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TRIAL

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Boise, Idaho, Tuesday, June 4, 1907.

9:30 o'clock A. M.

The records of the Court were read and the jury duly polled by the clerk.

THE COURT: You may proceed, Mr. Hawley:

MR. HAWLEY: May it please the court, and you, gentlemen of the jury: At this time it becomes my duty at the request of the other counsel in the case on the part of the prosecution, to present to you as best I may the theories upon which this prosecution is founded and the evidence that we expect to give you in support of these theories.

I do not expect, gentlemen of the jury, to go into these matters to any great extent, because the necessity therefor in my judgment does not exist. I for one always prefer that the jury, as the evidence is taken and the case develops, come to their own conclusion in regard to both theory and the evidence and the weight that is to be given to the evidence, ~~and~~ but in compliance with common custom in such matters we will make the statement and present it to you as we understand the evidence will develop the case which we expect to place before you.

You see by the evidence, gentlemen of the jury,--or, rather, you see by the indictