know what is doing." (Meyer, Haley and Talbot; People's Exhibit 326; R. Tr. V. 72, p. 5449; Cl. Tr. V. 2, p. 1027.)

July 26, 1910, O. A. Tveitmoe, at San Francisco, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

> "At present we are engaged, additionally to our ordinary duties, in directing and financing one of the greatest and most important battles that has been fought for unionism on the Pacific Coast. It is nothing less than a tremendous effort to unionize Los Angeles, which for years has been a constant menace not alone to union labor in California, but to the entire American trade union movement, to such a degree that the permanency of our eight-hour work day, which we have so generally and blissfully enjoyed during the last ten or twenty years, was seriously threatened. We have gained good ground since the fight commenced on the first of June when a few ironworkers walked out. Nineteen shops have conceded the eight-hour work day and unionized. All of the unions in the Building trades, as well as the iron trades,

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have increased their membership from twenty-five to as high as one thousand per cent. One non-union building—the Hall of Records—has been tied up for three weeks, and three large buildings have unionized so thoroughly that they are now being constructed by union men exclusively.

"The Los Angeles situation is in splendid shape, as the fight is being handled by a committee of experienced men in San Francisco and by well-trained organizers locally in charge of affairs. About three thousand mechanics are still out, and no anti-picket laws, no injunctions, policemen's clubs, guns, jails or prisons will ever drive them back to their former conditions of chattel slavery as long as they receive the support of union labor.

"Up to the present time the burden of the battle has fallen largely, if not entirely, upon the shoulders of the union men and women of California, as hardly any financial assistance has been received from the International unions or from other sections of our great country. We would therefore urge upon you, Brother McNamara, and through you upon the International Association of Bridge & Structural Ironworkers, that you come to our assistance in this struggle as promptly and as liberally as the treasuries of your International and its affiliated locals will permit.

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"We intend to carry on this fight until Los Angeles is unionized, whether it takes one month, one year or ten years; and California has so often come to the rescue of our brothers in the east that at this time we feel she is entitled to ask for a little help without overdrawing the account of fraternal trade union reciprocity.

"Funds for the above purpose can be sent through the customary channels to the undersigned, who will properly receipt and account for them.

"Believing that you recognize the importance and the justice of the case we have laid before you, and awaiting your early and favorable reply, we have the honor to remain, with kind regards and best wishes," (Meyer and Talbot; People's Exhibit 249; R. Tr. V. 72, p. 5474; Cl. Tr. V. 2, pp. 874, 875, 876.)

August 2, 1910, Eugene A. Clancy, at San Francisco, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

"Joe what about Barry has he gone South yet. I got a letter from Lewis today he did not see Barry as yet I left orders with him if he showed up to tell him to go to Los Angeles." (Meyer, Haley and Talbot; People's Exhibit 260; R. Tr. V. 72, p. 5484; Cl. Tr. V. 2, p. 895.)

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August 15, 1910, H. W. Pohlman, at Seattle, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

> "Clancy met his man here after waiting a week for him & he being in here every day. I understand the situation and why you wanted to reach him." (Freeman and Talbot; People's Exhibit 518; R. Tr. V. 80, p. 6109; Cl. Tr. V. 3, pp. 1507, 1508.)

The "man" referred to was J. B. McNamara.

June 23, 1910, J. H. Barry wrote to J. J. McNamara, saying, among other things:

> "Dear Sir & Bro
>
> "Just a line from St Louis I trust you will pardon my delay in not answering you sooner relative to that Los Angeles proposition, but I have several matters in hand that I did not put in shape until a day or so ago. I have a few matters still on hand that I want to get cleaned up and just as soon as I am in a position to leave I will write you and you can transfer the information to Bro Clancy so that he will be posted at his end. Our election takes place here Saturday, but I do not go much on the result Nick and I are candidates for delegates to the convention but I have my doubts about either one of us landing will give you the result later that is one of the matters that has been holding me here Well I guess that is all for this time with

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best wishes to pres Ryan & yourself, I am," (Haley; People's Exhibit 508; R. Tr. V. 73, p. 5512; Cl. Tr. V. 3, p. 1492.)

March 29, 1910, John J. McNamara, at Indianapolis, wrote to J. E. Munsey, at Salt Lake City, Utah, saying, among other things:

"I received Bro. Clancy's telegram this morning to the effect that the Kearns building had been taken away from Jones and given to Mr. Burke This was welcome news to me and the only bad luck I wish is that you will be able to run Jones not only out of Salt Lake City but out of the state of Utah. I shall forward Bro. Clancy's telegram on to President Ryan for his information. I presume he told you what I had in mind as to your city. If the matter can be gone into in a safe way I will be on the job." People's Exhibit 198; R. Tr. V. 70, p. 5308; Cl. Tr. V. 2, pp. 698, 699.)

March 31, 1910, J. E. Munsey, at Salt Lake City, wrote to J. J. McNamara, at Indianapolis, saying, among other things:

"we will show the snakes up on the Utah Hotel they raised five colums yesterday good days work for snakes with one derrick I don't think Jones is up against it and wee will try and keep him that way. Clancy left here tuesday 2.25 P M. he didn't have time to go up in Idaho but told me to go up but I cant for at least

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two weeks. everything will be straightened out here in good shape by that time." (People's Exhibit 103; R. Tr. V. 70, p. 5310; Cl. Tr. V. 1, pp. 384, 385.)

We have already shown by the correspondence that Barry could not come to Los Angeles. We have also quoted from the testimony of McManigal regarding his interview with J. B. McNamara at the time that McManigal started for the coast.

In this connection McManigal testified further that J. B. McNamara told him that, "they had plenty of money on the Coast, and he was going out there for that purpose, to give them a damned good cleaning up and get some of their money." (R. Tr. V. 76, p. 5778); but he received a postal card signed "J. B. Brice" in the handwriting of J. B. McNamara, post marked "Seattle, Wash.," containing the quotation, "The best of friends must part." (R. Tr. V. 76, p. 5798.)

A little later McManigal went to J. J. McNamara's office and McNamara showed him a card signed "J. B. Brice." He testifies:

> "He also showed me another card which was written on it—"
>
> (Here counsel for defendant interposed an objection which was overruled.)
>
> "A. Which it now reads, 'Times for the news; it will read News for the Times,' and it was signed by 'J. B. Brice.'

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Q. And what day is this you are—
A. This was the night of September 29, 1910." (R. Tr. V. 77, p. 5897.)

This postal card clearly shows that J. B. McNamara had the Los Angeles Times in mind when he told McManigal that he was going to the coast to give them "a damned good cleaning up."

Going back to the year 1907, we find that the Bridgemen's Magazine, the official organ of the International, in the number for October, 1907, at page 718, contains the following resolution:

"Resolution No. 45, Introduced by Delegate Nilsson, of Local Union No. 51.

"Whereas, The Los Angeles Times, having secured the unlimited financial backing of the American Manufacturers' Association, and other kindred organizations of capital, is today not only the leading exponent of the so-called 'open shop,' but it is the most unfair, unscrupulous and malignant enemy of organized labor in America. and

"Whereas, The Times has succeeded in practically disrupting many of the unions of Los Angeles, and, unless strenuously opposed, will eventually make that city thoroughly non-union, thereby creating a breeding place for strike-breakers of all crafts and trades, and

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"Whereas, If unionism is crushed in Los Angeles it will be but a short time before the same methods are applied to other cities, and

"Whereas, The International Typographical Union, having spent more than fifty thousand dollars in an effort to unionize the Times, believes the struggle in Los Angeles has become national in its scope, vitally affecting all organized labor, and shall therefore be financed and prosecuted by the great American labor movement through its recognized head, the American Federation of Labor, and

"Whereas, We believe that if this course is pursued it will mean not only the unionizing of the Los Angeles Times, but the winning of a victory that will be of incalculable benefit to the cause of unionism; therefore be it

"Resolved, That the Executive Council be instructed to prepare resolutions to be presented to the next convention of the American Federation of Labor to the effect that a per capita tax of one cent per month be levied on all members of the Federation, the money raised thereby to be expended by a representative appointed by, and under the immediate supervision of, the president of the American Federation of Labor; and be it further

"Resolved, That the Executive Council be instructed to appoint one or more representatives to attend the conventions of national and international organizations

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and endeavor to get similar resolutions adopted and in every way to further this movement.

"Resolved, That the International Association of Bridge and Structural Iron Workers, at its eleventh annual convention instruct its delegates to the next convention of the A. F. of L. to concur with the International Typographical Union delegates in the above resolutions, which are to be presented by the delegates of the International Typographical Union.

"Committee recommends concurrence.

"Report of committee was adopted." (People's Exhibit 498; Cl. Tr. V. 3, p. 1439.)

In this connection we again call the attention of the court to People's Exhibit 249 referred to, ante, pages 117–118, from O. A. Tveitmoe, at San Francisco, to J. J. McNamara, at Indianapolis, in which he states:

"At present we are engaged, additionally to our ordinary duties, in directing and financing one of the greatest and most important battles that has been fought for unionism on the Pacific Coast. It is nothing less than a tremendous effort to unionize Los Angeles, which for years has been a constant menace not alone to union labor in California, but to the entire American trade union movement. * * *

"We intend to carry on this fight until Los Angeles is unionized, whether it takes

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one month, one year or ten years; and California has so often come to the rescue of our brothers in the east that at this time we feel she is entitled to ask for a little help without overdrawing the account of fraternal trade union reciprocity.

"Funds for the above purpose can be sent through the customary channels to the undersigned, who will properly receipt and account for them." (Meyer & Talbot; People's Exhibit 249; R. Tr. V. 72, p. 5474; Cl. Tr. V. 2, pp. 874, 875, 876.)

On behalf of the defendant, Andrew J. Gallagher testified that he resided at 1379 Masonic avenue, San Francisco, and in the early summer of the year 1910 he was connected with the Los Angeles strike as secretary-treasurer, with power to receive and receipt for all funds collected for the purpose of unionizing and strengthening the labor movement of Los Angeles, and with the power to disburse the funds and receive receipts for disbursements. (R. Tr. V. 99, pp. 7713–7714.)

The method of collecting money was by a per capita assessment of 25 cents a week on the membership of the Building Trades Council of San Francisco, the Labor Council, the State Building Trades Council of California, and the California State Federation of Labor; also contributions from all over the country. Eleven thousand unions outside of California

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were petitioned for donations, and about one thousand of them responded. (R. Tr. V. 99, pp. 7714, 7715.)

Gallagher identified the book in bound form, entitled, "Final Report of General Campaign Strike Committee for the Unionizing of Los Angeles, embracing receipts and expenditures, June 1, 1910—April 1, 1912, O. A. Tveitmoe, President, Andrew J. Gallagher, Secretary," which was introduced as defendant's Exhibit 2, the whole book being placed in evidence. (R. Tr. V. 99, pp. 7716–7719.)

According to his testimony, he received from all sources for strike purposes, $333,891.61; but the record shows that the total amount donated from all sources was $339,891.61. The witness further testified that the account was audited by an expert employed for the purpose who mentions on one of the pages of the audit that there were some vouchers missing. (R. Tr. V. 100, p. 7737.)

No attempt was made to explain this difference of six thousand dollars, nor were the missing vouchers produced, although it was stated by counsel for the defense on the trial that the vouchers were in the custody of the witness Gallagher in a safe deposit box in San Francisco. (R. Tr. V. 100, p. 7760.)

Among other documents embodied in the report, is one headed, "Final Report of State

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Building Trades Council of California," which is found at page 1660 of the Clerk's Transcript (Vol. 3), and purports to be made "by O. A. Tveitmoe, Secretary-Treasurer." Under the heading in this report "DONATIONS THROUGH UNIONS AND BY INDIVIDUALS," the first item is as follows: "1910 Aug 30, International Assn. B. & S. I. W., $1000.00." "Curly" Grow, a witness for the defense, testified that the abbreviations meant "International Association of Bridge and Structural Iron Workers." (R. Tr. V. 97, p. 7584.)

He also testified in a general way to the turning over of all of the funds received for usual strike purposes, but did not specifically testify to the turning over of this one thousand dollars (R. Tr. V. 97, p. 7586); and it is perfectly clear, upon the face of his testimony, that he was not in a position to know, and did not know what was done with this money.

Gallagher does not even attempt to show specifically what become of this $1,000; and, although the witness Scharrenberg essays to make some explanation of it, yet we submit that he entirely fails to do so.

This witness for the defense (Scharrenberg) testified that he was editor of the Coast Seaman's Journal and secretary of the State Federation of Labor, and a member of the strike committee to procure funds for the Los

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Angeles strike in 1910, continuously from its inception to its finish. (R. Tr. V. 100, pp. 7756, 7757.)

He testified to the turning over of all money to one Gunrey, since deceased, who insisted upon a receipt for every single disbursement; and that every receipt was forwarded to San Francisco and is now in the care of Gallagher in his safe deposit, with the exception of a few items which the expert testified to. (R. Tr. V. 100, p. 7760.)

He testifies to an item of $5,500 turned over under date of September 2, 1910, and that the item of $1,000 went to Los Angeles, together with $4,500, and was spent for usual strike purposes (R. Tr. V. 100, p. 7762); but we submit that the court will see, on reading this testimony, that the witness had no opportunity to know and could not know this to be the fact. He further testifies that he might have seen the $1,000 check from the International, but does not recall. (R. Tr. V. 100, p. 7763.)

He was then asked,

"Q. Did you deposit it in the bank?

A. No; Mr. Gallagher's bookkeeper.

Q. Did you draw the check that came down here to Los Angeles?

A. Mr. Gallagher's bookkeeper did that.

Q. Did you draw it?

A. No sir. I know the lady who did it. however.

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Q. You know the young lady who is supposed to have done it?

A. Yes sir, I know that she did it.

Q. Did you see her draw the check?

MR. MCKENZIE: Let him answer.

A. I work in the adjoining office, and I was constantly in consultation with her, and knew all about her business, and she knew about mine; there were—

MR. HARRIMAN: Just a moment. Let him finish his answer.

A. There were no secrets between her office and my office.

MR. NOEL: I move that be stricken out.

Q. Did you see this check?

A. I might have seen it, because frequently—I will tell you, will you let me tell you frequently.

THE COURT: The question is, did you see it.

A. I might have seen it, and if you will let me tell you how—we had one adding machine between the two offices, and we used that adding machine between us, and sometimes I used to add up her checks. It is very likely I might have seen that particular check.

MR. NOEL: It is very likely that you might have seen it?

A. Yes; I wouldn't swear to the fact that I did." (R. Tr. V. 100, pp. 7763, 7764.)

Of course, this witness could not swear that he ever saw the check, and his guess that he

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might have seen it is of no evidentary weight whatever.

The check from the International was Number 4715 in a book of cancelled checks (People's Exhibit 626) which was taken from the files of the International at Indianapolis, and bears the stamp of the government agent "Talbot," covered by the stipulation heretofore mentioned, regarding the identification of the various documents found at the Intertional headquarters. (*Ante*, p. 20.) (R. Tr. V. 100, pp. 7765, 7768.)

> "The International Association of Bridge and Structural Iron Workers, Indianapolis, Ind., August 26th, 1910. No. 4715. Pay to the order of O. A. Tveitmoe, Secretary, $1,000.00 One Thousand—$\frac{00}{100}$ Dollars, To the Columbia National Bank, Indianapolis, Indiana. F. M. Ryan, President, J. J. McNamara, Secy-Treas."

It bears on its face the impression of a rubber stamp,

> "Columbia National Bank, paid Sep 7 1910, Indianapolis, Ind."

On the back it bears the endorsement,

> "O. A. Tveitmoe, Secretary, per Gilson."

Underneath this endorsement is the impression of a rubber stamp,

> "Pay to the order of Continental and Commercial Nat'l. Bank, 1022 of Chicago, Ill. 1022. All prior endorsements guaranteed Metropolis Tr. & Sav. Bank, San Francisco, Cal. Frank N. Fish, Cashier."

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Underneath this endorsement is the impression of a rubber stamp,

> "Pay to the order of Columbia National Bank B3 Indianapolis, Ind. B3 Continental and Commercial Nat'l Bank."

Underneath this endorsement is the impression of a rubber stamp,

> "Endorsement Continental and Commercial Nat'l. Bank of Chicago guaranteed."

The check is perforated,

> "Paid 9-7-10."

The stub contained in Exhibit 626, to which this cancelled check is attached, reads as follows:

> "No. 4715. 8/26 1910. To O. A. Tveitmoe, Bldg. Trades Council of California. For Los Angeles. 1000."

It is a peculiar fact that the check reads not to "O. A. Tveitmoe, Building Trades Council," not to the "Building Trades Council," but to "O. A. Tveitmoe, Secretary." So far as appears from the evidence, this check was cashed by Tveitmoe, either personally or through his agent Gilson; and the lame attempt to show by Scharrenberg that he saw a check drawn to cover this specific item is not only absurd, but a practical concession that no legitimate explanation could be made of the

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disposition of the $1,000. The theory of the prosecution is, that this check was sent by J. J. McNamara, Secretary-Treasurer of the International, to Tveitmoe for use in procuring the dynamiting of the Times building, and any other depredations which J. J. McNamara might be able to commit in Los Angeles, in pursuance of his criminal purpose to give the Coast, "A damned good cleaning up," in furtherance of the conspiracy to force the large employers of labor in the United States, by means of intimidation and destruction, to adopt the "closed-shop" policy.

We submit that with all the vaunted perfection of system in accounting for the vast sum of $339,891.61, the witnesses present and testifying, if there had been any legitimate explanation of why this check was made to the order of Tveitmoe, Secretary-Treasurer, and cashed by him instead of being deposited to the order of the State Building Trades Council, such explanation would have been forthcoming.

It is a fact of great significance in this connection that on December 13, 1905, Frank M. Ryan, president of the International, at New York, wrote John J. McNamara, at Cleveland, Ohio, saying, among other things:

> "What was the decision of the Executive Board as to the Illinois Steel Company

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Johnson called me aside at the council meeting and stated very confidentially that some man had come from Chicago and told him their was 100 of our men working for the Illinois Steel Co. at their south plant I told him that the matter was before the Ex Board he said he would keep the matter to himself, the next morning after Massey & Dolan had a long session with me Geo Curran came along and after they all went out on the sidewalk Dolan & Massey came hurriedly in and wanted to know all about it I explained matters to them and they went away satisfied, at #40 meeting another Brother got up and wanted to know all about it I answered it fully makeing the same statement that I did to the Executive Board which seemed to satisfy. Now I am fully convinced that the secret service people have got their orders to aggitate this matter. I am well satisfied that Mitchell, Loflan, Greene et al and all that tribe havent now or never had anything to do with the policies of that particular plant and just at this time they would like to see a brake in the friendly relations there, of course the only thing to consider is what the best course is to pursue and do it. You never told me what Boyd's mission was to Cleveland As to Hagerty I dont know but that any excuse to lay down on that job would answer his purpose, McGovern should make an effort to convince thoes card men that they are makeing a grievious

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mistake by staying on that job. I had already written you that if the consent of executive had been received that McGovern & Butler should be sent out with instructions to keep expenses down as much as possible I did not catch all your remark over phone in relation to this matter, wish you would write me, as to just what you said about the expenditure of money The Peace Commissioners are still at work but not so hopeful, they seem to think that Carey is going to put up a fight about being uncermoniusly dismissed and oweing to his knowledge of the iner workings he is in a position to create mischief yet they hold he has got to go. I am told now that I will be brought face to face with our friend Carnegie when he is back in the city but I am sawing wood. I will say for the peace envoys that they have not broached the subject of money to me yet and I consider that rather remarkable for New York dont you Will return the old Letter's in a separate package. I was just informed over the phone by the American reporter that the Iron League Combination withdrew from the arbitration board after a hot session to day, and presumable because they could not bring about a general lockout. how much truth there is in this I do not know, new developements may be looked for here from day to day what I surmise is that the Erectors Association combined with the Iron League may try to

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pull off a general shut down here and elsewhere between now and first of the year some of our Locals fell so easy last year they may be encouraged to repeat their tactics this year if so I hope our people wont weaken so easy. The truck teamsters here broke the Bosses combine by standing pat their places were easier to fill than ours and we certainly ought to do as well unless something extraordinary comes up to prevent I intend to spend Xmas with my boys as I have not seen them for six months of course I do not want our friend Daniels to know it. I think it would be wise to discontinue the publication of our financial standing while this trouble is on what do you think" (Haley and Talbot; People's Exhibit 470; Cl. Tr. V. 3, pp. 1328–1331; R. Tr. V. 66, p. 4989.)

Under date, December 16, 1905, John J. McNamara, at Cleveland, wrote to Frank M. Ryan, at New York, a long reply to the foregoing letter, carbon copy of which is on the back of Ryan's letter, saying, among other things:

"It is rather strange that the Peace Commissioners have not suggested some sort of a financial deal before this.

"There seems to be a good deal of mistery in all localities and every one seems to be anxiously awaiting the new year to see what changes, if any, it will bring forth.

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"I shall instruct all our local unions to enter into no agreement that will in any way interfere with the present contest.

"I am pleased to note the success of the teamsters in New York, and like yourself, believe we should be able to accomplish the same results.

"I shall say nothing relative to your Chicago trip.

"As to discontinuing the publication of the financial standing will say that it is a constitutional requirement, but I shall ask the executive Board for an opinion as to same." (Haley and Talbot; People's Exhibit 470; Cl. Tr. V. 3, p. 1333; R. Tr. V. 66, p. 4989.)

This little constitutional difficulty seems to have been solved in favor of secrecy, for, we find in the Bridgemen's Magazine (the official organ of the International) for February 3, 1906, the following:

"To the Officers and Members of Local Unions:

Dear Sirs and Brothers:—While Section 20 of the International Constitution provides that the Secretary-Treasurer shall make a monthly report of all money received and expended and publish same in the Official Journal, it is the opinion of the International Executive Board that it would be well to omit at least part of this report during our strike against the A. B. and other companies.

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"This being our opinion the Secretary-Treasurer is hereby instructed to omit publication of "Expenditures" and "Recapitulation" until further instructions are given. The monthly financial report for the present shall consist of the receipts alone.

"A complete statement of "Disbursements" will be published in the Magazine at a later date. This will comply with the law and also serve the best interests of the International Association.

"Fraternally yours,

F. M. RYAN,
E. A. CLANCY,
J. H. BARRY,
THOS. McGOVERN,
BEN MOORE,
J. J. McCRAY,
M. H. DAVIS,
J. J. McNAMARA."

International Executive Board."

(People's Exhibit 162; Cl. Tr. V. 2, p. 626; R. Tr. V. 94, p. 7279.)

This policy of suppression was carried out in the Bridgemen's Magazine continuously down to December, 1909, being the last issue of the magazine put in evidence.

This action in violation of the constitution reminds us of the occasion when Charles F. Murphy, one of the Tammany Hall chieftains, was instructed to see a reputable lawyer in New York and request him to take certain

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action in behalf of Tammany Hall, and was met with the reply that the thing could not be done because it would be unconstitutional. After repeating the request several times he was met with the answer, "but I have already told you that it cannot be done,—it would be unconstitutional." To which Murphy blandly replied, "What is the constitution between friends?"

It occurs to us that making the check for a thousand dollars, payable to O. A. Tveitmoe, Secretary, was enough to give a color of regularity, sufficient to pass the scrutiny of curious Labor eyes, and at the same time permit easy diversion of the money for purposes other than what "Curly" Grow characterizes as "usual strike purposes," and this harmonizes exactly with the policy adopted back in 1905, of suppressing the truth with regard to the disposition of the funds of the International.

It appears on the face of defendant's Exhibit 2 that it is a "Final report of general campaign strike committee for the unionizing of Los Angeles, embracing receipts and expenditures June 1, 1910—April 1, 1912." It having been introduced in evidence by the defendant, the prosecution is entitled to any inference or illumination of the situation which can be drawn from it; and it certainly

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reflects very strikingly the bitterness of feeling which existed not only prior to the destruction of the Times building, but subsequent thereto, toward the Times and General Otis, and the Merchants and Manufacturers Association; and does not in the least conflict with the theory that the dynamite found at the houses of General Otis and Mr. Zeehandelaar, secretary of the Merchants and Manufacturers Association, on the morning of the Times building explosion, was placed there by the same conspirator who placed the infernal machine over "Ink Alley" which destroyed the Times building.

At page 6 of this report appears the following:

> "As for the results of our efforts, what more significant proof could be forthcoming than:
>
> "First—That the struggle is won.
>
> "Second—That the power of the Merchants & Manufacturers' Association is shattered and it today is engaged in a futile appeal to rebuild its empty treasury.
>
> "Third—The membership of the Los Angeles unions has increased by over ten thousand.
>
> "Fourth—The power of Otis has faded and the circulation of his daily organ of filth, the Times, has been hammered to where he dare not publish the figures.

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"Fifth—Twenty-two new unions have been organized in Los Angeles.

"Sixth—Organized labor has found its power and strength, as evidenced by the tremendous vote given Job Harriman for mayor of that city in the campaign of 1911.

"Seventh—Big business keeps reiterating the 'hope that organized labor will be fair with capital,' etc."

Nor does it render the least improbable the theory of the prosecution that when J. B. McNamara reached the coast, intending to give it, "a damned good cleaning up," with at least a thousand dollars in the hands of Olaf Tveitmoe available for the purchase of dynamite in large quantities, for the expenses of transporting and secretly caching the dynamite, McNamara got in touch with Schmidt and Caplan, and with their assistance procured the powder, cached it and used a portion of it for his infernal machines for the Times building, General Otis' house and Mr. Zeehandelaar's house.

OVERT ACTS COMMITTED ON THE PACIFIC COAST IN FURTHERANCE OF THE CONSPIRACY TO FORCE THE ADOPTION OF THE "CLOSED-SHOP" POLICY.

Having referred as briefly as possible to enough of the large volume of evidence showing the character, scope and manner of execu-

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tion of the nation-wide conspiracy to compel employers of labor to adopt the closed-shop policy, together with some instances of the overt acts of violence and destruction committed throughout the country, up to the time when the emboldened conspirators determined to extend their efforts to the Pacific Coast, we shall now give a brief outline of the evidence upon which the jury found the defendant Schmidt guilty of complicity in the overt act which caused the death of Charles Hagerty.

We have shown that Eugene A. Clancy was for a long time prior to the destruction of the Times building, first vice-president and a member of the Executive Board of the International Association of Bridge and Structural Iron Workers, and was actively engaged in the furtherance of the conspiracy at various points in the United States.

We have shown his extreme anxiety that either Hockin, an experienced dynamiter, or Barry, also a dynamiter, should be sent to the coast to keep up the good work; and that when it was found inadvisable to send Hockin or Barry, J. B. McNamara, dynamiter and inventor of the Tattoo Junior Clock-Infernal Machine, was sent to give the coast "a damned good cleaning up."

The nature of the case requires a little repetition. We again call the attention of the

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Court to the testimony of Ortie E. McManigal, referring to the telegram from Eugene A. Clancy to J. J. McNamara (People's Exhibit 23; Cl. Tr. V. 1, p. 305; R. Tr. V. 76, p. 5768; ante, this Brief, p. ~~101~~ 121). "Has Jim left for here? If not, have him come at once." This telegram was exhibited to McManigal by J. J. McNamara, Secretary-Treasurer of the International, at his office at headquarters on July 15, 1910. (R. Tr. V. 76, p. 5768.)

J. B. McNamara was present at the time and said to McManigal, "I wish you could go along with me," to which J. J. McNamara retorted, "No, nothing doing. I will have to have one of you fellows here, so if there is anything comes off out on the Coast, that I can have an echo in the East, and besides that, I have got four or five jobs in sight now, and I could keep you busy around here." (R. Tr. V. 76, p. 5765.)

J. B. McNamara discussed with J. J. McNamara about the route he would take and the best way to buy his ticket, and whether he should buy a round-trip ticket. J. B. McNamara said:

> "Well, supposing I get picked up on the Coast there; I will have this return ticket in my pocket, that will direct right back here to Indianapolis."

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J. J. McNamara said:

> "When you get down to the depot, you can talk the matter over down there, and see which way. Maybe you can sell the ticket after you get out there. When you get out to San Francisco, you get in touch with Clancy, and he will introduce you to the bunch out there and you take your instructions from Clancy, and you will probably be gone three or four months. In the meantime, let me hear from you once in a while." (R. Tr. V. 76, p. 5771.)

Later, in this conversation, J. B. McNamara said to McManigal that "he was going to the Coast to give them a damned good cleaning up." (R. Tr. V. 76, p. 5772.)

The two had dinner at June's Restaurant, Indianapolis, and then boarded a train for Chicago. (R. Tr. V. 76, p. 5773.)

J. B. McNamara "had two suit cases, one of them was one that I had seen him have before, and the other one was a new one, a yellowish colored suit case; he told me that he had a dozen infernal machines in the suit case, he pointed to the old one, I had seen him have before." (R. Tr. V. 76, p. 5774.)

J. B. McNamara also told McManigal "that they had a couple of men working out on the Coast, but they were not in the explosion business, they were more in the fire—setting off fires to different buildings." (R. Tr. V. 76, p. 5777.)

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This was the last that McManigal saw of J. B. McNamara.

We again refer to the letter of O. A. Tveitmoe, dated July 26, 1910, to J. J. McNamara, referring to the fight to unionize Los Angeles, in which he said, among other things:

> "We intend to carry on this fight until Los Angeles is unionized, whether it takes one month, one year or ten years; and California has so often come to the rescue of our brothers in the east that at this time we feel she is entitled to ask for a little help without overdrawing the account of fraternal trade union reciprocity.
>
> "Funds for the above purpose can be sent through the customary channels to the undersigned, who will properly receipt and account for them." (Meyer & Talbot; People's Exhibit 249; R. Tr. V. 72, p. 5474; Cl. Tr. V. 2, pp. 874, 875, 876; ante, this Brief, p. ~~118.~~ 140.)

This letter bears date just two weeks later than that of the interview between J. B. McNamara and McManigal at the International headquarters above referred to.

The check for $1,000, signed by Frank M. Ryan and J. J. McNamara, to the order of "O. A. Tveitmoe, Secretary," bears date August 26, 1910, and the $1,000 item appears in Tveitmoe's report as secretary-treasurer of the Building Trades Council, contained in

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defendant's Exhibit 2, under date, August 30, 1910. This shows a lapse of four days between the date of the check and its receipt by Tveitmoe, which would be about the course of post between Indianapolis and San Franciso. The "paid-stamp" on the face of the check shows payment by the Indianapolis bank September 7, 1910, or eight days subsequent to the receipt of the check by Tveitmoe. As the check went first to the Continental and Commercial Nat'l. Bank of Chicago, and thence to the Indianapolis Bank, it is clear that it must have been cashed by Tveitmoe very shortly after its receipt by him.

In the meantime, under date, August 15, 1910, H. W. Pohlman, the business agent of the Iron Workers Association at Seattle, wrote to J. J. McNamara, saying, among other things:

> "Clancy was here for 4 days & has made some impression. * * * We had a good meeting & Clancy gave a good talk & I also had him address the Bldg. Trades. * * *
>
> "Clancy met his man here after waiting a week for him & he being in here every day. I understand the situation & why you wanted to reach him." (Freeman & Talbot; People's Exhibit 518; R. Tr. V. 80, p. 6109; Cl. Tr. V. 3, p. 1507, 1508; ante, this Brief, ~~119.~~ 146.)

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McManigal testified to the receipt of the post card signed "J. B. Brice," in the handwriting of J. B. McNamara, post marked "Seattle, Wash.," which contained the quotation "The best of friends must part." (R. Tr. V. 76, p. 5798.)

This would put J. B. McNamara in Seattle on July 30th. He would have time to wait around there a week and then see Clancy before the letter of August 15th was written by Pohlman, and evidently the person referred to in the letter, "Clancy met his man," is J. B. McNamara.

Another piece of confirmatory evidence has already been alluded to. When McManigal met J. J. McNamara in his office at headquarters on the 29th of September, 1910, McNamara showed him the card signed "J. B. Brice," containing the quotation, "The Times for News; it will read News for the Times." (R. Tr. V. 77, p. 5897.)

Frank Eckhoff, witness for the people, testified that while on a fishing trip with J. B. McNamara in June or July, 1910, McNamara showed him a telegram from J. J. McNamara, directing him to come to Indianapolis insisting that he wanted him to go to the coast. (R. Tr. V. 54, pp. 4064, 4065.)

George Dixon, Jr., a witness for the people, testified that on August 6, 1910, J. B. Brice

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registered at the Argonaut Hotel, in San Francisco, and was assigned to room 653. (Hotel Register, People's Exhibit 321a; R. Tr. V. 58, p. 4432; Cl. Tr. V. —, p. ——.)

The signature of J. B. Brice on the register was identified as the handwriting of J. B. McNamara by Milton Carlson, the well known handwriting expert of Los Angeles (R. Tr. V. 93, p. 7247) and the witness Herbert C. Wood (R. Tr. V. 64, p. 4843) and Frank F. Wocher (R. Tr. V. 65, p. 4892), bank officers of Indianapolis. Dixon further testified that J. B. Brice registered at the Argonaut Hotel August 19, 1910, and this registration was also proved by Carlson, Wood and Wocher, to be J. B. McNamara's handwriting. (People's Exhibit 321b; R. Tr. V. 58, p. 4434; R. Tr. V. 92, p. 7162; Cl. Tr. V. 2, p. 1023; Carlson; R. Tr. V. 93, p. 7247; Wood; R. Tr. V. 64, p. 4844; Wocher; R. Tr. V. 65, p. 4893.)

A. Kendall on behalf of the prosecution, testified that the mill of the Pacific Mill and Lumber Company, at Oakland, California, was dynamited on August 20, 1910; that the building was blown almost entirely to pieces; that he had been running open-shop and having much trouble with the unions; that he had two incendiary fires, the first one on the night of July 9, 1909, and the second on August 15, 1909. (R. Tr. V. 83, p. 6379.)

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And this testimony was corroborated by Charles A. Fife, a police officer of Oakland, California, on behalf of the people. (R. Tr. V. 83, p. 6390.)

Harry Brandt on behalf of the people, testified that he was superintendent of construction for Stone & Webster, at Seattle, who were erecting the Lyon Building; and that on August 31, 1910, between ten and eleven o'clock at night, this structure was dynamited. The explosion was set under steel columns in the construction around the elevator shafts; and that Stone & Webster were operating "open-shop" at that time. (R. Tr. V. 88, pp. 6823, 6824.)

This testimony was corroborated by Rudwig Wold, who stated that he heard the explosion and that it was the Lyon Building which was dynamited.

Donald Vose testified to a conversation with the defendant Schmidt a short time before Schmidt's arrest in New York, in which Schmidt told him that he had been in Seattle with J. B. McNamara and had blown up a building there, the Lyons Building, or Club Building, "I may be mistaken about the name. They had done the job in such a way that it would look like the sewer gas, or some gas under the building, had exploded and said

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they were sitting in the railroad station waiting for the train to return to San Francisco when they heard the explosion go off." (R. Tr. V. 91, pp. 7087, 7088.)

Vose also testified that Schmidt told him that "after they did this job in Seattle, that they came to San Francisco and that they had blown up some building, or something, in Oakland; that was before they did this job in Los Angeles." (R. Tr. V. 91, p. 7088.)

Charles Busby, manager of the Winchester Hotel, San Francisco, on behalf of the People, identified the register containing the registration of J. B. Brice, Friday, September 2, 1910. (People's Exhibit 129; Busby, R. Tr. V. 48, p. 3551; Benjamin, R. Tr. V. 92, p. 7162; Cl. Tr. V. 1, p. 458.)

This was proven to be the handwriting of J. B. McNamara by experts Carlson (R. Tr. V. 93, p. 7248), and Wood (R. Tr. V. 64, p. 4835.)

Mrs. Lena Ingersoll testified on behalf of the People that she kept a rooming house at 3656 20th street, San Francisco, and knew M. A. Schmidt; that J. B. Brice, or J. B. McNamara, on the 4th of September, 1910, rented a room from her as J. B. Brice; that he had two suit cases which he took to his room; that shortly after he went to his room, the defendant, M. A. Schmidt, called up and she

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answered the phone and recognized his voice. Schmidt said he wanted to speak to Mr. Brice, and as Brice would not talk over the phone, he said, "I will be right over." Ten or fifteen minutes later Schmidt came over. She asked Schmidt if he had sent Brice to her house, and he answered, "Yes"; "he told him I had rooms to rent." Schmidt went to Brice's room which Brice occupied for about ten days, that is, until the 14th of September, 1910; that Schmidt came to see Brice every day and was accustomed to holding long consultations with Brice in the latter's room, sometimes remaining in the room an hour or so; but sometimes they would go right in and come out; that Schmidt phoned Brice quite often and came in the evenings, "They seemed to be together all the time, nearly." The witness heard them talking with reference to a job, and says, "I thought it was getting a job, something of the kind." (R. Tr. V. 83, pp. 6407, 6409.)

She further testified that Schmidt lived at the house of Belle Lavin, about a block and a half from her house, at 2410 Mission street; that she remembered on one occasion going to the house of Mrs. Lavin, where she saw "Schmitty"' and Brice, during the time Brice was stopping at her house.

Brice left her house about September 14, 1910, directing her, if "Schmitty" called up,

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to tell him to call up the number written on a piece of paper marked "Douglas 3393," and "ask for Brice." (People's Exhibit 533; R. Tr. V. 83, p. 6411; Cl. Tr. V. 3, p. 1518.)

This number was found later to be the number of the Argonaut Hotel; that he thereupon left, taking one of his suit cases with him; the other suit case he had taken away before then. Later in the day she received a phone call from Schmidt and gave him the number, as requested by Brice. (R. Tr. V. 83, pp. 6412, 6413.)

Mrs. Ingersoll further testified that on September 17th, about three days after Brice had left her house, she again saw Schmidt and said to him, "Why, you look like you have been working,"—that "he looked so dirty and sunburned * * * I think he said he was across the bay, or something like that." (R. Tr. V. 83, p. 6422.)

The witness then identified a suit case introduced by the People as People's Exhibit 571, as one of the suit cases which J. B. Brice had brought to his room. This suit case contained two copies of the San Francisco Post and one copy of the San Francisco Call, all of them containing an account of the Times explosion; also four coils of fuse, one box of blasting caps, unopened, one can with the fuse

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attached, and parts of a clock,—the fuse consisting of one coil of white and three coils of black. (The presence of these newspapers in the suit case shows that J. B. McNamara remembered "J. J.'s" instructions to get clippings. (R. Tr. V. 83, pp. 6422, 6423.)

These several articles were all identified by police officer Gibson and received in evidence as People's Exhibits 571a to j. The suit case with the foregoing contents was found checked in the Southern Pacific Station at the Oakland Ferry, San Francisco. (R. Tr. V. 84, pp. 6482, 6487.)

Mrs. Ingersoll further testified that on October 1, 1910, at about 11 o'clock p.m., J. B. Brice phoned her for a room, and later in the evening called at her house; that she told him he could go away as she had no room for him that night:

> "He stated he wanted to stay there that night; because he didn't want to bother getting a room somewhere else; he said, any kind of accommodation would suit him, and I told him that I could not bother fixing a room at that time of night, and he would have to go, and he insisted on him taking the front room, just as it was, sleeping on the davenport, and told me that he would pay the house rent for a whole month, if I would let him stay there that night * * * I did not let him stay; he left, and I told

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him to call up next day and I would get the room prepared for him. I was figuring on getting rid of him that night, and giving him the same answer tomorrow." (R. Tr. V. 83, pp. 6414, 6418.)

Witness further testified that he called up the next evening at about five or six o'clock, but said nothing about the room. (R. Tr. V. 83, p. 6419.)

Mrs. Ingersoll further testified that she never saw Schmidt after October 1, 1910, until he was arrested. (R. Tr. V. 83, p. 6421.)

On cross-examination, she testified that when Brice left her house on the 14th, he said he was going across the bay; "I think he said to Alameda or some place over there." (R. Tr. V. 83, pp. 6437, 6438.) That Schmidt told her on the night of the 17th of September, when he called after Brice had left, that he had been over to Corte Madera. (R. Tr. V. 83, p. 6439.)

George Dixon, Jr., assistant manager of the Argonaut Hotel, identified the register of the Argonaut Hotel of San Francisco, containing the registrations under date, September 18, 1910, of the names of J. B. Brice and F. A. Perry. (People's Exhibit 322b; R. Tr. V. 58, pp. 4430, 4437; Cl. Tr. V. 2, p. 1024.)

Frederick Hill testified that in September, 1910, he was chief clerk of the Argonaut

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Hotel; that J. B. Brice registered there on September 18th, and F. A. Perry registered there on the same date. (R. Tr. V. 58, p. 4450.)

The register of the hotel shows that they were both assigned to the same room, No. 366. He identified J. B. Brice as being J. B. McNamara. The signature of "F. A. Perry" on this register was identified as that of the defendant, M. A. Schmidt, by the experts Milton Carlson (R. Tr. V. 92, p. 7223); Wood (R. Tr. V. 64, p. 4846); and Wocher (R. Tr. V. 65, p. 4884.)

T. T. McCachran testified that in September, 1910, he was the bell man at the Argonaut Hotel; that Brice and Perry occupied room 366, the latter part of September; and he delivered a suit of clothes to Perry. That he had identified Brice in the county jail as J. B. McNamara, and he identified Schmidt in court as Perry. (R. Tr. V. 59, pp. 4464, 4465.)

Tillie Higgins testified that she was a stenographer for the Asiatic Exclusion League, in the Metropolis Bank Building, San Francisco, during the year 1910; at that time she was not married and her name was Tillie McCarthy. She knew O. A. Tveitmoe, whose office was on the same floor with the Asiatic Exclusion League's office and next to it,—"the next suite of offices"—the rooms were adjoining. Tveitmoe was President of the League.

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She knew M. A. Schmidt and had seen him at the office of the Asiatic Exclusion League prior to October 1st, when the Times building was destroyed. She knew Anton Johannsen, who called at the Asiatic Exclusion League's office for Schmidt. The Exclusion League had the same telephone number as the Building Trades Council. (R. Tr. V. 89, pp. 6960, 6961, 6962.)

Charles Walgamuth testified that he lived at Corte Madera, where he saw defendant Schmidt in the early part of the summer of 1910, around the railroad station and the hotel; also a day or two after October 1st; and he had never since seen him until he was arrested. (R. Tr. V. 90, pp. 7019, 7020.)

Dr. F. D. Ashworth testified that he was a dentist, practicing in San Francisco. He knew Belle Lavin and Lena Ingersoll. He met the defendant Schmidt the last part of August or the first part of September, 1910, at Belle Lavin's house, and J. B. Brice was one of the party. He identified Brice as J. B. McNamara. He saw Schmidt a dozen times. (R. Tr. V. 83, pp. 6395, 6396.) The first time he met Brice was when he met him and Schmidt together at Mrs. Ingersoll's. He testified:

> "Q. Now, the defendant, Schmidt, is the man you saw on that occasion, is he?
> A. Yes sir." (R. Tr. V. 83, p. 6397.)

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"Q. How does Schmidt compare in appearance now as he did then?

A. He looks a little thinner." (R. Tr. V. 83, p. 6398.)

Mrs. Rosie Brown testified that she resided at 2410 Mission street, San Francisco, in 1910, in the house of Mrs. Belle Lavin. The defendant Schmidt lived there about eight months prior to October 1st, and she knew him. She also met J. B. Brice there, going to and from Schmidt's room; likewise David Caplan. She saw Schmidt at the house on Saturday, October 1, 1910, the day of the Times explosion. (R. Tr. V. 84, pp. 6493, 6497.)

She saw him go across the street to get the paper. He left the house that afternoon and she never saw him again until after his arrest; he had been living at Mrs. Lavin's for about eight months. (R. Tr. V. 84, pp. 6497, 6498.)

Schmitty and Mrs. Lavin and she used the same kitchen. (R. Tr. V. 84, p. 6502.) She knew it was October 1st, "because we had the paper there and we saw it; it was the next day of the explosion." (R. Tr. V. 84, p. 6507.)

William Henry Brown, the husband of Mrs. Brown, testified that he lived at Mrs. Lavin's house, 2410 Mission street, San Francisco, during the year 1910, he knew the defendant there, and David Caplan, and met J. B. Brice

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right after Schmidt moved to the house prior to October 1, 1910. (R. Tr. V. 84, p. 6515.) The witness then identified Caplan and Schmidt in open court.

Witness further testified that he saw Johannsen and his wife, E. B. Morton and his wife, a man named Gray, and Tveitmoe at the house, visiting Schmidt during the summer of 1910. The defendant Schmidt was away during that summer for about six weeks.

Witness had a conversation with Schmidt as follows:

> "I asked him where he had been; we got talking. He said he had been down to Los Angeles, and so we got talking further. He says, 'They are having an awful time down there,' he said. He says, 'they are beating men up down there.' * * * 'They won't give a union man no chance down there at all. It is a regular Otis town they are running. *There is something going to happen to him pretty soon.*' " (R. Tr. V. 84, pp. 6519, 6520.)

He testified that this conversation was sometime in August, just prior to Labor Day. He saw Brice on October 1st, about 5 o'clock in the evening at the house and Brice inquired for Schmitty, "I says, 'he has gone; he has beat it; he is not here.' He said, 'do you know where he has gone?" I says, 'No, I don't.' " Then Brice closed the door and went away.

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The witness testified that the man Brice was J. B. McNamara. He never saw Schmidt again until he was arrested. Schmidt, during the year 1910, was smooth shaven, fuller in the face, and his cheeks were redder than now. He saw David Caplan around the house during the summer of 1910. (R. Tr. V. 84, pp. 6515, 6519, 6520, 6522.)

On cross-examination Brown testified:

> "Mrs. Lavin told me if anybody had inquired about if Schmitty lived here, to tell them, no, which I did."

And Schmitty had already gone. (R. Tr. V. 84, p. 6536.)

James Fay, who lived at Corte Madera, knew Schmidt during the latter part of 1910, and saw him many times at Corte Madera, but never after October 1, 1910. (R. Tr. V. 90, p. 7105.)

Mrs. Anna Boehme testified that she and her husband were proprietors of the hotel at Corte Madera during 1910. The defendant Schmidt lived at the hotel during the early part of 1910, and worked for Johannsen, who paid Schmidt's board at the hotel. Schmidt left the hotel four or five months before the Times building was blown up, saying he was going to live on Mission street with Mrs. Lavin, something in the neighborhood of 2410 Mission street. Thereafter he came over to Corte

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Madera nearly every Sunday. Witness saw Schmidt with Tveitmoe, Mr. Lofthouse, Mrs. Belle Lavin and Eric Morton nearly every Sunday, up until about a week previous to the Times building being blown up. "I never saw him afterwards," except a week afterwards Schmidt was at the hotel with Mrs. Lavin. The witness identified Schmidt in open Court and said, "he isn't as stout and had rosy cheeks." (R. Tr. V. 56, pp. 4240, 4246, 4247.)

Bartholomew Mahoney, an employee in the post office at San Francisco, identified Exhibits 534, 535, 536 and 537 which are post-forwarding orders signed by Schmidt. Schmidt's handwriting on these exhibits was identified by experts Carlson (R. Tr. V. 93, pp. 7242, 7243); Wood (R. Tr. V. 64, pp. 4856–4859); and Wocher (R. Tr. V. 65, p. 4883).

The exhibits are the following:

Exhibit 537, January 19, 1910, "Old address: Genl Delivery, San Franciso. New Address: Genl Del Corte Madera Marin Co. Until Notice." (R. Tr. V. 75, pp. 5702, 5704; Cl. Tr. V. 3, p. 1522.)

Exhibit 536, April 12, 1910; "Old address: Corte Madera, Cal. New address: General Del San Francisco Cal." (R. Tr. V. 75, pp. 5702, 5704; Cl. Tr. V. 3, p. 1521.)

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Exhibit 535, June 15, 1910: "Old address: Genl Del San Francisco New Address: Genl Del Los Angeles Until Notice. For the Postmaster at San Francisco." (R. Tr. V. 75, p. 5701; Cl. Tr. V. 3, p. 1520.)

Exhibit 534, August 4, 1910: "Old Address: Los Angeles Cal New address: General Del San Francisco." (R. Tr. V. 75, pp. 5702, 5703; Cl. Tr. V. 3, p. 1519.)

Walter L. Smith, who was proprietor of the Chapman Hotel, Los Angeles, during August, 1910, identified the registration of J. B. Brice at the hotel August 7, 1910. (People's Exhibit 84; R. Tr. V. 46, p. 3411, 3412; Cl. Tr. V. 1, p. 328.)

Witness subsequently saw the man who registered "J. B. Brice" in Court a short time afterwards and learned that he was J. B. McNamara. (R. Tr. V. 46, p. 3412.)

The register showed the entry "J. B. Brice, Seattle, Wash.;" and was proven by experts Carlson (R. Tr. V. 93, p. 7247); Wood (R. Tr. V. 64, p. 4840); and Wocher (R. Tr. V. 65, p. 4894), to be the handwriting of J. B. McNamara.

The witness also proved registration of O. A. Tveitmoe at the Chapman Hotel, July 7, 1910, and Andrew Gallagher and Edward W.

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Miller, on the same date. (People's Exhibit 85; R. Tr. V. 46, p. 3414; Cl. Tr. V. 1, p. 329.)

Mrs. Maude S. Stewart testified that she was housekeeper and office assistant at the Chapman Hotel, Los Angeles, during the summer of 1910. This witness identified Schmidt in open Court and testified that she remembered him and had seen him during the summer of 1910 at the Chapman Hotel, going under the name of "Perry." "Frequently, he was in and out of the hotel." (R. Tr. V. 89, p. 6943.)

She also saw Tveitmoe there during the same summer, and identified him in open Court. She also knew Anton Johannsen, and he also stopped at the hotel during the same summer. She met Schmidt under the name of Perry at Johannsen's house at the beach, and saw him in company with Johannsen frequently during that summer, at the Chapman Hotel. (R. Tr. V. 89, pp. 6942, 6943, 6944.)

J. Y. Bedell, who was room clerk at the Hotel Hayward, in Los Angeles, prior to October 1, 1910, saw O. A. Tveitmoe at the hotel. He knew Tveitmoe and saw him register August 23, 1910, "O. A. Tveitmoe & friends." Tveitmoe took two rooms for himself and friends. (Register, People's Exhibit 587; R. Tr. V. 92, p. 7147; Cl. Tr. V. 3, p. 1628.)

H. C. Fryman, proprietor of the Hayward Hotel, also saw Tveitmoe as a guest at the hotel

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four or five days in August, 1910. (R. Tr. V. 92, p. 7151.)

A. Conrad, bell boy of the Hotel Hayward, in August, 1910, saw Tveitmoe at the Hayward Hotel during that time, and testified that Tveitmoe had a room there with another man, and had guards stationed outside the door. (R. Tr. V. 92, pp. 7153, 7154.)

K. A. Diekelmann, who was chief clerk of the New Baltimore Hotel, Los Angeles, during September, 1910, testified to the registration of *J. B. Brice, September 29th, 1910,* and his assignment to room 402. Brice checked out the night of September 30th, 1910, at 7 o'clock. (R. Tr. V. 46, pp. 3421, 3424.)

The witness testified:

> "Why, I assigned him to his room and when I turned the register around and I noticed he was from Chicago, and being that we had just opened a hotel at that time, and that I had just come from Chicago shortly before that, why, I was interested to meet him; so when he came down again to the office, I introduced myself to him and I told him I was from Chicago also, and we spoke about, I presume, a few minutes, about places in Chicago." (R. Tr. V. 46, p. 3424.)

In a further conversation, the next day Brice said, "I am leaving tonight on the Lark for San Francisco." This was the last time the

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witness spoke to Brice. (R. Tr. V. 46, pp. 3425, 3426.)

William H. Brown testified that he had been working for the Los Angeles *Times* since the 14th of April, 1896, twelve years of the time hauling, and since then working inside. He was working for the "Times" on the 1st of October, the date of the explosion. His hours were from 11:30 p.m. to 5:30 a.m. (R. Tr. V. 93, p. 7250.)

On the morning of September 29, 1910, he was at work as usual, the morning before the explosion. Witness further testified that he was cleaning up at about three o'clock in the morning.

> "And there was a man came in, and as he came into the room he spoke to me, 'Good morning' or something of the kind, and I spoke to him; and I noticed that he was a stranger to me, and he spoke something about the roll of paper, he asked me what work I was doing, and I told him I was handling the roll paper; spoke of it being heavy work; I said it was, and we talked a minute or two that way, and I asked him if he was a route man or carrier, or if he worked in any department there; he said, that he was not a route man or carrier and was not working for the *Times* now, but he said he had worked in the mailing department and thought of applying again for work in there again, and he talked

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on for a minute or so and finally asked me where he would go to apply for work in the mailing department, and I told him if he had worked in the mailing department that that would be the place to go and apply again, mailing clerk, would tell him about that but there was nobody in this department could tell him anything about it, they had nothing to do with the work in the stereotype room. He was a stranger, and I thought he had no business in there, and I looked him over carefully, and I wondered what he was there for. * * * He talked for a minute or so, and he went away. He went west and went through the door into the partition leading either—either leading out up the stairway or into the mailing room, but I don't know where he went from there * * *.

Q. Did you ever see him again?

A. Yes, sir, * * * In the court room in this building during the trial of the McNamara brothers.

Q. And who went to the court room with you on that occasion?

A. Mr. Ford.

Q. Mr. Ford, who was then Assistant District Attorney or Deputy District Attorney?

A. Yes, sir.

Q. And you saw the man there at that time, did you?

A. Yes, sir.

Q. Did you point him out to anyone?

A. I pointed him out to Mr. Ford.

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Q. The same man whom you had seen in the basement?

A. Yes, sir.

Q. Do you know who that man was?

A. Yes, sir; I was told who he was.

Q. Who was it?

A. He was Mr. J. B. McNamara."

(R. Tr. V. 93, pp. 7252, 7253, 7254.)

W. J. Ford testified that he knew Mr. Brown, who was just on the stand; that he remembered an occasion when he came to the court room with the witness during the trial of J. B. McNamara; that witness went into the court room with Mr. Brown,

"Mr. Brown pointed to Mr. J. B. McNamara and said, 'That is the man that I saw in the *Times* basement; he knows me all right. Did you see him drop his eyes?'

Q. And Mr. Brown indicated or pointed to J. B. McNamara at that time?

A. He did."

(R. Tr. V. 93, p. 7255.)

The foregoing testimony shows clearly that Schmidt must have been in Los Angeles during the six weeks when Brown says he was absent from the house of Belle Lavin, at 2410 Mission Street, San Francisco, and was in touch with Tveitmoe, Johannsen and Gallagher and other labor leaders of San Francisco. It must have been during this time that Schmidt observed

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the conditions in Los Angeles which he described to Mr. Brown, saying, among other things: "It is a regular Otis town they are running. There is something going to happen to him pretty soon." (Ante, this Brief, p. ~~153.~~ 179.)

We now come to the evidence which demonstrates that Schmidt participated in chartering the launch "Pastime"; and in the purchase of the letters used to alter the name of the launch to "Peerless"; and in the purchase of the powder which he and McNamara transported from Giant, California, to San Francisco.

Margaret Sheldon was, in September, 1910, a subscription clerk for the San Francisco Call. She testified to having received an advertisement for a boat, under date, September 17, 1910, which was produced and identified by her. A facsimile of this exhibit (People's Exhibit 526) is inserted here.

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The handwriting of the exhibit was proven by Carlson (R. Tr. V. 93, pp. 7226, 7228, 7233), and Wocher (R. Tr. V. 65, p. 4882) to be that of the defendant, M. A. Schmidt. (R. Tr. V. 84, pp. 6475, 6476.)

W. D. Stolte, who was manager of the San Francisco Examiner during September, 1910, identified a similar advertisement for a boat. (People's Exhibit 527; R. Tr. V. 88, p. 6833; Cl. Tr. V. 3, p. 1513.)

He testified that it was inserted in the Examiner September 17, 1910. The handwriting of this exhibit was proven by Carlson (R. Tr. V. 92, p. 7172), Wood (R. Tr. V. 64, p. 4849), and Wocher (R. Tr. V. 65, p. 4882) to be the handwriting of M. A. Schmidt. (R. Tr. V. 88, p. 6841.) A facsimile of this exhibit is inserted here.

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J. D. Hunter testified that he was chief of the secret service of the district attorney's office, and together with H. I. Baring brought the defendant Schmidt from police headquarters, in the city of New York, to Los Angeles; and on the morning of the 24th of February, 1915, the defendant Schmidt wrote a telegram in the presence of the witness and Baring, which he identified. The telegram was admitted in evidence as People's Exhibit 510. (R. Tr. V. 62, pp. 4712, 4713, 4716; Cl. Tr. V. 3, p. 1496.)

This testimony was corroborated by Herbert Baring. (R. Tr. V. 70, pp. 5241, 5242.) A facsimile of the telegram is here inserted.

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The testimony of experts Carlson, Wood and Wocher was based on a comparison of this telegram as a proved standard with the two advertisements. We are satisfied that upon the most casual comparison of these documents the court will have no doubt that the defendant wrote them all.

Mrs. M. J. Peterson testified that she lived on the bay, in Oakland, in 1910, and her husband was in the business of renting launches, sailboats and rowboats. (R. Tr. V. 86, p. 6656.)

On September 19, 1910, the defendant Schmidt, whom she positively identified in open court, and a tall man, very thin, sharp-featured, came to their place to rent a boat. They said they didn't want

> "Anybody to go with them, they wanted to go alone. I said 'For what would you want the launch for?' He said, 'Well, they were going up either the river or up the bay' * * * And this man offered to put $500 as a deposit on the launch and when they came back they would deduct the $10 or $5, whatever it might be." (R. Tr. V. 86, p. 6658.)

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Witness refused to let them have the launch, and Schmidt took the number of the owner of the boat and said,

> "We haven't time; we want the boat today, * * * we will go down the line and take the other boat." (R. Tr. V. 86, p. 6659.)

Douglas Burrowes, witness for the defendant, testified that during the year 1910, he was half owner with E. H. Baxter of a launch called the "Pastime." In September, 1910, he and John Stanley were at the Webster Bridge, Oakland, when two men come to hire a boat. One gave the name, "Perry," and the other "Brice." Witness showed Perry how to operate the "Pastime." He talked nearly all the time to Perry. He testified to the following description of Perry:

> "Perry was a man about 5 feet 9, I should judge he weighed 190 pounds; had a very ruddy complexion; smooth shave; round face; he had a peculiar eye, his left eye was sunken in." (R. Tr. V. 96, p. 7442.)

He stated in open court that the defendant was not Perry. He described Brice as weighing one hundred fifty pounds and about five feet ten in height, with sallow complexion and sharp features. Perry and Brice told him they lived at the Argonaut Hotel, San Francisco.

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They left to make arrangements with Baxter for the boat and returned the next day with a contract of hire, containing the names of J. B. Brice and F. A. Perry as the hirers of the boat.

The witness testified that his telephone number was "Oakland 3846;" and the telephone number of Stanley's Boat House was "Alameda 377." (R. Tr. V. 96, pp. 7438, 7446.) The boat was rented September 26th. Witness identified overalls and a jumper found on the boat. (People's Exhibit No. 579; R. Tr. V. 96, pp. 7446, 7448.)

On September 28th the witness received a telephone call from Perry at the Argonaut Hotel, and Perry wanted to get back his deposit. Witness was at his telephone, "Oakland 3846," and recognized Perry's voice. (R. Tr. V. 96, p. 7449.)

> "Q. What was the conversation on that occasion?
>
> A. He wanted to know if I knew where Baxter was, and I told him I did. * * * I told him he was at his residence in Alameda." (R. Tr. V. 96, p. 7449.)

Witness also testified that Perry called him up at Stanley's Boat House; he could not be sure whether it was the 27th or 28th of September.

> "Q. You don't remember the day?
>
> A. No, sir.

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Q. Do you remember whether it was before or after the boat was returned to you?

A. It was after the boat was returned to me.

Q. But you don't know whether it was the 27th or 28th?

A. No, sir.

Q. Do you remember what that conversation was about?

A. He was still trying to locate Baxter.

Q. And that was from Perry, was it?

A. Yes, sir.

Q. From the Argonaut Hotel?

A. Yes, sir."

(R. Tr. V. 96, pp. 7450, 7451.)

It is obvious from the answer, "he was still trying to locate Baxter," that this conversation must have been subsequent to the first one on the 28th, in which Perry tried to locate Baxter. The matter is set at rest by the testimony of Mrs. C. D. Hurd, telephone operator at the Argonaut Hotel, who identified calls from room 366, which we have already shown was occupied by Schmidt and J. B. McNamara under the names of F. A. Perry and J. B. Brice, to the following points: September 28, 1910, to Oakland 3846; September 28, 1910, to Oakland 3846; September 28, 1910, to Alameda 377. (R. Tr. V. 83, p. 6471.) The first two of these were Burrowes' telephone number, and the second the number of the Stanley Boat House.

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Taking the description which this witness Burrowes gave of Perry, together with the proof that Perry was living in room 366 of the Argonaut Hotel, and the fact that Baxter recognized Perry's voice when he telephoned from the Argonaut Hotel, and the record of the three telephone calls from room 366 of the Argonaut Hotel to Baxter's place and the Stanley Boat House, it is perfectly clear that Baxter was mistaken in saying the defendant Schmidt was not Perry.

Witness further testified that on examining the bow of the boat after it was returned he saw where there was a streak of fresh green paint around the name "Pastime," and he also noticed some holes on each side of the bow where the name "Pastime" was, either in front of the "P" and after the "E," or in the immediate vicinity of those letters; and that neither the holes nor the paint were there when he let the boat. (R. Tr. V. 96, p. 7452.)

Edward H. Baxter testified that in the month of September he was half owner with A. D. Burrowes of the launch "Pastime"; that his telephone number then was "Alameda 51" and Burrowes' telephone number was "Oakland 3846." (R. Tr. V. 86, p. 6974.)

Witness was at that time employed by Fairbanks, Morse & Company, San Francisco,

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whose telephone number was "Douglas 3585." (R. Tr. V. 86, pp. 6974, 6979.)

They kept the "Pastime" at Stanley's Boat House at the foot of Webster Street, on the Alameda side, at the Webster Street Bridge. (R. Tr. V. 86, pp. 6974, 6975.)

On September 19, 1910, witness received a telephone message from Burrowes in regard to the launch, and afterwards received a call from two men at Baxter's office on First Street, corner of Natoma, in San Francisco. They said:

> "that they were a party of four of them out from Chicago, desiring to go on a pleasure trip up the river, wanted to rent our boat. * * * By reason of the phone advice from Burrowes that two men would call, and he having advised me that he had asked them for a deposit of $250, I was not agreeable to any such small amount, and suggested to these men that I would want a five hundred cash deposit before we could consider the rental of the boat, and that further, I of course would want to know they were familiar with handling a boat; to which I was advised that they had had experience with Fairbanks-Morse machinery and had had boating experience. (R. Tr. V. 89, pp. 6975, 6976.)

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They gave the names "F. A. Perry" and "J. B. Brice," and Perry did the talking. He said:

> "He said that he was a machinist, had had experience elsewhere in handling Fairbanks-Morse machinery, had installed it, and there would be also in the party a man familiar with the automobile type of engines. * * * So that on my stating to them that $500 cash deposit would be required, also a rental charge of $30 for seven days or $40 for ten days, they furnishing the fuel, but we desired to furnish lubricating oil, so as to have it correct, they said that was entirely agreeable, and the man who had given me the name of Perry started—laid out on my desk between four and five hundred dollars in greenbacks. * * * Perry did that, not quite having the $500, he said, 'Keep this and tomorrow, when the bank opens, I will bring you the balance.' * * *
>
> Q. Now, did they come back the next day?
>
> A. They did. * * * They gave me the balance, so that I had $500 cash from them.
>
> Q. Now, at that time did you deliver them a receipt for this money?
>
> A. I did."
>
> (R. Tr. V. 89, pp. 6976, 6977.)

Witness further testified that he kept two carbon copies of the receipt and identified a

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carbon copy of the contract which he delivered to the two men at the time, containing at the bottom the signature, "E. Howard Baxter" and "Douglas Burrowes, by E. H. B.," which he testified were written by himself. The contract was received in evidence as Exhibit 585; it reads as follows:

"Sept. 20, 1910.

"Received of F. A. Perry and J. B. Brice, the sum of Five Hundred $500.00 Dollars as security on the launch 'Pastime,' above sum to be returned to the above parties within 48 hours after return of said launch 'Pastime' in condition as found at present date less ordinary wear and tear. It is agreed that Mr. F. A. Perry and Mr. J. B. Brice pay the sum of $30.00 for seven days rental of the above launch and $40.00 for ten days. Owner is to furnish lubricating oil and above parties supplying the fuel.

"E. Howard Baxter
"Douglas Burrowes
by E. H. B."

(People's Exhibit 585; R. Tr. V. 89, pp. 6977, 6978; Cl. Tr. V. 3, p. 1626.)

Witness further testified:

"The man who said his name was Perry was a man who stood approximately 5 foot ten in height, weighing probably 175 or 180 pounds. He was very erect, square-shouldered, rosy-complexion, cheeks, and the left eye was recessed; I would not say

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whether it was a glass eye or whether it was due to an accident, but was deeply recessed; it was at variance with the other eye; * * *

"The man who gave his name as J. B. Brice, was a dark, swarthy complexion man, shorter than the man calling himself Perry, with dark, black hair and black eyes, lighter in weight than the other party." (R. Tr. V. 89, pp. 6978, 6979.)

The witness saw these parties the following Wednesday, September 28, 1910. Perry telephoned to him at his residence, saying his name was Perry, the man who rented the boat of him. Perry stated:

"He had returned the boat in good condition to the boat house, and as they were desirous of leaving that afternoon for Canada, was very hopeful of being able to come over and get the return of the balance of the deposit due him, to which I replied that if he would come right over I would give him a check for the balance." (R. Tr. V. 89, p. 6980.)

The man who said his name was F. A. Perry came over alone.

"I offered to give him a check that he could cash at the bank, but on his advising me that he was not acquainted in San Francisco, it then occurred to me that I could give him a check on my brother-in-law, Mr. Bert C. Scott, which I did, and gave him

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instructions as to how to find Mr. Scott. * * *

"He said that forenoon they would leave on the Portland train for the north and Canada. He and the other party named Brice." (R. Tr. V. 89, pp. 6980, 6981.)

After some discussion as to rental for the launch and a skiff, and the amount due for gasolene, witness agreed to make the charge an even forty dollars and gave Perry a check payable to Scott for the sum of four hundred sixty dollars, which was received in evidence as "People's Exhibit 586." (R. Tr. V. 89, pp. 6981, 6982; Cl. Tr. V. 3, p. 1627.)

Perry and Brice told the witness that they were stopping at the Hotel Argonaut in San Francisco. (R. Tr. V. 89, p. 6982.)

Afterward the witness examined the boat around the bow where the name "Pastime" was and discovered that there were screw holes before and after the name on either side of the boat, which were not there prior to renting the launch to Perry and Brice. He further testified:

"Q. You have seen the defendant, Schmidt, have you, Mr. Baxter, observed him here?

A. I have.

Q. State whether or not, in your judgment, he was one of the men who came there

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on that occasion and deposited this money with you and conducted that transaction?

A. He resembles the man; he fits my description of him. * * * He resembles the man who gave his name as F. A. Perry. * * * I saw two men on the first two occasions at my office and the one man Perry at my residence.

Q. I see. And was Perry at that time smooth-shaven or not?

A. He was." (R. Tr. V. 89, pp. 6982, 6983.)

Bert C. Scott testified that he is the brother-in-law of E. H. Baxter, and identified the check which Baxter gave to Schmidt. (People's Exhibit 586.) Baxter telephoned that Schmidt was coming and when Schmidt brought the check, witness endorsed it and went to the bank with Schmidt.

"Q. Look at the defendant, and state whether or not he is the man that came in and conducted that business with you?

A. He exactly resembles the man.

Q. Can you state whether or not he is the man, in your best judgment?

A. I am quite sure.

Q. That he is?

A. That he is." (R. Tr. V. 89, p. 6992.)

John Stanley, boatman, living at the foot of Webster street, in Alameda, and carrying on his business there in the month of September, 1910, testified that he knew a boat called the

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"Pastime," and owned at the time by Burrowes and Baxter and kept at his place at the foot of Webster street, Alameda; he had a telephone at his boat house, the number of which was Alameda 377. He recalled an occasion in the month of September, 1910, when two men came to his place and rented a boat. It was the latter part of September. Witness was there and talked with the men, who stayed around until Burrowes came down to see them. The men came the next day, or the second day afterwards, and took the boat and at that time witness rented a skiff to them, eleven feet long, with the color between green and yellow, the color of "dead tules for hunting; between green and yellow."

> "Q. How long did the two men keep this boat?
>
> A. One week.
>
> Q. Were you present when they brought it back?
>
> A. Well, not exactly; I was going to dinner when I saw them coming up the creek. When I come back from dinner they was waiting with the boat." (R. Tr. V. 90, p. 7034.)

Witness testified further that the skiff was rented at the same time and that Burrowes called his attention to the "Pastime."

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"Q. Did you see on the bow of the boat near the name Pastime any holes of any kind?

A. Well, I noticed mostly the outline or print, small touches of paint, where the name was, the same as if the name had been —the letters had been painted and they overlapped on the woodwork.

Q. That was fresh paint?

A. Yes.

Q. Did you notice any screw holes there?

A. Well, I forget whether there was screw holes or nail holes.

Q. You saw some holes there?

A. There were some small holes there; I don't know whether they were screw holes or nail holes.

Q. Will you describe these two men, Mr. Stanley, who came there on that occasion?

A. Well, the man done the talking was about five foot nine, very heavy; I guess he would weigh about 190 pounds, and very florid complexion, and very round in the face.

Q. How about the other man?

A. The other man was about five foot six, and he was very thin, and he had sharp features and very dark; he looked as if he was sick.

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Q. Are you able to state whether or not the defendant in this case is one of these men, Mr. Stanley?

A. I couldn't say that. He looks a great deal smaller and his face is smaller, too. I couldn't say that is the man.

Q. You couldn't say whether this is the man or not?

A. No sir."

R. Tr. V. 90, pp. 7034, 7035.)

George B. Parker testified that he and a man named Watkinson went to the Webster street wharf about September 18, 1910, swimming a couple of dogs there. He knew the launch "Pastime," which was tied to the Webster street bridge about two feet from himself and his companion. Two men came along and handed Burrowes a letter. Burrowes showed the larger man how to run the launch. The men left with the launch and the larger man was running it. They were there between ten and twenty minutes. (R. Tr. V. 85, pp. 6586, 6589.)

"Q. Now, will you take a look at the defendant, Mr. Parker, the defendant, M. A. Schmidt, and give us your best judgment as to whether or not he was one of those men?

A. Well, my judgment is he resembles the man very much.

Q. Which one of the men?

A. The larger of the two.

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Q. The one who was on the boat?

A. Yes sir.

Q. Did you notice which one of the men was running the boat when she left?

A. I believe the larger of the two men was."

(R. Tr. V. 85, p. 6589, 6590.)

Bert Watkinson testified that he knew Mr. Parker, who was just on the stand, and was with him on the Webster street wharf on the occasion referred to by Mr. Parker in September, 1910. He saw the launch "Pastime" on that occasion and saw two men there around the launch on that day. He saw them leave on the launch.

"Q. Will you take a look at the defendant, Schmidt, in this case, and give us your best judgment as to whether or not he was one of the men who were on the launch on that occasion?

A. Well, he resembles him, I say, about like Mr. Parker does. Of course, it has been a long time ago, and he might have been a little stouter then.

Q. A little stouter then?

A. Yes; he resembles the man.

Q. He resembles him?

A. Yes.

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Q. Well, what is your best judgment, and opinion, as to whether or not he is the man? * * *

A. Well, I couldn't say; I think he resembles him, though a whole lot."
(R. Tr. V. 85, pp. 6592, 6593.)

Harry W. Bridgeman testified that in the month of September, 1910, he was hardware salesman for the Pierce Hardware Company, 1108 Broadway, Oakland. He recalled the occasion in the month of September when two men came to the store inquiring for enameled letters. It was right after lunch, about two or three o'clock.

"Q. Will you take a look at the defendant Schmidt, and state whether, in your judgment, he was one of the men?

A. There is a resemblance. I couldn't say positively, but there is a resemblance of the type. * * * there is a resemblance on account of the peculiar look on the face. * * * The other man was a thinner-faced man and darker."
(R. Tr. V. 86, pp. 6687, 6688.)

Witness told the men that he had no enameled letters and referred them to the "Moise-Klinker Company." The men said they wanted the letters "Peerless." (R. Tr. V. 86, pp. 6688.)

Harrison M. Nutter testified that he was in the sign business in September, 1910, working

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for "Moise-Klinker Company." The company sold enameled letters, aluminum letters, rubber stamps, brass signs and everything of that particular line. (R. Tr. V. 86, p. 6669.) The place of business was 1212 Market street, San Francisco. Witness was a salesman and remembered an occasion about the 22d of September, 1910, when he sold some aluminum letters, making the word "Peerless" twice, that is, two sets. He testified:

> "Well, it was about 6 o'clock in the evening there was two gentlemen came in, they said they wanted some aluminum letters—they didn't say what kind exactly. I showed them aluminum letters; they said that was all right; they said they wanted to tack them on wood. * * * So I showed them three-inch aluminum and they said that was about the size, so I tagged out aluminum letters reading 'Peerless' twice —* * * And wrapped them up and give them to the gentlemen and they went away, paid me $1.60 for them. * * * I thought it was for an automobile 'Peerless' car. That is how I came to remember it. * * * I gave them the necessary tacks. * * * The cashier had went home already, but the tag was recorded the next day.
>
> Q. Were you there alone?
>
> A. No, Mr. Pell was there, but he was away in back.

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Q. Take a look at this defendant, Schmidt, and state whether or not he was one of the men who came in there that day?

A. He resembles him very much. I think the gentleman that came in the store was a little stouter than what Schmidt is now.

Q. A little stouter than what he is now?

A. He had the same defective eye, the left eye, of course, standing on the side from me.

Q. And you observed his eye at that time, did you?

A. I did, yes.

Q. And how was the other man described?

A. Well, he is a smaller man, and he was—come up about the size I am now.

Q. Who did the talking, Mr. Nutter?

A. The taller gentleman.

Q. What is your best judgment, Mr. Nutter, as to whether the defendant Schmidt is that man?

A. Well, he looks very much like him.

Q. Well, what is your judgment as to whether he is the man or not.

A. I think he is myself.

Q. You think he is. I show you a paper, Mr. Nutter.

A. That is my writing.

Q. That is your writing?

A. Yes sir.

Q. What is that?

A. That is the cash tag.

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Q. The cash tag you made out at that time?

A. It is, yes sir."

(R. Tr. V. 86, pp. 6671, 6672, 6673.)

This tag was received in evidence as People's Exhibit 577.

Fred Behnke, an awning maker, whose place of business in 1910 was at 1209 Mission street. The witness examined a tarpaulin shown to him and said that he saw it in his shop about the 17th or 18th of September, 1910; that on the 19th of September, at 5:30 in the evening, a gentleman by the name of Cap took it away. The man gave his address as 1565 Grove street.

"He was a medium-sized man, and I thought at the time he was coming in, he was like an Italian, to use it for one of those scavenger wagons; rough-looking man; small black mustache; a little gray on one side, and—well, he looked to me like a man was in hard circumstances, like all those Italians that always have a poor mouth to make, that is the way they look to me.

Q. How did you happen to ask his name and address?

A. Well, I have the—they were in the place before, and we never came to any conclusion about renting some old canvas. I got kind of mad, then, they took time, didn't make a sale—took too much time

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away, and I turned it over to Mrs. Fisher. * * * They came again the next day. * * *

Q. You subsequently did make arrangements for the rent of the tarpaulin?

A. Yes sir. * * * We rented it."

(R. Tr. V. 89, p. 6966.)

Witness testified that the man paid $13 or $13.50 in full. He first saw the tarpaulin after letting the man Cap have it, around a week or so after, at Mr. O'Brien's house, on Nineteenth street, in South San Francisco, in the front room.

"Q. And what was it covering?

A. It was covering—well, the tarpaulin was half off and half laying over.

Q. Over what?

A. Over the dynamite.

Q. Did you put your initials on it at that time?

A. I did. * * * can you state what date it was that you went there?

A. On the 17th.

Q. October 17th, 1910?

A. Yes, the Chief of Police got me in the automobile there, I think it was 3 o'clock in the morning, 4 o'clock, something like that.

Q. Did you see the dynamite at that time?

A. I did."

(R. Tr. V. 89, pp. 6967, 6968.)

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The tarpaulin was received in evidence as People's Exhibit 584.

August Miclo, a salesman for the W. F. Altwater Company, was engaged in the real estate business in the city of San Francisco in the month of September, 1910. He testified that he rented a house—1622 Nineteenth avenue, San Francisco, belonging to Mr. O'Brien, about the 15th of September, 1910, to a man by the name of William Cap. He showed the place to William Cap and they had some discussion about the rent. Cap said,

> "'I like that place for my family'; he said, 'I expect my family come from Seattle.'"

Cap went away and subsequently returned and rented the house from the 15th of September until the 15th of October, 1910; he paid a month's rent in advance. (R. Tr. V. 88, pp. 6884–6886.)

Witness described the locality as "outskirts" and says:

> "I took that man looked like a machinist, to me, kind of dark hair, a little curly, with a few white stripe on it, and high cheek bones; a man about between 40 and 45, something like that. * * * Weight about 150 pounds, smooth shave, and was dressed in a blue serge, I think, something like that, in blue shirt. * * * I take him like a Russian, I surmise a Russian. * * * He was

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about my height; I am about 5-7, something like that.

Q. Mr. Caplan, will you stand up, please. Take a look at that man.

A. The man I saw didn't wear any glasses, and certainly like me, he was younger than he looks now. * * *

Q. State whether or not in your judgment the defendant Caplan is a man to whom you rented that house as Cap.

A. He looks similar—* * * He looks like the man I saw. To testify it is hard, a man you know, after five years, a man couldn't pay very much attention—but that is about the size man I saw; my height, built about the same size.

Q. Did he tell you when his family was coming down?

A. No, he didn't say so. Just told me he was expecting his family from Seattle, and he expected a job down at the lumber yard."

(R. Tr. V. 88, pp. 6887, 6888.)

James C. O'Brien testified that he owned the house known as 1622 Nineteenth avenue, San Francisco, in 1910. The name of avenue has been changed to "Shafer avenue." (R. Tr. V. 88, p. 6869.)

It is called the "Bay View District." The house is about half a mile from the water along the main thoroughfare from Third and Market to the county line, about four miles south of

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the Ferry Building. In September, 1910, the agent Miclo rented the house. Witness occasionally visited the house to see if the people had moved in. (R. Tr. V. 88, pp. 6870, 6871.)

> "Q. Now, what condition did you find the house in on those visits?
>
> A. Well, when I went there I saw no change, and the shades were practically the same all the time. * * * Well, like half up, half a window; then I would again notice that the shade would be pulled down, and yet there were no curtains placed on the windows, and that attracted my attention, that I visited the place more often. * * * I never went inside until we found the dynamite. * * * It was Sunday afternoon, about 3 o'clock. * * * as near as I can remember, October 16th. * * * 1910. * * * On that afternoon I visited the place and in visiting there, when I saw there were no people in there, as I observed during a couple of weeks, I took my keys."
> (R. Tr. V. 88, pp. 6872, 6873.)

Witness testified that he went in through the basement and there was nothing there, no sign of furniture or anything, so he rang the front door bell and nobody came, then he opened the front door. He says:

> "in doing so, the first thing I observed to my left was blue overalls striped with white stripes and a jumper hanging on the hatrack, and I went into the kitchen; there

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was no furniture; I thought, 'Why this is strange,' and I went into the back bedroom, out into the pantry, out in the back porch; there was nobody there. * * * So the last place, I was into the parlor and that was locked, * * * I opened the door and I opened it just a little ajar, and I saw a canvas on the floor, * * * and I went in and I made a thorough investigation, I took the canvas and threw it off, there was a canvas on there marked F. Thoms."
(R. Tr. V. 88, pp. 6873, 6874.)

Witness identified the canvas and testified further:

"There were ten boxes; they were all tied up with burlap, and with manilla rope, except one, which was open, and the burlap was underneath that box, but the rope and the cover was taken off the box with the nails protruding through the cover, the nails hadn't been taken out, just pried right up. So I looked at it and I saw sticks as I thought they were candles, so I took one out of the box, and I looked, I says, 'This is a queer thing,' I says, 'That is a candle without a wick.' * * * I didn't examine the box, so finally I lifted all the boxes; they were all about the same weight, and then I came back to the box that was open, and I looked at the stamp, had a mark on it, and I saw 80% gelatin and I when I saw that, I said, 'Good night, dynamite,' Then I saw what I was up against. * * *

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Q. Where was the stamp that you looked at?

A. The stamp was on the side of the box.

Q. Side of the box?

A. On the box, you know; not on the cover, and it was marked 80% gelatin, I knew what that was when I read it, and I knew it wasn't wax candles then."

(R. Tr. V. 88, pp. 6875, 6876.)

Witness testified that he reported the matter to the police and that there were in all ten boxes there at that time. There was sawdust intermingled with the sticks. (R. Tr. V. 88, pp. 6876, 6877.)

Daniel McCarty, a real estate man of San Francisco, testified that in the month of September, 1910, he rented the house at 1565 Grove street, San Francisco, to a lady, who gave the name of Mrs. D. Caplan, and who kept the house for about one month, beginning with September first. (R. Tr. V. 89, p. 6970.)

L. C. Pistolesi, a lawyer of Sausalito, testified as to the location of the Stuparich Hotel, wharf and float. He was there the latter part of September, 1910, and saw three men and a strange boat off the wharf. (R. Tr. V. 90, p. 7028.)

"Q. Take a look at the defendant here, and state whether or not he was one of those men you saw there at that time?

A. He resembles the man, but the man I saw was a little stouter than he is, and a

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little redder in the face, but had no mustache, the man I saw.

Q. What is your best judgment, whether or not he is one of those men?

A. I have never seen this party with a white shirt on. This gentleman I saw had very old clothes on, but from his general appearance he resembles the man; I won't say positive he is the man, because this gentleman has a mustache, and he is dressed different, what I seen, and this gentleman appears to be a little lighter than the party I saw. * * * In weight, and in complexion, also."

(R. Tr. V. 90, p. 7031.)

Mrs. Emily Stuparich, a witness for the defendant, testified that in September, 1910, she was proprietor of a hotel at Sausalito. She testified that the launch "Pastime" was tied up there with two persons on board.

"I was told that one gentleman's name was Perry, but I never learned the name of the other party. * * * They remained over night." (R. Tr. V. 96, p. 7468.)

Witness testified that the one called Perry was the short, stout one, with the reddish face. She is not so positive about identifying Schmidt. He "does look like the man" she

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saw. The other man was a trifle taller and sallow. On cross-examination she testified:

> "Well, I only saw them at a glance, you see, * * * just gave them a passing glance." (R. Tr. V. 96, p. 7470.)

She testified that they called up the Argonaut Hotel, and a little short, foreign-looking man came on the night of the 23d. Witness put up a lunch for the three of them the morning of September 23d. On cross-examination the witness further testified as to Perry:

> "Well, it seemed to me that one side of his face—the entire side of the face, something wrong with it, and I couldn't really state what it was; it wasn't alone the eye, it was the surrounding flesh, too, I believe.
> Q. Well, he did have a defective eye, did he?
> A. Yes."
> (R. Tr. V. 96, p. 7473.)

Paul J. Stuparich, a witness for the defendant, testified that in September he owned the Cafe Miramar at Sausalito. It is on the water's edge, about two hundred feet away from the shore. There were two floats, one on each side of the pier. They were used for people landing there. The house was used mostly for boating and yachting parties, and

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hunters and fishers and so forth. (R. Tr. V. 96, p. 7475.)

"Q. Did you afterwards see the name changed on that boat?

A. Well, yes; I think they did change the name."

(R. Tr. V. 96, p. 7476.)

Two people came in the boat. Witness saw them around the place in the evening. They spent the night there. (R. Tr. V. 96, pp. 7476, 7478.)

"Q. Well, Mr. Stuparich, one of these men, while they were there, did ask you for a board, did he not?

A. They asked me for a small piece of wood; yes.

Q. And you told them to go to the boat house and they went there, didn't they?

A. Yes sir.

Q. And you did see them fooling around the letters on this name on the launch?

A. If I am not mistaken, I saw the letter fall off, or something like that, but then I didn't pay much attention to that.

Q. Well, you saw a letter fall off, and asked the man about it?

A. Yes sir.

Q. And one of them was fooling around the letters at that time?

A. Yes; I didn't know what it was.

Q. And you noticed next morning after that first morning, when they were there,

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that the name of the launch had been changed from Pastime to Peerless, did you not?

A. Yes sir.

Q. And you saw the name Peerless on it?

A. Yes sir.

Q. And they borrowed some green paint, from you, did they not, also?

A. Yes; they asked me if I had any paint. I says, 'Well, you go and look there; I don't know if I have got any, but you go and look in the little'—

Q. Didn't they ask you for green paint?

A. Yes.

Q. And you directed them to go to your paint house or boat house?

A. Yes sir.

Q. Now, this man, whom you have described as the big heavy set man, did most of the talking, did he not?

A. Well, I guess he did—well, both, I don't know. * * *

Q. They had plenty of greenbacks there, didn't they, every one of them?

A. Yes."

(R. Tr. V. 96, pp. 7486, 7487.)

Witness further testified that one of the men gave his name as "Perry." (R. Tr. V. 96, p. 7489.)

Bruce McCall testified that he was salesman for the Giant Powder Company, and lived at

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Oakland. During the year 1910 he was shipping clerk and office salesman for the same company. The company's office was located in the Kohl Building, San Francisco, room 204; the Giant Powder Company is a corporation engaged in the manufacture of explosives, and its plant is at Giant, California, maybe twenty miles from San Francisco and on San Pablo Bay. (R. Tr. V. 85, pp. 6595, 6596.)

It was about sixteen miles from Oakland.

On the 15th of September, 1910, witness received a phone call at the office, from a party stating,

> "that they were the Bryson Construction Company—Brice or Bryson, I couldn't get which—of Sacramento, and they wanted to know if we had any 90 per cent powder, and if they could take delivery by launch; I told them they could, and they said they would be down the next day to see me." (R. Tr. V. 85, pp. 6596, 6597.)

The next afternoon two men called:

> "Q. Did you have a conversation there with them?
>
> A. Yes sir.
>
> Q. State whether or not the defendant was one of those men?
>
> A. Yes sir.
>
> Q. Now, describe the other man who was with him?
>
> A. Well, he was a man—I didn't pay as much attention to the other man—he was an uninterested party, appeared to be;

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he didn't ask any questions, or anything, he was just sitting on a settee we had there in the office.

Q. Who did the talking?

A. The gentleman here.

Q. Which one?

A. Right there, gray suit.

Q. Schmidt?

A. Yes sir.

Q. You indicate the defendant Schmidt?

A. Yes sir.

Q. Now, relate the conversation that he had with you at that time, Mr. McCall?

A. Well, he wanted the powder, he wanted some 90% powder, and I asked him what he wanted it for and all; he told me he wanted to blow up some stumps; I tried to pursuade him to take some 20% and he told me that he had a man doing contracting work for him and he would have to give him what he wanted; he was to furnish some materials, and he would have to give him the powder he wanted. So that was a pretty good argument, and I told him we could only give him 80%, that was all we had listed at the time; so he took that and paid me $80.00 in currency, two one-dollar pieces, and ten cents.

Q. That is, he placed the order with you at that time?

A. Yes sir, and paid me for it.

Q. Now, how much powder did he order at that time?

A. 500 pounds.

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Q. How much?

A. 500 pounds.

Q. How much did he pay you?

A. $82.10.

Q. Now, was there anything said by Mr. Schmidt, the defendant here, as to when he would call for the powder, or how he would call for it?

A. He said he would send a launch later, he thought about a week. * * *

Q. Now, about a week later, did you receive another telephone call?

A. Yes sir.

Q. From whom?

A. Well, a man that give his name as Leonard.

Q. Leonard?

A. Yes sir.

Q. Now, state that conversation?

A. He told me he was going to call in for the powder; I told him that he would have to come up to the office and get—or he would have to come up to the office and get an order or let me bring it down to him; so I told him I would take it down to his boat, and he told me his boat was in Sausalito, so I couldn't go over there to see it, and he said he would send somebody up, take the order."

(R. Tr. V. 85, pp. 6597–6599.)

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Witness further testified that in about a half hour somebody came for the order, and witness had a conversation with him:

> "He was a short man, small; I thought he was a Portuguese or Italian." (R. Tr. V. 85, p. 6600.)

Witness said he saw David Caplan in the county jail, but could not identify him. Witness asked for a description of his launch and he could not give any, and could not give the name of it, whereupon witness told him he would have to give the name and also some description of it, what kind of an engine it had, the length of the boat, and so on, and he said he would have to go to Oakland and get that information. (R. Tr. V. 85, p. 6600.)

He left the office and got back about 5 o'clock. He was gone about two hours. When he returned he gave witness a certain horsepower and the name "Peerless" for the launch. At that time the witness gave the man no bill but just an order on the work. The man gave the name, "William Morris," and his residence as somewhere out on Mission street. (R. Tr. V. 85, pp. 6600, 6601.)

Witness described the other man, who was with Schmidt on the first occasion, as,

> "He was a tall man, dark, slender—I should say he weighed about 158 pounds;

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about five foot ten. * * * Clean shaven, not very full-face." (R. Tr. V. 85, p. 6602.)

Witness further says that after receiving the order for the powder from Mr. Schmidt, he turned it over to Mr. Rennie, who O. K.'d it and sent it to the works. (R. Tr. V. 85, p. 6602.)

Witness identified People's Exhibit 528 as the order brought to the office of the Giant Powder Company by the man, William Morris.

"Sept 20-10

"Giant Powder Co

Please Deliver to Bearer Mr J G Leonard the Powder which I purchased of you last week and oblige

"J B Bryson
R F D 4-1
Auburn Cal

P. S. I am giving Mr. Leonard your receipt for identification

"J. B. B."

(People's Exihibit 528; R. Tr. V. 90, p. 6995; Cl. Tr. V. 3, p. 1514.)

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R. H. Rennie testified that he was general sales agent for the Giant Powder Company, in the Kohl Building, San Francisco, in September, 1910. September 22, 1910, a man giving his name as "Morris," came to the office between two and three o'clock in the afternoon. Witness had a conversation with him as follows:

> "The party giving the name of Morris responded that his principals knew nothing about the nature of the work, that no stump blowing was contemplated, that, as a matter of fact, the powder was wanted for blasting granite boulders on a ranch recently acquired by people that he was doing the work for. That reason sounded legitimate. He was asked what his idea was in taking it by a launch; he said that his principals owned a launch and they thought they might perhaps save a little money by taking it through that means, as far as Sacramento and hauling it by team beyond that. He was told that we had to be very careful in such matters, and that we would not feel ourselves at liberty to give him an order on our works for powder without having the full details of the parties involved, also the description of the launch to call for the product, and an estimate of the number of men that would be there and what names they would answer to. I don't remember just what names were given at that time as to parties who

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would call for it, but I do remember distinctly that he could not at that time give a description of the launch, that it was lying over at Sausalito and he would probably have to go there for it. Further discussion, however, brought out the fact that he thought he could find out, get the description of the launch, rather, from some party over at First and Broadway in Oakland; that he would go there and get the description for us." (R. Tr. V. 85, pp. 6631, 6632.)

Morris left the office and came back again about one and a half hours later and gave a description of the launch; then Mr. McCall wrote it down in the presence of Morris. Further, relating the conversation, witness says:

"A. Well, we told him that we had telephoned up to Auburn in the meantime, following the original placing of the order, to ascertain whether Bryson was known to the post-office authorities or the tax collector's office, and we had found that he was not, and how did he explain that; Morris replied that they had only very recently acquired the property, that they were expecting to work and that naturally they would not be known there. I happened to refer again to his name as William Morris, and made mention that seemed more an American name than would apply to a man of his appearance, that he looked

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more like a Dago. He rather flared up at that time and said no matter what his name was—what his appearance was, that his name—

Q. Now, did you ask him his address at that time also?

A. The address was asked him, yes.

Q. And what address did he give you?

A. He gave some address out on the Mission; I wouldn't recall that.

Q. Did you put it down at the time?

A. Yes.

Q. I will ask you to look at this memorandum, refreshing your recollection. I will ask you to state what address he gave, name and address.

A. William Morris, 2410 Mission street. * * * He said he was boarding there at that time, and we sent a boy out from the office to find out a description of the boarding house that he gave was in accordance with his description. * * * the two interviews covered probably 15 minutes each." (R. Tr. V. 85, pp. 6632, 6633, 6634.)

Morris gave the witness the name of the launch as "Peerless."

"Q. Was he delivered the order for the powder at that time?

A. Yes.

Q. He came in the office alone, did he?

A. Yes."

(R. Tr. V. 85, p. 6634.)

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Witness testified he had seen David Caplan over in the county jail:

> "Q. Now, how does he appear in height and appearance in reference to his face, features, and general bearing, manner of speaking, with the man who came in there and gave his name as William Morris? * * *
>
> A. Well, the time that I saw him, I should think that his height was approximately—that is the height of the party pointed out as Caplan—approximately very closely to my recollection of the height of Morris.
>
> Q. Yes sir. Now, how about his features, and manner of speaking, his general bearing?
>
> A. His manner of speaking had a very close resemblance.
>
> Q. And did you notice any other points of similarity between Caplan and the man who you saw as Morris?
>
> A. My recollections of him wouldn't be distinct enough to answer that."
>
> (R. Tr. V. 85, pp. 6634, 6635.)

M. V. Gilmore was assistant purchasing agent and clerk of the Giant Powder Company, in the Kohl Building, San Francisco, in the month of September, 1910. Witness testified that about the 21st of September, 1910, a

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man came to the office of the Giant Powder Company and gave his name as "Morris."

> "Q. Now, will you state to the jury what you saw and heard on the first occasion when Mr. Morris came in there?
>
> A. When Mr. Morris came in there and he wanted an order to receive powder that was ordered by the man that came in some five or six days prior to that time, on our works, and he said that he was going to take this powder away in a launch, and we refused at that time to give him the order, because he did not know the name of the launch, and for that reason we did not give him the order. So we told him to go out and find the name of the launch and return and we would then give him the order; he returned in the course of about 40 minutes or possibly an hour, giving the name of the launch as "Peerless," he was then handed the order."
>
> (R. Tr. V. 85, pp. 6636, 6637.)

Witness was present when Mr. Rennie made the memorandum, "William Morris, 2410 Mission street," when Morris came in the second time. (R. Tr. V. 85, p. 6637.)

Witness had a man pointed out to him in the county jail, whom he recognized as William Morris. (R. Tr. V. 85, p. 6638.)

Whereupon David Caplan was directed to stand up in Court, and the witness positively

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identified him as the man, William Morris. (R. Tr. V. 85, p. 6644.)

On cross-examination Gilmore testified that in the month of September, 1910, he saw a man in the office who resembled the defendant, M. A. Schmidt, he doesn't know whether it was he or not,

> "Q. The man you saw there had an eye very similar to the defendant's, didn't he? Something the matter with his left eye?
>
> A. I thought the man at the time met with some kind of an accident, like he was hit with some instrument that fractured the bone under his eye. * * * left eye—" (R. Tr. V. 85, p. 6643.)

John H. Baker testified that he was in the office of the Giant Powder Company, in the Kohl Building, San Francisco, about September 22d, when a man came in and presented an order for powder. Witness at that time was traveling salesman for the Giant Powder Company. He says that the man gave the name of "William Morris," and that David Caplan, who was produced in Court, is the man. Morris gave his residence number, a number out on Mission street. (R. Tr. V. 89, pp. 6902, 6903.)

Witness, in the presence of Caplan, looked up the address and found there was no William

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Morris there. Thereupon Caplan stated to the witness and others present,

> "Why, that is very likely, I might have moved—I probably have moved there since this directory was gotten out." (R. Tr. V. 89, p. 6905.)

And there was a question as to whether that was his name or not, and he said it was. Then there was further talk as to getting the order from the office of the company to present to the powder works for the delivery of the powder. He was told that he would have to get the name and description of the boat in which he would take that powder away. He represented that he didn't know the name of the boat and would have to go to Oakland and find out. He was told he couldn't get the order until he got the name of the boat. He left and returned with a piece of paper with the name of the boat and length over all. The name was "Peerless." (R. Tr. V. 85, pp. 6905, 6906.)

William Flynn testified that in September, 1910, he was foreman of the Giant Powder Company at their plant on San Pablo Bay; they were engaged in the manufacture of explosives. Any orders that came into the works for powder not in stock, witness ordered made up for shipment. Witness remembers an occasion of an order coming in on or about the

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16th or 17th of September for some 80 per cent nitrogelatin; he received the order for 500 pounds from the office on the works; that is an order to make that amount. (R. Tr. V. 86, p. 6691.)

The order called for 500 pounds of 80 per cent gelatin, "an inch and a quarter by eight —that is an inch and a quarter in diameter and eight inches long." There was none in stock and witness ordered it made up. He saw it after it was made up; he put it up himself; there was a stamp put on the wrapper. Witness examined People's Exhibit 568, consisting of a package of ten wrappers, and pronounced them the wrappers that came off part of the powder manufactured at that time.

> "Q. They bear your stamp that was put on at your place of business, under your direction at that time?
>
> A. Yes sir."

Witness examined People's Exhibit 569, being a package of six wrappers, and declared them a part of the same wrappers, part of the same order, used on the 80 per cent gelatin. (R. Tr. V. 86, pp. 6692, 6693.)

As to the time the dynamite was manufactured and packed, witness says:

> "I ordered the powder, the gelatin, set on the 19th, and we rolled it up—two girls rolled it up and—I gave it to two girls to roll it up, and I put it in the boxes myself; I

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boxed it up on the 20th * * * of September." (R. Tr. V. 86, p. 6693.)

Witness read this stamp which he put on the wrappers,

"Giant Gelatin, 80%, manufactured by Giant Powder Company, Con. September 20, 1910."

After the powder was put up, witness put it in the boxes, ten boxes of fifty pounds each. (R. Tr. V. 86, p. 6693.)

He did not count the sticks to the box, but said that sometimes powder runs close on 80, 85 sticks to a box.

Six boxes were shown the witness and he examined them and stated that they were a part of the ten boxes in which he packed the powder; also that he marked them himself, "Blasting gelatin, 80%," with the date, September 20, 1910, "inch and a quarter." He says he did not put the words in stencil on the cover of the box shown him, "J. B. Bryson."

Witness says the order was made up to be called for on the wharf; there was no name on the order they gave him, only to be called for on the wharf by a launch. (R. Tr. V. 86, pp. 6694, 6695.)

The boxes were then taken to the wharf, which is three-quarters of a mile or a mile from where witness packed the powder. After the ten boxes left his hands, they contained, each

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of them, fifty pounds of 80 per cent nitro-gelatin. Witness next saw many of these boxes at 1622 Nineteenth avenue, a house in San Francisco. He was taken there by one Browne on the 16th of October, 1910. Browne was chief of detectives for the district attorney's office of Los Angeles County. (R. Tr. V. 86, p. 6695.) They reached the house sometime before ten o'clock in the morning. Witness says when they got there,

> "Well, there was a white tarpaulin, duck tarpaulin, over something in a room there, and threw that off and underneath that was one of these boxes that had been opened there, and the other number of boxes was wrapped up in the burlap there. * * * the boxes themselves were wrapped in burlap? * * * There was one of these boxes had been opened and the 80% gelatin had been taken out and it was refilled with 7/8 cartridges, 40% dynamite Hercules."

That is the Dupont powder, which was not manufactured by witness' company. (R. Tr. V. 86, p. 6697.)

Witness opened three of the other nine boxes in this house, and the balance when they got up to the Giant Powder works again. They were removed from the house the same day, in the afternoon. Witness put his initials on each box in the house on Nineteenth avenue when

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he went there on the 17th of October, 1910. When witness opened the nine boxes, he found 80 per cent gelatin still in them, the same powder they had manufactured and delivered at the wharf. (R. Tr. V. 86, pp. 6697–6699.)

> "Q. Do you know what became of the 80% nitrogelatin that was taken out of the one box, that you opened?
>
> A. Why, I saw some of the sticks afterwards up in Los Angeles—16 or 17, I think it was."

He saw them in the grand jury room in Los Angeles. (R. Tr. V. 86, p. 6699.)

These sixteen sticks were a part of the order manufactured and delivered at the wharf—80 per cent gelatin.

> "Q. Did the wrappers bear your stamp?
>
> A. Yes sir, it was the same thing.
>
> Q. Will you state whether or not those 16 sticks, which you saw before the grand jury, were part of the order which you manufactured and delivered?
>
> A. Yes sir, positive.
>
> Q. You are positive?
>
> A. Yes sir.
>
> Q. Are you positive that those 16 sticks which you saw before the grand jury were nitrogelatin, 80% strength?
>
> A. Yes sir.

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Q. And had you ever seen this 40% 7/8 DuPont Powder before you saw it in that box at that house on that day?

A. No sir, never seen it."

(R. Tr. V. 86, p. 6700.)

Witness positively identified People's Exhibit 584, as the tarpaulin found at number 1622 Nineteenth avenue. (R. Tr. V. 86, p. 6702.)

On cross-examination witness testified that the stamp impression on the 40 per cent dynamite was 40 per cent Hercules and it was manufactured in May, 1910. (R. Tr. V. 86, p. 6717.)

Further, on cross-examination, witness testified:

"Q. And when you noticed these boxes in the house, at Nineteenth Avenue, South San Francisco, was it full?

A. Yes sir.

Q. Level with the top of the boxes?

A. Yes sir, pretty near level."

(R. Tr. V. 86, p. 6720.)

J. H. Annesley, powder foreman of the Giant Powder Company, testified that the 80 per cent gelatin was stored in magazine of Giant Powder Company, October, 1910, ten boxes—nine boxes 80 per cent, one 40 per cent Dupont powder; that the last named box was brought in Giant Powder Company box. (R.

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Tr. V. 87, pp. 6751, 6752.) Witness destroyed the nitrogelatin, taking wrapper from one stick in each box; he marked the wrappers. He destroyed the gelatin under direction of Mr. Phillips. (R. Tr. V. 87, pp. 6751, 6752.) He "killed" the wrappers and boxes by soaking in denatured alcohol "to kill the explosive qualities in the oil that had saturated the boxes." He identified the boxes in Court. (People's Exhibit 585.) He also identified the six dynamite wrappers. (People's Exhibit 581; R. Tr. V. 87, p. 6755.)

On cross-examination, he testified that they broke all the sticks of dynamite, spread them on beach and set fire to it. The dynamite was in a dangerous condition. (R. Tr. V. 87, pp. 6758, 6760.)

George H. Phillips was assistant superintendent, Giant Powder Company, in September, 1910. He received an order by telephone in latter part of September, 1910, for 500 pounds 80 per cent gelatin; they had none on hand, and made it up under supervision of witness. The powder was delivered at the wharf September 23d, to three men in the boat "Peerless," lying at "our wharf." Witness had a conversation with one of the men, and identifies M. A. Schmidt as the man he talked with. Witness also identifies Caplan as one of the men, and also identifies J. B. McNamara

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as one of the men. Witness talked to Schmidt, saying,

> "You better pull the end around to the side of the wharf, as it will be right in front of the chute, and we can put the chute down and put the powder down easier—handier * * * This man Schmidt pulled the boat around, tied it, and put down the chute—the tide was low—I said, 'You better get a rope and we will lower these down, because one of them might get away or something, you would probably break that deck loose,' so he turned to the man near the left-hand side of the boat, he says, *'Dave,' he says, 'get an anchor rope.'*" (The man talking identified by witness as J. B. McNamara.) "Dave kind of mumbled something; * * * 'something about getting wise to names' * * * to the man upon the wharf * * * prisoner Schmidt. * * * He made a loop in the rope, he packed the boxes out, and I stood down at the chute. I put a rope around and he lowered them down; the man at the lower end of the chute took them and passed them over to the man he called Dave.
>
> Q. And who was that man that he called Dave?
>
> A. That is the man I identified as Caplan, sir. * * *

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Q. Where did they put this powder, Mr. Phillips?

A. Why, they were piling it upon the side, at the side of the boat there, in a kind of pit—cockpit, or something on the side, like."

(R. Tr. V. 87, pp. 6764–6770.)

Witness identified the boxes, and also the boat as the "Peerless." He saw the boat about two weeks later; the name had been changed to "Pastime." (R. Tr. V. 87, pp. 6770, 6771, 6772.) Schmidt gave a receipt for the powder (People's Exhibit 525) identified by witness.

The handwriting was proven to be that of Schmidt by experts Wood (R. Tr. V. 65, p. 4847), and Wocher (R. Tr. V. 65, p. 4880), and Carlson (R. Tr. V. 92, pp. 7171, 7173, 7175, 7176).

Witness saw Schmidt sign receipt. The men were there about half an hour in his presence. (R. Tr. V. 87, pp. 6773, 6774.)

Witness identified powder October 5th and 6th as being part of same powder manufactured and contained in order and part of same order delivered to defendant. Saw about a dozen more sticks of some order in grand jury room at Los Angeles. (R. Tr. V. 87, pp. 6775, 6776.)

After October 1st, witness saw about nine boxes. The boxes were brought over to works on launch in charge of police. Witness

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marked one box "Received from the San Francisco Police Department," and identified boxes in court.

There were nine boxes brought over, containing 80 per cent nitrogelatin, part of same order obtained by Schmidt; and one box half full of Hercules, 40 per cent powder. (R. Tr. V. 87, p. 6778.)

Part of the powder was subsequently destroyed, getting bad. The remaining six boxes were destroyed later, getting very dangerous (R. Tr. V. 87, pp. 6779, 6780). They were burned on the beach (R. Tr. V. 87, p. 6782). Defendant at time of delivery of powder to him was dressed in practically a new suit of overalls and jumper. Witness identified Exhibit 579 as overalls and jumper. (R. Tr. V. 87, pp. 6782, 6783.)

On cross-examination, witness stated that a small boat was attached to the "Peerless." (R. Tr. V. 87, p. 6785.)

On cross-examination, witness testified,

> "Q. You said in your direct examination, since I read it over to you, on your direct examination, that you positively identified J. B. McNamara as one of those men?
>
> A. I certainly did, and I must have been right or he would never have plead guilty.

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Q. All right, very well. * * * Now you state that you positively identified him, don't you?

A. Yes sir."

(R. Tr. V. 87, p. 6797.)

Further, on cross-examination, witness testified:

"Q. I mean, did you have any reason to suspect anything, and did you thereafter pay particular attention to this person whom you have named as J. B. McNamara?

A. Why, naturally, when you would hear a man say—when a man calls a man by name, and then be chided for it, it would naturally make you or anybody else wouldn't it, think and wonder why a man should be chided for calling another man his name, and why the man whose name is called should grumble because it was called; naturally would make you wonder why these things should be."

(R. Tr. V. 87, pp. 6800, 6801.)

Witness further testified, on cross-examination, that he met the man (Schmidt) on the wharf face to face and further substantiated testimony given before Los Angeles County grand jury. (R. Tr. V. 87, p. 6810.)

On re-direct examination, witness identified Caplan in court. (R. Tr. V. 87, p. 6816.) On re-cross examination, witness described writ-

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ing of receipt by Schmidt. (R. Tr. V. 87, p. 6821.)

J. L. Bryson stated that he was a miner during 1910, with Hollister Mining Company, in Placer County; that he has not lived in Auburn for the last 20 years; that he used dynamite but never higher than 40 per cent; that he never purchased any dynamite, 80 per cent, in September, 1910, through an agent, or otherwise—always bought through agent; he does not know of any J. B. Bryson Construction Company, and does not know a man by the name of J. B. Leonard or William Morris. (R. Tr. V. 90, pp. 7037, 7038.)

M. E. Arnerich testified that he was State Wharfinger in September, 1910, at the Howard street wharf, 1, 2 and 3, San Francisco; that on September 24th, 1910, about 5 o'clock, launch Peerless (giving description) tied up. Witness had conversation with man on boat, and made memo at time. The man wanted berth for the boat for the night. (R. Tr. V. 87, pp. 6735, 6736.)

Witness identified Schmidt as the man, in court. He stated that Captain Burns' boat was tied up the same night; that the Peerless was about 100 feet north of Burns' launch; that Schmidt was dressed in blue overalls with bib, white stripes; and identified Exhibit 579 as looking exactly like those overalls. Witness made a memo to charge 10 cents. He never

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saw defendant again, or boat. Memo introduced, Exhibit 580. The letters on the boat were aluminum. Witness stated that he saw small wagon on wharf at times. (R. Tr. V. 87, pp. 6737–6740.)

B. T. Byrne, a wharfinger at the Howard street wharf, San Francisco, September 24th, 1910, corroborates Arnerich. He took a look at the launch "Peerless" and identified Schmidt as being in charge of the launch. (R. Tr. V. 87, pp. 6745, 6746.)

On cross-examination, he said that Schmidt had overalls on; "some overalls, that pattern." (R. Tr. V. 87, pp. 6747, 6748.)

Eugene Joseph Burns testified that he was captain of the state launch James N. Gillett Jr., in the month of September 1910; that he knew the launch "Pastime," which he described. (R. Tr. V. 87, p. 6724.)

On the 24th of September, 1910, witness saw the launch in the bay abreast of the Union Iron Works, San Francisco. It came off in the direction of Oakland and close to him on his port side, and blew one whistle which was the wrong signal to cross his right bow from the port side. This attracted witness' attention. The man in the boat was not very familiar with the boat; he was running the boat, and it was possibly fifty or seventy-five feet from the witness, and crossed witness' port bow. He was heading toward "Butchertown," the slaughter houses,

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in the vicinity of Nineteenth Avenue, San Francisco. (R. Tr. V. 87, pp. 6725, 6726.)

Witness next saw the boat between a place called "Shag Rock" and "Hunter's Point," heading in the direction of Bay View.

> "Q. Was there anything peculiar about that launch by which you could recognize it?
>
> A. Yes, sir; it was a peculiarly built boat and it was painted green at the time and had a small green skiff in tow with him; had a little ventilator on the forward part of the house, that was rather big for such a small boat, made it a very prominent mark to identify her by."
>
> (R. Tr. V. 87, pp. 6726, 6727.)

It is important to remember here that George H. Phillips, Assistant Superintendent of the Giant Powder Company, who testified to delivering goods on board the launch, testified at the time the "Peerless" called at the company's wharf, it did not have any air funnel, but that afterwards, when he saw it laid up in a creek where the police of San Francisco took him to examine it, he saw the air funnel which puzzled him at first, but he was able to identify the launch by a drinking glass, and otherwise, although the name had been changed to "Pastime." (R. Tr. V. 87. pp. 6771, 6772.)

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Captain Burns saw the launch again about 4 o'clock p.m., September 24th, when he was passing Sixteenth Street. The launch was coming out in the neighborhood of the oil wharves.

> "the Standard and Associated and Union all have their plants there for supplying the launches with gasoline, and it was coming out in that direction, as they had been in there after oil, and he headed along the water front towards the ferry." (R. Tr. V. 87, pp. 6727, 6728.)

Witness saw the boat again after that about half or three-quarters of an hour later, going in pier known as "Howard No. 2," on the water front,—the Howard Street Pier No. 2. (R. Tr. V. 87, p. 6728.)

He testified:

> "A. Well, after my work I tied up the boat over night Sundays and Holidays, and I was going in the slip to tie up for the night, this boat was ahead of me on my right-hand side, I ran up close to the boat, and I seen that the man was going to tie the boat up, I sung out to him, if he was going to tie up for the night, to tie up well in the corner that the dredger was coming in there at midnight to tie up until Sunday night, midnight.

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Q. By the way, was that Saturday night?

A. Saturday evening. * * * So I don't know whether the man understood me or not. Of course, I couldn't understand what he hollered back to me, or not, on account of the engine making such a noise that we couldn't hear one another. I tied my boat up, secured her for the night, and after I secured my boat, went up on the dock and was on my way to the office to change my clothes; the man at that time was up on the wharf already, standing alongside of the boiler room of the Western Fuel Company there, and I went up and spoke to the man, I told him that if he was going to keep his boat over night there to keep her well up in the corner and related about the dredger coming in there again, and he says to me, 'I am only going to stay a few minutes.' At that I left him.

Q. Was that the same man that had been on the boat?

A. Yes, sir.

Q. At that time did you notice what name was on this boat?

A. Well, to the best of my recollection I believe I remember seeing the name "Peerless" on it.

Q. "Peerless?"

A. Yes sir.

Q. Now, Captain Burns, take a look at this defendant and state whether or not he

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is the man you saw on the wharf there and spoke to on that occasion?

A. In a general way he resembles the man, although at the present time he is thinner in the face than at that time.

Q. Did you notice his eye at that time?

A. Yes sir.

Q. Does he have the same eye now?

A. Yes sir.

Q. Same appearance?

A. Yes sir.

Q. What is your best judgment, Captain, as to whether or not he is the man you saw at that time on that boat?

A. I am pretty positive it is the same identical man.

Q. By the way, what date did you say that was?

A. September 24th.

Q. 1910.

A. Yes sir."

(R. Tr. V. 87, pp. 6728 to 6731.)

On cross-examination, referring to the man Schmidt, whom he had seen on the wharf, he testified:

"Q. Now, how was the man dressed? Did he have on overalls?

A. Yes, he had on blue and white vertical striped overalls, that is, with a bib on them, and he had a brown shirt—a brown flannel shirt, to the best of my recollection. Had his sleeves rolled up, his arms were tanned like it was a new coat of tan on

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them. The man didn't look like a man that had been out in the weather much." (R. Tr. V. 87, p. 6732.)

Mrs. E. Boden testified that during the month of September, 1910, she resided within a few doors of 1622 Nineteenth avenue, and in the latter part of September she saw a delivery wagon with two men unloading in front of 1622 Nineteenth avenue. The delivery wagon had one horse attached, and the men were taking out packages and carrying them into the house. (R. Tr. V. 86, p. 6651.)

Mrs. A. Wittrock testified that she lived at 1613 Nineteenth avenue, San Francisco, in the month of September, 1910, and just across the street from 1622 Nineteenth avenue. She saw two men drive up to 1622 Nineteenth avenue with a one horse team and unload some boxes, which they took into the house, eight or ten of them.

"One was tall and light-complected, and he wore overalls and I believe a machinists jacket; and the other just wore overalls and he was short and dark-complected." (R. Tr. V. 86, p. 6647.)

Witness saw the shorter man the following week, twice, on different days, go into the house with a suit case. (R. Tr. V. 86, p. 6648.)

Stephen D. Russell testified that in the month of September, 1910, he was captain of

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the fire boat Dennis T. Sullivan, of the San Francisco Fire Department, and that in the latter part of September, 1910, he saw men with a launch named "Pastime" about 100 feet from the end of Harrison Street Wharf, San Francisco Bay. (R. Tr. V. 90, p. 7010.)

Witness gives a circumstantial account of difficulty had by the men running the launch in getting up to the end of the dock, and that

> "he then came up and said that—he had run out of gasoline and wanted to know if we had any; I told him that we hadn't, and when he tied the boat up, he tied it in such a way that it was right across the bow of the fire boat, and in the event of a fire we would have had some difficulty in getting out with the boat, or we would have probably ran into the launch, so I asked him to move the launch farther along on the end of the dock, where it would be out of the way. He came up on the dock and said that he was going around to Crowley's boat house to get some gasoline, and he started up the dock, and I think he only got about as far as the head of the dock, which is about 600 feet long, when he returned and said that he was unable to procure any gasoline from Crowley's. Well, I didn't say anything to him, but I made a mental note of the fact that he didn't have time to go around to Crowley's from the time he came back, and he wanted to know if we—somebody else suggested that we had some dis-

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tillate; he said that would answer the purpose very well, he wanted to know if I would give him some distillate; I said I would. So whether I gave him the distillate myself, or gave someone else the key to the lock room, and told him to give him two or three gallons of distillate, I can't recall, but I know that he got the distillate and came over and wanted to know how much he owed me for it. I said he didn't owe me anything. I wouldn't accept anything, but he took a dollar and a half out of his pocket and told me to buy some cigars for the boys; I said, they wouldn't know how to smoke cigars, they all smoked pipes around here, and passed it off in that way, and refused to accept his money, and he said he would make it good some other time.

Q. Now, take a look at this defendant, Schmidt, I will ask you whether or not, in your judgment, he is the man that was on the boat at that time and with whom you had this transaction.

A. While I say he bears a striking resemblance, in a general way, I wouldn't say positively; the man that I saw, I think, was heavier than he is.

Q. What is your best judgment as to whether or not he is?

A. My best judgment is that he is the man, but I wouldn't say positively.

Q. In your best judgment, he is the man?

A. Yes sir."

(R. Tr. V. 90, pp. 7011–7013.)

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Thomas F. Carrick, called by the defendant, testified that he was chief engineer on the boat Dennis T. Sullivan, in the month of September, 1910. He testified further:

> "I recollect of seeing a launch at Harrison Street wharf, and a gentleman getting some distillate, five gallons of distillate * * *
>
> Q. Did you notice any occupants of that launch?
>
> A. At that time I did not.
>
> Q. Did you have a conversation with anybody with respect to the distillate? * * *
>
> A. No, I did not.
>
> Q. Well, did you see the man who procured the distillate?
>
> A. Yes, I saw him carrying 5 gallons of distillate or gasoline. I thought it was distillate, though. * * * I didn't pay any attention to what was going on. * * * I had nothing to do with it."
>
> (R. Tr. V. 96, pp. 7496, 7497.)

Witness further testified that he never saw defendant before. Describes the man as 5 feet 11 inches or 6 feet, something like that, weighed about 200 pounds, a stout man.

On cross-examination witness stated that he took "a passing glance and that is about all." (R. Tr. V. 96, p. 7498.)

Frank Herrin, also called by the defendant, testified that on September 24, 1910, he was on board the boat Gillett at the Howard street wharf, San Francisco. He saw a launch which

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he did not identify. He spoke to someone in the launch, whom he described as a man weighing "190 or 200 pounds, red faced, he was a blond." There was a kind of defect in one eye. "I thought he was hit with a hammer." Witness failed to identify Schmidt, and stated that the man was dressed in a bib and overalls, and "he looked more like an athlete." (R. Tr. V. 96, pp. 7493, 7494, 7495.)

Frank Miskel, called by the defendant, testified that he was lieutenant of the San Francisco Fire Department on the fire boat Dennis T. Sullivan, in the month of September, 1910. Witness testified to the conversation between Captain Russell and a man from a boat with reference to gasoline. The man got distillate. Witness describes him as a "big, husky man," a little taller than witness. He was five foot eleven. Witness further says that the defendant does not resemble the man that he saw. (R. Tr. V. 96, pp. 7499–7501.)

This closes the evidence relating to the identification of Schmidt, Caplan and J. B. McNamara, and their movements before and after the dynamiting of the *Times* building. We now come to the testimony relative to the dynamite found at the residences of Mr. Zeehandelaar and General Otis.

J. W. Bringham testifies that he was a motorman on the Los Angeles Railway, and

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living in Los Angeles in the month of October, 1910, at 811 Garland avenue; he did not know F. J. Zeehandelaar at that time, but knows him now by sight. In the month of October, 1910, Mr. Zeehandelaar was living at 830 Garland avenue, "catercornered" across the street from witness' house. Witness was on duty October 1, 1910, and left work about 8 or 9 o'clock that morning. (R. Tr. V. 81, p. 6228.)

After leaving work, he passed along First street and saw the scene of the *Times* explosion, but could not get close to it. From there he went out West Ninth, to Ninth and Garland, toward his home, and on Ninth street, near Mr. Zeehandelaar's house, he testifies:

> "There were two girls there, and I understand one of them was the lady of the house —I don't know just what relation it is, and the girl that worked at the house." (R. Tr. V. 81, p. 6229.)

Witness had a conversation with the two girls, and thereafter, he says:

> "The first think I did was to go out and look for a patrolman on the beat, see if I could find anyone on the beat in connection with the package there was—I couldn't find any patrolman. The girls went in and phoned to someone and said the police officers would be there. Then I carried the package out in the street." (R. Tr. V. 81, p. 6131.)

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Witness says the package was lying against the south side of Mr. Zeehandelaar's house, about midway between the front and back, and right up against the house. He described the package:

> "Well, it was not a very neatly done up package, such as a suit of clothes would be done up in, a heavy paper, laying there, wrapped with a twine of some kind. * * *
>
> Q. Now, did you examine it there where it was laying by the house?
>
> A. Well, not very closely. I went up to it and took a look at it, and there was a clock in there that ticked, and the girl spoke of that first, and it led me to think that it was an infernal machine, and I was a little bit careful of it. I didn't want to be examining it too close.
>
> Q. You did hear a clock ticking at that place?
>
> A. Yes sir, I heard the ticking of a clock.
>
> Q. And that was before the package was opened?
>
> A. Yes sir. * * * I carried it out in the street and laid it about 10 or 12 feet, I should judge from the sidewalk, and stood there watching until the officers come."
> (R. Tr. V. 81, pp. 6132, 6133.)

Witness further testified that the officers came in about fifteen or twenty minutes and he stayed with the package until they arrived.

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When they came they immediately took possession of it. He saw the officers open the package and saw in it a lot of dynamite sticks and a clock and a battery attached. This was the same morning that the *Times* building was destroyed. Witness thereupon examined a clock and battery and said, "That is just exactly the same or a facsimile." The clock and battery were then received in evidence as People's Exhibit 567. The lady told the witness that Mr. F. J. Zeehandelaar owned the house where the package was found, and he was secretary of the Merchants and Manufacturers' Association. (R. Tr. V. 81, pp. 6234–6236.)

John S. Hendrickson, a police officer in the police department of Los Angeles, testified that on October 1, 1910, between nine and ten o'clock in the morning, he went to the house of Mr. Zeehandelaar and met officers Rico, Jarvis and Adams of the police department.

> "Officer Rico had in his hands a clock, with a battery attached to the clock, about 2½ inches in diameter, and on the ground lying about the base of a palm tree there was a number of sticks of dynamite wrapped in cotton and paper. One of the sticks had a cap in, I took that stick up myself and wrapped the wire, which was attached to the cap, approximately about four feet of wire, as I remember it now, around the

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stick, and put that stick in my pocket, and packed the rest of it in a box and conveyed it to the police station." (R. Tr. V. 81, pp. 6260, 6261.)

Witness further testified that the dynamite was taken to the police station by himself and Mr. Garbutt; that the clock and battery marked for identification No. 567 is the clock that was in Mr. Rico's hands at Mr. Zeehandelaar's house on the morning they found the dynamite; that witness put a mark upon it, which is still there. Thereupon the clock was received in evidence as People's Exhibit 567.

Witness further testified that fifteen sticks of dynamite were put in a box, packed in cotton, by the witness and taken in Mr. Garbutt's automobile to the police station and turned over to the chief of police. Witness examined the dynamite at the police station; broke one of the sticks in two, smelt it and tasted it and found it to be dynamite. (R. Tr. V. 81, p. 6262.)

"Q. Now, did you examine the wrappers—any of the wrappers that were on these dynamite sticks?

A. Yes sir; I looked at them, yes sir, and marked them.

Q. Did you notice how they were stamped?

A. There was a red square stamp evidently put on by rubber stamp, had that

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appearance, and it was labeled Giant glycerine, 80% strength, the wrapper of the Giant Powder Works, at Giant, California; there was a date at the bottom, stamped right in the stamp in square marking of September 20. * * *

Q. Where did you break this stick of dynamite?

A. Right in the presence of Mr.—right in the police station there, just broke it in two.

Q. That was some dynamite that you brought in from Zeehandelaar's house?

A. Yes sir. It had not been out of my possession at that time; I hadn't turned it over, yet. Mr. Ford was there, and several gentlemen there; I just broke the stick in two to see what it was.

Q. And in your opinion it was dynamite?

A. Yes sir, my opinion it was."

(R. Tr. V. 81, pp. 6262, 6263.)

Thomas Rico, a police officer in the Los Angeles Police Department, testified that on October 1, 1910, he went to the house of Mr. Zeehandelaar between nine and ten o'clock in the morning, with officer Jarvis, Lieutenant Adams, Mr. Zeehandelaar and the chauffeur. We got Mr. Zeehandelaar at the corner of Hill and First streets. On arrival at the house we found a package wrapped in paper and tied with strong twine, or cord, on the parkway on

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the east side of Garland avenue, between Eighth and Ninth streets. We picked it up and laid it in the center of Garland street and cut it open. He disconnected the battery—the wire—from the package with the sticks that lay alongside the battery. These sticks were about eight or ten inches long and an inch thick, and were wrapped in yellowish colored paper. He noticed the stamp on the paper but paid no attention to it. There were fourteen or fifteen sticks. There was cotton wrapped around the sticks and outside of the cotton, there was paper, newspaper. Besides the cotton and sticks there were a dry battery and alarm clock and wire. Being shown People's Exhibit No. 568 for identification, ten wrappers, witness testified that the wrappers were about the color of the paper and the general appearance of the paper that he saw around the sticks. Being shown People's Exhibit 567, witness explained to the jury:

"A. This lay alongside of the stick of dynamite or whatever it was—I don't know —I didn't examine that. * * *

Q. Are you referring to the entire exhibit that lay alongside of this?

A. It lay alongside of this battery, the wire was attached to the battery here at this end and then to a plate alongside of the battery.

Q. Do you say a plate?

A. A plate alongside of this battery.

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Q. That isn't there now, is it?

A. No sir. * * * This plate extended towards the clock; I disconnected this wire here and then cut this loose, or took it apart and separated the pile of sticks from the battery, handed it over to, I think, Mr. Garbutt, or someone there, who took charge of it."

(R. Tr. V. 82, pp. 6329, 6330, 6331.)

Witness also testified that he saw Mr. Hendrickson and others there and handed everything over to them. The alarm clock was set in the neighborhood of one o'clock. (R. Tr. V. 82, p. 6332.)

Witness further testified that in the neighborhood of one o'clock in the afternoon of the same day he went to the house of General Otis, on Wilshire boulevard and Park View avenue, and there found Mr. Flocken, Mr. Otis' gardener. Together they made a search and found a suit case under the east exposure of Mr. Otis' home, under a window. It was not concealed, but was under the bay window and not concealed by the shrubbery. They saw it from the garden walk. It was probably two or three inches from the wall and twenty-five feet or twenty feet back from the front of the house. Witness carried it to the east side of Park View and laid it on the parkway. The suit case was apparently leather, or dark tan.

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—brown, and looked as though it had been used. Witness sent a 'phone call to police headquarters and in about twenty minutes Chief of Police Galloway, detective George Home and Mr. Adams arrived, together with officers Hendrickson and Jack Mart. At that time witness had the suit case approximately 125 or 150 feet from General Otis' house. (R. Tr. V. 82, pp. 6332, 6333, 6334.)

He cut the suit case with his knife, starting on the lower left side to the upper left corner and then along the lock, or the frame of the suit case, at the right corner, and then at the lower right corner, and as he did that he heard a buzz and ran about a hundred yards.

> "Q. And what happened, after you got about that distance away?
>
> A. I heard a very heavy report, loud, dirt, debris and everything up in the air; I could see quite a cloud of dust, and coming back to the place, the trees were cut, the trees all cut, that is, the limbs; some of the limbs were approximately near to the concussion, and a hole in the ground there. That is all we could find—bits of the suit case, particles of it. * * * I found a piece of the frame stuck to a tree there, a tree about 4 or 5 feet from where the suit case was, and found a piece of the hinge, looked that way. * * * It was very close to the park, inside of the hedge."
>
> (R. Tr. V. 82, p. 6335.)

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Witness also found windows broken in Mr. Otis' house, on the east side, and also windows on the east side of the garage. (R. Tr. V. 82, p. 6336.)

David L. Adams, a police officer of the city of Los Angeles, testified that on the first day of October, 1910, he was sergeant of police. He went that morning to the house of Mr. Zeehandelaar, leaving the station about 9:10 and arriving about 9:20. The house was between Eighth and Ninth streets on Garland avenue in Los Angeles. (R. Tr. V. 82, p. 6300.)

> "Q. Now, what did you find when you got out there?
>
> A. Well, when we arrived there there must have been two dozen people along the street, and we found a package along the parkway between the sidewalk and the curbing."
>
> (R. Tr. V. 82, pp. 6300, 6301.)

Mr. Bringham, the motorman who testified, was standing close by the package, which was about a foot wide and twenty-four inches long, and about eight inches high. It was wrapped in a newspaper and securely fastened with a strong string. The package was taken into the street by detectives Rico and Jarvis and myself, and opened.

> "Q. What did you find in the package?
>
> A. Found dynamite—supposed to have been dynamite—securely wrapped with

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cotton batting, and an alarm clock attached to a board. We opened it; if I remember rightly, it was 15 sticks of dynamite in it, as near as I can remember there were 15 sticks."
(R. Tr. V. 82, p. 6302.)

Witness examined the sticks and noticed they gave the impression of a rubber stamp on them, as near as he could remember, "80% Giant Gelatin, September 20, 1910."

"Q. Now, did you see this clock and battery arrangement that was in court here yesterday, identified by Mr. Hendrickson?

A. I did.

Q. Is that the one you saw out there at that time, Mr. Adams?

A. Well, it was exactly like the one I saw there; I could not positively identify it.

Q. You put no mark upon it?

A. I put no mark upon it.

Q. It was one exactly similar to that, was it?

A. Yes sir; the only one I have seen since and the only one that I ever saw.

Q. Did you notice how this clock and battery was attached to the dynamite, if at all?

A. Well, yes, I did.

Q. Will you describe that to the jury?

A. Well, there was a wire attached to the side of the battery and one the end of the battery, and that connected with an

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insulated wire that was attached to a cap. The cap was inserted in one of the sticks of dynamite."
(R. Tr. V. 82, pp. 6302, 6303, 6304.)

Witness further testified that the dynamite was brought to the Central Police Station by Mr. Garbutt and Mr. Hendrickson and delivered to Chief Galloway. It was placed on a long table in a box. The battery and clock attachment were set on the table. The battery and clock were detached from the dynamite in the presence of the witness by detective Rico.

About noon of the same day the witness and Chief Galloway, detective Home, and officer Mart went together to the house of General Otis, where they met officer Rico. They went in answer to a 'phone call to headquarters.

"Q. What did you see when you got there, Mr. Adams? * * *

A. I found Detective Rico was in front of the residence of General Otis. I noticed —he had found a suit case under the window of the residence—he said he had. * * * Well, we found a suit case on the opposite side of the street, bordering along the park, Westlake Park."
(R. Tr. V. 82, p. 6306.)

Witness testified that detective Rico had it in charge.

"We went over to the suit case and the question arose as to what it contained, just

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what was the best thing to do with it. * * * Detective Rico took his knife out of his pocket and cut this suit case along the side, on one side of the suit case, he no more than completed the operation until I noticed smoke, a sizzle coming from the grip—suit case; of course, we all started to run in different directions. We had the police automobile there and we got into that—two or three of us—and started that off, but we hadn't got more than a hundred yards until it exploded. * * * the sound was very loud and as it exploded it brought so much dirt, dust, that it was several minutes before we could see anything around there at all; came back, couldn't find any particles of the suit case left, a large hole blown into the ground; we found a piece of the suit case over in Westlake Park, that is, a portion of it, steel band." (R. Tr. V. 82, pp. 6306, 6307.)

Witness testified that the hole must have been two feet deep and about eighteen inches wide. It tore out a part of the parking, the curbing, the board plank at that time, tore off one side of the tree that was along the curb, also broke most all the windows in General Otis' house. Witness noticed windows broken on the east side of his house, as he remembered, there were none that were not broken. (R. Tr. V. 82, p. 6307, 6308.)

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At the time it exploded, the suit case lay about 150 feet from General Otis' house. It was a leather case, brownish yellow. (R. Tr. V. 82, p. 6308.)

When the suit case was cut open by Mr. Rico, witness heard a kind of a rumbling sound, like something going to go off.

> "Q. Have you heard any of these little alarm clocks working around here?
>
> A. More of that than anything I could think, but at that time I didn't—just like you was unwinding a spring."
>
> (R. Tr. V. 82, p. 6309.)

George K. Home, Assistant Chief of Police of the city of Los Angeles, testified that on October 1, 1910, he was a police detective. He saw the package of dynamite that was brought to the police station on the morning of October 1, 1910. He says:

> "There were several sticks wrapped in grayish paper, gray substance inside, about 8 inches long, I should judge, and about an inch through, had some marks on them. * * * As near as I can remember it was—it gave the percentage of the glycerin or the nitroglycerin, dynamite, or whatever you call it, 80%, manufactured by the Giant Powder Company, I believe, Giant, California. * * * That was stamped in red ink, as I remember it."
>
> (R. Tr. V. 81, p. 6278.)

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Witness does not remember counting the sticks of dynamite, but there were in the neighborhood of a dozen, maybe more or less. At the last time he saw the dynamite he thinks there were fourteen sticks and four one-half sticks, making eighteen pieces. (R. Tr. V. 81, p, 6278.)

It was kept in the Chief's office. Witness saw the clock and battery on a table in the Chief's office. Being shown People's Exhibit 567 and asked if that was the one he saw there then, witness said:

> "A. I think it is. * * * That was on the table close to the box of dynamite in the Chief's office. * * * There was another stick of dynamite lying there on the table, I believe it was laying in a big bowl of cotton, or a pile of cotton, I should say, and it had a couple of wires coming from it.
>
> Q. What was attached to the wires, do you remember?
>
> A. There was a cap, I believe, which was imbedded down into the dynamite.
>
> Q. I show you now, Mr. Home, a fulminating cap, attached to a couple of pieces of wire, I will ask you to state, Mr. Home, if that is the wire and the fulminating cap that you saw there on that occasion?
>
> A. I think it is; it looks very much like it. I didn't put a mark on the wire or on the cap, but it looks very much like it—

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identical. * * * it was left there in the Chief's office, in the Chief's possession." (R. Tr. V. 81, pp. 6279, 6280.)

Witness testified that afterwards the dynamite was exhibited to the grand jury:

"In company with Detective Carroll, we took it to the police station, re-packed it, put a new covering on the box, or put a cover on the box, and took it to a quarry out near San Fernando,—Pacoima." (R. Tr. V. 81, p. 6281.)

He testifies that it was there delivered to William Davidson, foreman of the quarry. Subsequently the witness removed the cap from the stick of dynamite, and he says:

"Ultimately I left it before the United States Court in Indianapolis, Indiana.

Q. It was marked there in evidence, was it?

A. Yes sir.

Q. And you testified back there at the trial in Indianapolis, and left the cap there, did you?

A. I did; yes sir."

(R. Tr. V. 81, pp. 6282, 6283.)

Witness further testified that he removed the wrappers from some of the sticks of dynamite in order to take them before the court and not to have to carry the dynamite into court—referring to the court in Indianapolis.

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Being shown five wrappers, witness examined them and stated that they were the ones he removed from the dynamite in the quarry and took to Indianapolis. Witness identified six in all. Mr. Davidson was present when he removed the wrappers. They were taken from the dynamite he had previously delivered to Davidson. Thereupon, the wrappers from one to six, together with the writing on them, were received as People's Exhibit 569, and the writing read in evidence.

> "Six wrappers, taken off at Pacoima Magazine quarry, October 29, 1912, by Carroll and Home; that bears the number 4, and the same writing appears upon each of these exhibits." (R. Tr. V. 81, p. 6284.)

Thereupon the fulminating cap and wire were marked as People's Exhibit 570 for identification, being identified by the witness. (R. Tr. V. 81, p. 6284.)

F. B. Carroll, a police detective of the city of Los Angeles, in the year 1910, testified that he remembered the destruction of the Times building and was detailed the morning of October 1st to visit the scene. On the same day, at about one o'clock, witness saw a package in the office of the Chief of Police of Los Angeles, and says:

> "It was wrapped up in a square package, newspapers around it and there was, as near as I can recollect, 16–½ sticks of

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dynamite, and each stick was stamped 80% gelatin, Giant, California. Giant gelatin, September 20, 1910. There was also a clock in there, battery, and a fuse; one of the sticks was connected up, had a cap on it.

Q. Where was the clock and battery at the time you first saw them, Mr. Carroll?

A. It was laying in the package; the package was opened up.

Q. And the clock and battery, were they attached at that time, to this dynamite cap or not?

A. The cap and fuse was inserted in one of the sticks of dynamite."

(R. Tr. V. 88, p. 6848.)

Witness testifies that the cap was not attached by wire to the clock at that time—it had been disconnected. (R. Tr. V. 88, p. 6848.)

Being asked whether People's Exhibit 570 appeared to be the cap and wire that were inserted in the stick of dynamite at that time, witness answered:

> "Why, as near as I can recollect it does; it is the exact duplicate, anyway; it looks just exactly like the one." (R. Tr. V. 88, p. 6849.)

The cap was inserted in the end of one of the sticks of dynamite. It was out of sight so the cap didn't show. Witness testified he

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examined all the sicks of dynamite at that time.

> "Each stick was stamped '80% Giant gelatin, September 20, 1910.'" (R. Tr. V. 88, p. 6850.)

The color of the wrappers on these sticks was yellow. Witness and Mr. Home afterwards had charge of the dynamite sticks and cap. They were eventually delivered to Mr. Davidson, packed in a box of excelsior, wired up and marked, and taken to Mr. Davidson, Superintendent of the Pacoima County Arsenal. Mr. Davidson was the man in charge at the quarry and Pacoima. (R. Tr. V. 88, p. 6851.)

Subsequent to that time witness and Mr. Home went to the quarry and took the wrappers off of six of the sticks of dynamite and removed the cap from one of these sticks. They marked the six wrappers and took them to San Francisco and then to Indianapolis. (R. Tr. V. 88, pp. 6852, 6853.)

Witness further testified that on October 17, 1910, he went to the house in San Francisco, known as 1622 Nineteenth avenue, South San Francisco. It was about 7:30 or 8 o'clock in the morning. He there saw nine fifty-pound boxes of Giant gelatin, eight boxes had 80% Giant gelatin stamped "September 20, 1910"; the ninth box had been emptied and refilled

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with 40% DuPont. All the boxes were stamped "J. B. Bryson." Witness corrected his testimony, saying there were ten instead of nine boxes, and nine of the boxes had 80% gelatin, and the tenth was refilled with 40% DuPont. (R. Tr. V. 88, p. 6853.)

The dynamite was covered with a canvas cover. Some of the boxes were opened in the presence of witness by two or three officers from San Francisco and William J. Burns. Witness saw Burns open one and a man from the Giant Powder Works opened most of them. His name was Flynn. (R. Tr. V. 88, pp. 6854, 6855.)

Witness examined the contents of the boxes and each box contained fifty pounds of dynamite and every stick that he examined was stamped "80% Giant gelatin, September 20, 1910."

> "Q. What was done with these boxes, Mr. Carroll, do you know?
>
> A. Yes sir, we put them in a machine and took them down to the nearest wharf and put them on a launch belonging to a fellow named Peterson, and they were taken back to the Giant Powder works. * * * That was done the same day, that afternoon." (R. Tr. V. 88, pp. 6855–6856.)

Witness saw them again on November 3, 1912, at the Giant Powder works, when he

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went there to get a couple of wrappers from the dynamite to take with the other six to Indianapolis. He got the two wrappers from a part of the same nine boxes. (R. Tr. V. 88, p. 6856.)

Caroline E. Briggs testified that she resided at Giant, Contra Costa County, and was chemist of the Giant Powder works, a little over ten years. She held that position in the year 1910. She was a graduate of a university and had taught chemistry two years, and worked with the Giant Powder Company as chemist over ten years, ten years last August. (R. Tr. V. 89, p. 6923.)

Witness further testified that in October, 1910, she made an analysis of six sticks of dynamite. The powder was received on October 5, 1910, and she made a record of the analysis of three of the sticks. (R. Tr. V. 89, p. 6924.)

The powder was delivered to her by Mr. Don M. Wilson, from Los Angeles, who came to the works with Mr. Samuel Browne. Mr. Wilson gave her one stick of dynamite, which she examined. She marked the cover on that dynamite with her initials. Being shown People's Exhibit 569, consisting of ten wrappers, and asked to examine them and state how many had initials on them, she stated that numbers 1 and 3 had the initials, "C. E. Briggs,

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October 5, 1910," upon them. (R. Tr. V. 89, pp. 6925, 6926.)

Being shown People's Exhibit 568, and asked to examine a wrapper marked "10 W. J. F.," she testified that she found "C. E. Briggs, Chemist, October 5, 1910." She also found written on the exhibit, in the lower right-hand corner, "Not from L. A." Witness further testified that stick No. 2 was taken from the magazine at Giant Powder Company and was part of the analysis.

She began the analysis on October 5, 1910. The stick was part of the nitrogelatin that had been made at the works and had not been shipped. She could not state how many of the sticks of the powder were left over, but there generally would be, in 500 pounds, about 50 pounds left over. The wrapper "10 W. J. F." bearing her name and other marks was at the works on October 5, 1910, and had not been shipped in the 500 pound shipment. (R. Tr. V. 89, pp. 6926–6927.)

People's Exhibit 569, the wrapper No. 3, with witness' name on it and a date, was from the magazine of the Giant Powder Company, and from the excess of over 500 pounds which was not shipped; and the stick No. 1 was brought to the witness by Mr. Wilson on October 5th. (R. Tr. V. 89, pp. 6927, 6928.)

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Witness made an analysis of stick No. 1 brought by Mr. Wilson, and of the other two sticks. She gave these analyses as follows:

	Moisture.	Nitroglycerine.	Sodium nitrate.	Gun cotton.	Zinc oxide.	Pulp by difference.
No. 1 ------	.85	71.10	16.48	5.15	1.05	*5.38
No. 2 ------	.89	71.0	16.44	5.7	---	5.59
No. 3 ------	.83	71.21	16.50	.500	1.	5.45

*Not actually weighed.

(R. Tr. V. 89, p. 6930.)

Witness explained the causes of the fractional differences in the chemical analyses. (R. Tr. V. 89, p. 6931.) The difference is due to being a mechanical mixture instead of a chemical compound. (R. Tr. V. 89, p. 6932.)

"Q. It is mixed mechanically?

A. It is mixed mechanically. And when it is analyzed chemically all particles of pulp, say, are not the same size, so you couldn't have them evenly distributed throughout any mixture you happen to stick pulp into, and so on with the others. * * *

Q. Now, will you tell the jury what the sticks known as No. 2 and No. 3, what they were, what you would designate them as?

A. I don't think I understand your question.

Q. Well, you designated the first one as 80% gelatin.

A. Yes. I would call No. 2 and No. 3, 80% gelatin."

(R. Tr. V. 89, p. 6932.)

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W. J. Ford testified that in the month of October, 1910, and for several years subsequent to that time he was deputy district attorney of the county of Los Angeles.

In the morning of the 1st of October, 1910, witness visited the police station in Los Angeles, and there saw some dynamite in the possession of the police, which he examined. On the 24th of September, 1913, he saw the same dynamite at Pacoima Quarry.

> "We had received word that the nitroglycerin was drying out through the papers, and that it was becoming very dangerous, and they wanted us to explode it. I went out to see it was exploded, and to observe the effect of it, and to save the wrappers." (R. Tr. V. 81, p. 6242.)

Witness testifies there were present, Russell Graham, of Whittier; E. R. Collins, of Los Angeles; Gerald Graham, of Whittier; William Davidson, Superintendent of Pacoima Quarry; C. F. Hayden, "Times" reporter; and A. Streib, an "Examiner" photographer. (R. Tr. V. 81, p. 6243.)

Witness saw this dynamite and took the wrappers off of it. The wrappers were the same that he saw at the police station, together with the clock, on the morning of October 1, 1910. Witness examined the clock at the police station and said the clock shown him in court was not in the same condition

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now as it was in at the police station. That the clock and battery were attached to the same board at the time, but there was a wire running from one of the posts on the battery to a brass post at the side of the battery, the post running through the board. That brass post was attached to a piece of brass which ran parallel with the clock toward the end of the board on which the clock was situated. It is not there at the present time.

"Q. Will you indicate to the jury where that brass was?

A. There was a piece of brass attached to this brass post, a little piece of flat brass, about between a quarter and a half inch wide, and several inches long. It extended parallel with the edge of the board towards the end of the board on which the clock is situated, and it was so placed that when this arm was attached to the alarm part of the clock revolved, this arm would come down and touch that piece of brass. There was another electric wire running parallel on the post of the battery connected with the clock, in some way so that when that arm touched that piece of brass it would complete the circuit. I examined it and saw that the clock was set for 1 o'clock; that underneath the clock was a place to make the clock silent or alarm, that was set at the alarm. The clock was going and the connections were clean on the wires, and I examined those all carefully, to ascertain why

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it did not go off at 1 o'clock. Found the alarm was wound as tight as it could be wound at that time. Of course, my conclusions are irrelevant.

Q. You say the clock was set for 1 o'clock. Will you indicate to the jury where it was set, what made your conclusions at that time it was set for 1 o'clock?

A. At the bottom of the face of the clock there is a little circle with the figures 1, 2, 3, 4, along around to the number 12 in the left hand direction, and the little hand within the center of the circle had the long part of the hand pointing at the figure 1.

Q. That is the alarm indicator, is it not?

A. Yes."

(R. Tr. V. 81, pp. 6245–6247.)

Witness further testified that he had examined the wrappers which were taken from the dynamite, delivered to him by Mr. Davidson September 24, 1913, being the same which he saw on October 1, 1910, in possession of the Los Angeles Police Department; that he marked each one of them from "1" up to "10," inclusive, together with his initials, "W. J. F."; that one of the sticks was broken in two at the police station on October 1st. Witness further testified that on the morning of October 1, 1910, when he examined

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this dynamite, he saw upon it the print of the Giant Powder Company, which was marked,

> "'Giant gelatin, 80%, From Giant Powder Co., Giant, California, Sept. 20, 1910.' Each stick was marked in the same way when I saw it at the police station on October 1st, 1910; but when I took them from the quarry in 1913, the printing had become blurred." (R. Tr. V. 81, pp. 6248, 6249.)

Witness testified that after the wrappers were taken from the dynamite:

> "We took them around the side of the hill, selected a couple of rocks and first exploded one stick at a time, probably the first two sticks on separate rocks at the same time; the rocks were about two feet in diameter, Mr. Davidson stuck a couple of fulminating caps in the dynamite, stood off at some distance, closed the circuit and exploded them. * * * each of the single sticks shattered the rocks, and then I think we exploded all the balance on one rock." (R. Tr. V. 81, p. 6249.)

Witness testifies that at the police station on October 1, 1910, he saw fifteen or sixteen sticks of dynamite; one of these sticks was sent to the Giant Powder works. (R. Tr. V. 81, p. 6250.)

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William Davidson, superintendent of the Pacoima Quarry in 1910, testified that George Home and Mr. Carroll delivered the dynamite in 1910 at the request of the District Attorney to destroy on account of danger. He corroborates the testimony of W. J. Ford, regarding the explosion of it, and says he saw the wrappers taken from the dynamite and saw Ford put his initials on them, referring to Exhibit 568.

Witness recalls that Home and Carroll came to the magazine and took a number of sticks of dynamite and wrappers away. He examined wrappers marked Exhibit 569 and identified them as the ones taken by Home and Carroll. He also identified the Zeehandelaar clock and fulminating cap, Exhibit 570. (R. Tr. V. 82, p. 6349.)

Donald Wilson corroborated the testimony of Miss Briggs, chemist for the Giant Powder Company, that he delivered part of the sticks of dynamite, together with the wrappers, marked Exhibit 569. (R. Tr. V. 90, p. 6996.)

E. H. Miller testified that he was chemist for the Health Department of the city of Los Angeles, in the year 1912. That he went to Pacoima Quarry with Mr. Home of the police department, and Mr. Rockwell, the chauffeur, he thinks, at the suggestion of Deputy District Attorney Ford. He saw wrappers or sticks of

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so-called dynamite there. This was February 27th.

"Q. I will show you nine full wrappers, and two parts of wrappers, and call your attention to the rubber stamp, indistinct, 'Giant Powder Company, September 20, 1910,' and ask you if that is the same stamp that was on the sticks that you saw at that time at the quarry?

A. That is the same stamp that was on the wrappers that I saw at that time."
(R. Tr. V. 95, p. 7401.)

Witness then identified his handwriting upon one of the wrappers, his initials "E. H. M.," "test 2-27-12." Witness examined two sticks. (R. Tr. V. 95, pp. 7399, 7400, 7401.)

"Q. What did you do with them? Did you make any tests there of the contents of the sticks?

A. I attempted with one of the pieces. I took about an inch off the end of one stick, or both of the sticks, attempted there to make a determination of the amount of nitroglycerin present in the material, and I was unable * * * at that place to find any nitroglycerin in the stick that I tested. * * * I took the part of the other stick, brought it in to my laboratory in the city here."
(R. Tr. V. 95, p. 7402.)

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Witness testified that at the quarry he,

"I attempted to separate nitroglycerin from the material by means of water, and this was a failure; I also made a test for nitroglycerin—a chemical test—which was a failure. In other words, there was no nitroglycerin present in this stick." (R. Tr. V. 95, p. 7402.)

Witness further testifies that he made further examination of the material he took to his laboratory:

"Q. Now, did you arrive at a determination of the contents of those sticks, Mr. Miller?

A. Not entirely.

Q. The composition?

A. Not entirely. * * *

Q. Will you kindly give the result of your test, as to the composition contained in those two samples?

A. I can only give the result on the first sample, which I tested at the Pacoima quarry, saying that it contained—

Mr. Keyes: We object to that result on the first sample, in view of the witness' testimony heretofore given on the direct examination, that that test was a failure. * * *

"Mr. Miller, I call your attention to the first test made from the first stick at the quarry, state what that test was.

A. That was a test to determine the presence and amount of nitroglycerin.

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Q. And what did that test show with respect to the amount of nitroglycerin in that sample?

MR. KEYES: Objected to on the ground it is immaterial, no proper foundation laid, in view of his testimony.

THE COURT: Objection sustained."

(R. Tr. V. 95, pp. 7403, 7404, 7405.)

Being further examined, witness stated the test which he made, and basing his opinion on that test of sample No. 1, it did not contain any nitroglycerin. (R. Tr. V. 95, p. 7406.)

Witness further testifies to his experiments on the second sample, at his laboratory, and found no nitroglycerin present. (R. Tr. V. 95, pp. 7407, 7408.)

At the close of his cross-examination, witness was asked:

"Q. And what would that be there for?

A. I don't pretend to be an expert on the manufacture of—

Q. Did you ever analyze any dynamite before?

A. No sir, I never.

Q. That was your first attempt?

A. Yes sir."

(R. Tr. V. 95, p. 7412.)

We now come to evidence relating to Schmidt's flight and incriminating declarations made by him just prior to his arrest.

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Samuel L. Browne testified that he went to San Francisco October 2, 1910, and obtained a description of the three men who bought the dynamite; and then made a search all over the United States for the defendant, and sent out circulars describing him. (R. Tr. V. 89, p. 7007.)

William P. Lawson testified that he knew the defendant Schmidt in the city of San Francisco.

> "As far as I remember—I think my memory serves me well,—the morning of the Times disaster I was walking—I saw Mr. Schmidt on Market Street and he hailed me and I hailed him, but there was no particular conversation.
>
> Q. Have you seen him since that occasion?
>
> A. Never since that occasion."
>
> (R. Tr. V. 90, p. 7022.)

Witness further testified that he knew Caplan and had known him for approximately seven years. At one time he and his wife lived with Mr. and Mrs. Caplan at 1565 Grove street, San Francisco. Referring to the 1st of October, the date of the Times explosion, he said:

> "With reference to that date we occupied the house perhaps a month before that."

Witness moved out of the house a few days after the explosion. The last time he saw Cap-

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lan was several days after the explosion. (R. Tr. V. 90, p. 7023.)

Mrs. Louisa Bernard lived adjacent to Caplan's house, 1565 Grove street, San Francisco, in September, 1910. She saw David Caplan on one occasion leaving the house with another man with a suit case. Caplan said good-bye to his wife. Mrs. Caplan,

> "appeared to me was tearful; said she was afraid she wouldn't see him any more."

She identified Caplan and said:

> "He is slimmer; he didn't wear glasses then."

On cross-examination the witness said she saw a man, who may have been Lawson, drive up occasionally with a horse and wagon, or buggy. The Caplans moved very suddenly about September 14th. (R. Tr. V. 90, pp. 7044, 7047, 7050.)

W. A. Hammel, sheriff of Los Angeles County in 1910, testified to making a fruitless search for Schmidt. (R. Tr. V. 91, p. 7126.)

Robert T. Brain, deputy sheriff of Los Angeles County, in 1910, testified to making a fruitless search for Schmidt. (R. Tr. V. 91, p. 7129.)

William J. Burns, detective, testified that he made search for Schmidt in San Francisco, and at Home Colony, Washington, immedi-

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ately after the explosion, and instructed officers throughout the country to make a search for him. Witness also made search in Europe, London and Paris. He continued the search, "until the time of his arrest." (R. Tr. V. 94, pp. 7353, 7356.)

W. J. Doevy, captain of detectives of the first rank, with headquarters at the police headquarters in New York, testified that he arrested the defendant Schmidt.

> "I grabbed Schmidt by his left hand. Schmidt grappling me, and we tussled about a bit * * * We threw Schmidt into an automobile and then proceeded down to the police headquarters at 240 Center Street." (R. Tr. V. 71, p. 5329.)

The witness testified that Schmidt did not desist from struggling until he was informed that Captain Doevy was a "copper." (R. Tr. V. 71, cross-examination, p. 5335.)

We now come to the testimony of a witness who was employed by detective Burns to trace and interview the defendant Schmidt. He was, of course, strongly denounced by the defense as a detective, spy and traitor, and of low origin and from an anarchistic environment; but we submit that his testimony tallies so completely in so many important respects with the large body of evidence adduced in the case, that no candid man can fail to accept it as true.

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Donald Vose Meserve, called on behalf of the prosecution, testified:

My home is at Home Colony, Washington; I am acquainted with David Caplan; I was in San Francisco during the month of September, 1910, where I saw David Caplan; and I had met him in Home Colony about six months before; Caplan lived at my mother's house in Home Colony. (R. Tr. V. 91, p. 7058.)

"Q. If you saw Caplan in San Francisco in September, 1910, state when and where, and under what circumstances?

A. The first time that I saw him there, I don't know the exact date, but I believe it was about a month before—Oh, about the 1st of September, likely. * * *

Q. What was going on at his house?

A. They were having a party there that evening.

Q. Who was present besides yourself and Caplan? * * *

A. His wife, Mr. Lawson, his wife, Terrie Carlin. * * * E. B. Morton * * * Mr. Johannsen."

(R. Tr. V. 91, p. 7059.)

Witness further testified that the Lawson he named was the man who testified in this case; that he met Caplan after that and prior to October 1, 1910, in Chute's Cafe, an amusement park on Fillmore street, between Turk and Eddy streets, in San Francisco. It was the Sunday night before the Times explosion. Those present were: David Caplan

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and his wife, Edith Jarmon, Norman Newer, Terrie Carlin, Marie Latter and the witness. In the presence of all of these people Caplan said he was going to get the late train for Los Angeles—he was going to Los Angeles on the late train. Just before the people left, Terrie Carlin told witness that he was going to the train with Caplan. They left together. (R. Tr. V. 91, pp. 7059, 7060, 7061.)

Witness did not see Caplan again before the Times explosion. Witness went to New York, arriving in the city May 12, 1914. He was employed by the Burns detective agency to go to New York City and locate M. A. Schmidt. After he was in the city two or three weeks, he got a room in Emma Goldman's house, 74 West 119th street; he was acquainted with her. He remained there until the last of September, 1914. (R. Tr. V. 91, pp. 7061, 7062.)

Witness saw defendant Schmidt about September 23, 1914, at Emma Goldman's house, 74 West 119th street. Witness arrived first; Schmidt came later and passed his room. That night witness, Terrie J. Carlin, Hutchins Hapgood, Emma Goldman, Alexander Berkman, Eleanor Fitzgerald and Schmidt were all there. Witness was introduced to Schmidt by Alexander Berkman, who said to Schmidt, "meet an old friend of ours"; and explained to Schmidt that witness was Gertie Vose's son. (R. Tr. V. 91, pp. 7062–7063.)

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Schmidt told witness that he had seen him in San Franciso, in 1910, at Lawson's and Caplan's house; and one other time in San Francisco when a bunch was out on a kind of a slumming party there. There was a general conversation, and then witness had a conversation with Schmidt and Carlin, not within hearing of the rest of the party. Schmidt told them that he had been having a hell of a time running around the country trying to lose himself, keeping away from the police. At first when they were after him, he had destroyed all of his laundry and other wearing apparel, marks, by which he could be identified. He said that when he first arrived in New York, that he thought he had better get a new glass eye, as he was afraid the authorities would have some description of the one he had before, and that he went to a shop on Fifth avenue with the old glass eye out, and got a new one, and ordered a new one and a pair of spectacles at the same time. (R. Tr. V. 91, p. 7065.)

He told that when talking to strangers, if the party would happen to get on his left side, he would explain to them that he had a glass eye on that side and could not see them, and would ask them to get on the right-hand side. He said he did this to throw them off—that is, if the party happened to be an officer or detective that they might get suspicious of that

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—notice he had a glass eye, but if he could call their attention to it first, that it would throw them off. He also said that he intended to go to London, England, a short time before that, about August, but that he couldn't get away from New York on account of the war over there. (R. Tr. V. 91, p. 7066.)

Schmidt told witness that he had been to Detroit the day after J. B. McNamara was arrested there; that he went to the hotel where McNamara had been arrested; that he thought if they wanted to get him, he would go there so they could find him, but that he would fight it out with them. (R. Tr. V. 91, p. 7067.)

Schmidt also told witness that he was sorry that he had had anybody working with him on that job in Los Angeles; he said that if he had had the job alone he would have come out all right with it. He said that there had been about 400 people in San Francisco that knew all about this Los Angeles Times job before they did it, and that Johannsen got scared and called a meeting of the higher-ups, Tveitmoe, Johannsen, E. B. Morton, and others, and "Schmitty." Schmidt said that Johannsen told him that he had been mixing around with so darned many girls in Frisco, and talking about this job so much, that he wanted to call the job off; and Schmidt said that he told Johannsen to go to hell, that he was going to

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do the job, and if he wanted to back out he could do so, but they would go on with the job just the same. (R. Tr. V. 91, pp. 7068, 7069, 7070.)

In this same conversation at Emma Goldman's, Terrie Carlin asked Schmidt if we could get in touch with him soon and spend an evening together, just the three of us, and have a good talk; Schmidt said that he didn't know, that he had several trips to make out of town and that he was keeping away from the old bunch all he could anyhow, but that if we wanted to get in touch with him at any time, we could do so through Emma Goldman. Terry asked Schmidt if he didn't think he was taking a big chance by coming around Emma Goldman's house this way, and Schmidt said no, that he thought it was the safest place in the world for him, because they would never think of looking there for him. (R. Tr. V. 91, p. 7071.)

Witness had a room there. Emma Goldman had the whole place, and the ground floor was occupied by the office, her monthly magazine "Mother Earth." (R. Tr. V. 91, p. 7071.)

> "Q. Now, Mr. Meserve, before he went away, state what, if anything, was said about the name under which Schmidt was going? * * *
>
> A. Oh, yes, yes, referred to him as Joe Hoffman, and we called him Joe, and Miss

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Fitzgerald called him Joe Hoffman; Bergman told me, before he came there, that he was to be known as Joe Hoffman."
(R. Tr. V. 91, p. 7072.)

Witness next saw Schmidt on the 12th of October at Emma Goldman's office on 125th street, where she had moved and had rooms at 20 East 125th street. Witness had moved to her farm at Ossining, New York, where he remained about one month. During that time, and on October 12, 1914, witness went to Mother Earth's office and found Schmidt there doing some carpenter work in the room. Witness had several other unimportant conversations with Schmidt, at Emma Goldman's house, in the office. (R. Tr. V. 91, pp. 7073, 7074.)

Witness saw Schmidt on the 2d of January, 1915, at Emma Goldman's office, together with Terrie Carlin, Max Baginsky and Emma Goldman. Schmidt told witness that he understood witness was going back home to Seattle, and wanted to know if he had fixed the date. Witness said he thought he was going to leave in about a week, and Schmidt said he would want to get in touch with witness before he left; that he would get in touch with him. On January 23, 1915, witness met Schmidt at the Woodstock Hotel, in New York City, on Forty-third street, at about 7 o'clock in the evening, with

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Max Baginsky. (R. Tr. V. 91, pp. 7076, 7077, 7078.)

They all sat at a table in the front end of the barroom, and Schmidt suggested moving into a stall in the back end where they could be more private. Baginsky asked Schmidt what he had been doing up on Boyson's farm, in Connecticut. Schmidt said he had been passing the time there; had some powder and was experimenting around the place there; and Baginsky said,

> "Yes, I saw Boyson down town here and he told me that he found you on the place, after he had been away once, and that he said you was around shooting stumps and rocks with dynamite, and thought you was a little nutty."
>
> (R. Tr. V. 91, p. 7079.)
>
> "Q. Now, state what, if anything, was said about the name he was going under in that conversation?
>
> A. He told us some time before this he has been in Detroit and other cities, going by the name of Kellar. * * *
>
> "He pointed out a man at the Woodstock bar there, and told us he had met this man in Detroit, while he was under the name of Kellar, and that later he came back to New York City and registered at the Woodstock Hotel, and was known around there by the bartenders as Joe Hoffman, and that he had

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met this same party there, and the party asked him why he changed his name." (R. Tr. V. 91, p. 7083.)

Witness next met Schmidt at Max Baginsky's house the next evening, where they remained about two hours. From there Terrie Carlin and Schmidt and witness left about ten o'clock and went to a saloon near by, and into the barroom where they were alone, Carlin, Schmidt and the witness. Schmidt said he had been in Los Angeles with J. B. McNamara and Caplan several times before the *Times* building explosion, and that they were down there making plans for the explosion. At these times they were in Los Angeles they would go to several different hotels and register at each hotel under a different name; that they finally would stay at one of these hotels under the name that they had registered there, and explained that they did this so in case the authorities were trying to trace them through hotels, they would get mixed up on account of that. (R. Tr. V. 91, p. 7084.)

Schmidt said that General Otis and his paper, the Times, were the worst enemies of organized labor in the United States. It was for that reason they wanted to blow up the Times building, and that they also intended to kill Otis; get him out of the way. He said that

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they didn't gain much by blowing up the building as long as Otis was living yet; the only thing they gained was getting rid of these twenty men that were in there, and that he was sorry there had not been more of that brand in there at that time. He said that there had been three other explosions to come off and he mentioned the homes of Chandler and Zeehandelaar and Otis. He also said that these other three bombs didn't explode for some reason. He told us that they had made an awful lot of blunders up at Frisco while they were planning this job. He said that he and Caplan had bought the dynamite, 500 pounds of dynamite, at the Giant Powder works, and that they had a launch called the "Pastime" that they had used to carry this dynamite across the bay; that E. B. Morton had rented a house in San Franciso to store this dynamite in when they brought it over there, but that he got on a drunk the same day he rented the house, and lost the key and forgot the street number of the house, and was afraid to go inquiring around to find it again. He said that they had used Lawson's wagon to haul the dynamite from the boat, and that they stored it in a room there that was occupied by Terrie Carlin and Schmidt, and that they kept it there in their room until they got another house to store it in. He also said that Caplan had two boxes of dynamite in his house, and that he

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and Lawson were living together; that some stranger came up to the door and rang the bell, Caplan got scared, he thought maybe somebody was on his trail. He said that he had been at Seattle with J. B. McNamara, and had blown up a building there which was being constructed, the Lyons Building, or Club Building. He said that they had done the job in such a way that it would look as if the sewer gas, or some gas under the building, had exploded; and said that they were sitting in the railroad station waiting for the train to return to San Francisco when they heard the explosion go off. He said that after they did this job in Seattle, that they came to San Francisco and that they had blown up some building, or something, in Oakland; that was before they did this job in Los Angeles. (R. Tr. V. 91, pp. 7084–7088.)

Schmidt explained to us several bombs, or different things he used to blow up buildings with; he said that he had one bomb that when it exploded it would form a gas and that gas would set the building on fire, and make it look as if the building had caught fire, and that there would be no traces of the dynamite or bomb. (R. Tr. V. 91, pp. 7088, 7089.)

Witness did not see Schmidt any time after this conversation.

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APPENDIX.

Hotel Registrations Tending to Corroborate the Testimony of Davis and McManigal of Explosions Produced by Them.

Exhibit No. 307.

Wilbur Hotel.

Fall River, Mass.

Registration of George Davis under the name of George O'Donnell, April 23, 1908.

To corroborate George Davis: explosion produced by him April 26, 1908, Fall River, Mass.; dynamiting Slades Ferry Bridge over the Taunton River. American Bridge Company, constructors.

Exhibit No. 308*a*.

Exhibit No. 308*b*.

Perrin Hotel.

Providence, R. I.

Registration of George Davis under the name of George O'Donnell, June 14, 1908.

This to corroborate George Davis, who produced explosion on viaduct in the course of construction by the Phoenix Bridge Company of Summerset, Mass.

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Exhibit No. 42.

Columbia Hotel.

Clinton, Iowa.

Registration of McManigal under the name of W. R. Grovie, February 15, 1908.

This to corroborate McManigal, who produced the explosion at Clinton, Iowa, February 17, 1908, on the bridge in the course of construction by the Wisconsin Bridge & Iron Company for the C. & N. W. R. R.

Exhibit No. 542.

United States Hotel.

Boston, Mass.

Registration of McManigal under the name of Charles Clark, March 27, 1909.

To corroborate McManigal, who produced the explosion at Boston, Mass., March 27, 1909, of the Boston Opera House, under construction by George W. Harvey & Co.

Exhibit No. 27.

Braun House.

Muncie, Ind.

Registration of McManigal under the name of George Miller; Herbert S. Hockin under the name of C. Clark, and J. B. McNamara

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under the name of J. B. Brice, December 9, 1909.

(See McManigal's testimony, Schmidt Trial, Vol. 74, pages 5612–5637.)

McManigal meets J. B. McNamara for the first time. J. B. tells McManigal that he and Hockin had been up to Beaver, Penn. (near Pittsburg). See Exhibits 72, 73, 74 and 75, showing registration of J. B. McNamara under the name of James Brice, December 4, 6, 7, and 5th, respectively.

J. B. explains to McManigal the clock device.

J. B. tells McManigal that he (J. B.) and Hockin have tried the clock device out when in Steubenville, Ohio. Had six explosions, five of which went off. (This testimony is further corroborated by witness, F. E. Ervin, telegraph operator.

J. B. tells McManigal of producing the Von Spreckelsen explosion at Indianapolis, Ind., Oct. 25, 1909.

J. B. tells McManigal of producing explosion at Green Bay, Wis., Nov. 21, 1909.

Hockin, McManigal and J. B. McNamara procure 120 quarts of nitroglycerine from one Charles Kizer, and store same in the vacant house rented for that purpose at 227 Ebright St., Muncie, Ind.

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Exhibit No. 543.

Lorraine Hotel.

Indianapolis, Ind.

Registration of McManigal under the name of O. E. McManigal, April 16, 1910.

This to corroborate McManigal's testimony wherein he states he came from Chicago, Ill., to Indianapolis, Ind., in response to a telegram from Hockin and received instructions from Hockin to proceed and to cause an explosion on the works of McClintic-Marshall Construction Company at Mt. Vernon, Ill. (See p. 5639, Vol. 74.)

Exhibit No. 544.

Dodson House.

Mt. Vernon, Ill.

Registration of McManigal under the name of Will Clark, April 17, 1910.

This to corroborate McManigal, who produced an explosion at Mt. Vernon, Ill., April 19, 1910, at the power house, Mt. Vernon Car Manufacturing Co., in the course of construction by McClintic-Marshall Co.

Exhibit No. 530.

New Kimball Hotel.

Davenport, Iowa.

Registration of J. B. McNamara under the name of J. B. Brice, June 3, 1910.

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This to corroborate McManigal's testimony. He testified that J. B. McNamara told him (McManigal) that he (McManigal) produced an explosion at Davenport, Iowa, June 4, 1910; machine shops for the Davenport Locomotive Works in the course of construction by the McClintic-Marshall Company.

Exhibit No. 545.

Savoy Hotel.

Cincinnati, Ohio.

Registration of McManigal under the name of Will Clark, June 17, 1910.

McManigal meets Hockin and J. B. McNamara in Cincinnati. McManigal and J. B. receive instructions from Hockin to proceed to Cleveland, Ohio, and cause the explosion of the Dennison-Harvard viaduct.

Exhibit No. 531.

Kenhard Hotel.

Cleveland, Ohio.

Registration of McManigal under the name of Peter Miller and J. B. McNamara under the name of J. B. Brice, June 18, 1910.

This to corroborate McManigal's statement that he with J. B. McNamara produced an explosion, June 22, 1910, on the Dennison-Harvard viaduct in the course of construction by the McClintic-Marshall Construction Company.

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Exhibit No. 532.

Park Hotel.

Toledo, Ohio.

Registration of McManigal under the name of Frank McGraw and J. B. McNamara under the name of J. B. Smith, June 21, 1910.

This to corroborate McManigal's testimony that he left Cleveland, Ohio, after causing explosion of the Dennison-Harvard viaduct job and went to Toledo.

Exhibit No. 548.

St. Clair Hotel.

Toledo, Ohio.

Registration of H. S. Hockin under the name of H. S. Hockin, June 26, and McManigal under the name of John Graw, June 27, 1910.

This to corroborate McManigal in his statement that he received a long distance telephone call from Hockin at Toledo, for he (McManigal) in Chicago to meet Hockin in Toledo. (See p. 5729.)

Hockin instructs McManigal to visit Beaver and McKee's Rocks, Penn. (near Pittsburg).

Hockin arranged to meet McManigal in Pittsburg at the St. Charles Hotel, where he was registered under the name of Charles Lawton.

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Exhibit No. 77*a*.

St. Charles Hotel.

Pittsburg, Penn.

Registration of McManigal under the name of John McGraw, June 30, 1910.

Exhibit No. 77*b*.

St. Charles Hotel.

Pittsburg, Penn.

Registration of Herbert S. Hockin under the name of Charles Lawton, July 1, 1910.

(See volume 75, p. 5735 to 5749, tending to corroborate McManigal's testimony as to certain conversations had with Herbert S. Hockin, who had stopped at above mentioned hotel as Charles Lawton.)

Exhibit No. 77*c*.

Saint Charles Hotel.

Pittsburg, Penn.

Registration of McManigal under the name of John McGraw, July 10, 1910.

(See volume 76, pp. 5760 to 5763) McManigal stops off at Pittsburg to buy alarm clocks; returning from Greenville, New Jersey, where he produced explosion July 9, 1910, on a viaduct of the Lehigh Railroad Company in the course of construction by the Phoenix Bridge Company.

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Exhibit No. 76.

Saint Charles Hotel.

Pittsburg, Penn.

Registration of McManigal under the name of J. W. McGraw, Aug. 12, 1910.

(See volume 76, pp. 5802 to 5805.)

McManigal, after having a conversation with J. J. McNamara in Indianapolis, was instructed to proceed to Pittsburg, Penn., and get another dozen clocks and go over to Rochester, Penn., and get 20 Qts. of nitroglycerine from the Rochester cache. McManigal proceeded to Pittsburg to purchase the clocks, made a search of the Rochester cache and found nitroglycerine had been taken away.

Exhibit No. 549.

Union Depot Hotel.

Omaha, Neb.

Registration of McManigal under the name of J. B. McGraw, July 18, 1910.

Corroborates McManigal as to the explosion produced by him July 21, 1910, at Omaha, Neb., power house in course of construction by Wisconsin Bridge and Iron Company for the Omaha and Council Bluffs Railway.

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Exhibit No. 552.

Atlas Hotel.

Milwaukee, Wis.

Showing registration of McManigal under the name of J. B. McGraw, July 27, 1910.

(See volume 76, 5784–5792.)

Corroborates McManigal's testimony wherein he states, after a conversation with J. J. McNamara in Indianapolis, Ind., he was instructed to visit Milwaukee, Wis., and get in touch with business agent W. E. Reddin there and look over some work in the course of construction in Milwaukee by the Heyl-Patterson Construction Company.

Exhibit No. 554.

Oneida Hotel.

554*a*	Oneida	Indianapolis	McManigal	Aug. 15-16, 1910
554*b*	"	"	"	" 24-28, 1910
554*c*	"	"	"	" 30, 1910
554*d*	"	"	"	Sep. 1, 1910
554*d*	"	"	"	" 2, 1910
554*e*	"	"	"	" 13, 1910

(See volume 76, 5808 to 5835.)

The above tends to corroborate McManigal in conversations had with J. J. McNamara in Indianapolis, Ind., when he received instructions to cause explosions at Kansas City (Aug. 23, 1910), and Peoria, Ill. (Sept. 4, 1910).

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Exhibit No. 555.

Jefferson Hotel.

Kansas City, Mo.

Showing registration of McManigal under the name of J. W. Graw.

This to corroborate McManigal, who produced explosion at Kansas City, August 23, 1910. Railroad bridge over the Missouri River under construction by the McClintic-Marshall Construction Company.

Exhibit No. 553.

Spaulding Hotel.

Duluth, Minn.

Registration of McManigal under the name of John McGraw, July 30, 1910.

This to corroborate McManigal's testimony of the explosion produced by him Aug. 1–2, 1910, Superior, Wis., unloading rig for the P. & R. Coal Co., in the course of construction by Heyl-Patterson Construction Company.

Exhibit No. 65.

Kupper Hotel.

Kansas City, Mo.

Registration of J. J. McNamara, Aug. 24, 1910.

(See volume 76, page 5825), tending to corroborate McManigal's testimony as having

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conversations with J. J. McNamara when McManigal told J. J. about the loss of the clocks in the Kansas City job and when J. J. said "I know all about it, I was in Kansas City the morning of your explosion."

Kansas City explosion occurred August 23, 1910.

(See registration of McManigal at the Jefferson, Aug. 20, 1910, under the name of J. W. Graw.

Exhibit No. 28.

Braun House.

Muncie, Ind.

Registration of McManigal under the name of J. W. McGraw, August 29, 1910.

(See volume 76, page 5836) tending to corroborate McManigal's testimony that he produced nitroglycerine from Morehart, Portland, Ind.

Exhibit No. 507.

Forest City Hotel.

Cleveland, Ohio.

J. B. McNamara registered under the name of George J. Clark, Sept. 14, 1910.

Corroborating McManigal's testimony that he made a trip accompanied by J. J. McNamara from Indianapolis, Ind., to Cleveland,

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Ohio, wherein McManigal relates certain conversations had with J. J. on the different jobs that they were to blow up.

(See Vol. 76, 5883–5887.)

Exhibit No. 559.

Atlas Hotel.

Milwaukee, Wis.

McManigal registered under the name of William King, Sept. 17, 1910.

Corroborates McManigal's statement, with instruction from J. J. McNamara he again visited 17th & St. Paul, Milwaukee, in the course of construction by Heyl-Patterson Company.

NOTE.—This is the second visit made by McNamara on this job. It was subsequently damaged by a terrific explosion after October 1, 1910.

Exhibit No. 560.

Oneida Hotel.

Indianapolis, Ind.

McManigal registered under the name of O. E. McManigal, Sept. 28, 1910.

(See volume 77, page 5894.)

McManigal reports to J. J. and received further instructions.

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Exhibit No. 81.

Lincoln Hotel.
Rochester, Penn.

J. B. McNamara under the name of J. B. Brice, Feb. 8, 1910.

Exhibit No. 82.

Lincoln Hotel.
Rochester, Penn.

J. B. McNamara under the name of J. B. Brice, Feb. 12, 1910.

Tends to corroborate McManigal's testimony where McManigal testifies that J. B. McNamara told him (McManigal) that he (J. B.) had made trips to Rochester, Penn., and cached the nitroglycerine in an old cooper house near Rochester, Penn.

REGISTRATIONS TO PROVE J. B. MCNAMARA ON THE COAST.

Exhibit No. 321*a*.

Argonaut Hotel.
San Francisco, Cal.

Registration of J. B. McNamara under the name of J. B. Brice, Aug. 6, 1910.

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Exhibit No. 321*b*.

Argonaut Hotel.

San Francisco, Cal.

Registration of J. B. McNamara under the name of J. B. Brice, Sept. 14, 1910.

Exhibit No. 321*c*.

Argonaut Hotel.

San Francisco, Cal.

Registration of J. B. McNamara under the of J. B. Brice, Sept. 14, 1910.

Exhibit No. 322*a*.

Argonaut Hotel.

San Francisco, Cal.

J. B. McNamara registered under the name of J. B. Brice, Sept. 18, 1910.

M. A. Schmidt registered under the name of F. A. Perry, Sept. 18, 1910.

Exhibit No. 84.

Chapman Hotel

Los Angeles, Cal.

Registration of J. B. McNamara under the name of J. B. Brice, August 7, 1910.

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Exhibit No. 129.

Winchester Hotel.

San Francisco, Cal.

Registration of J. B. McNamara under the name of J. B. Brice, ——————.

Exhibit No. 86.

Baltimore Hotel.

Los Angeles, Cal.

Registration of J. B. McNamara under the name of J. B. Brice, Sept. 29, 1910.

(End of J. B. McNamara on the Coast.)

Exhibit No. 71.

St. Charles Hotel.

Pittsburg, Penn.

Registration of J. B. McNamara under the name of James Brice, December 3, 1909.

Registration of Frank Eckhoff under name of Frank Smith, December 3, 1909.

This corroborates Eckhoff's testimony of having gone with J. B. McNamara from Cincinnati, Ohio, to Pittsburg, Penn., and visited the Rochester cache, and relates conversation had with J. B. McNamara.

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Exhibit No. 30.

Stubbins Hotel.

Indianapolis, Ind.

Frank Eckhoff registered under the name of Frank Eckhoff, Feb. 5, 1910, and J. B. McNamara registered under the name of J. B. McNamara. This corroborates Eckhoff's testimony that he met J. B. McNamara in Indianapolis, Ind.

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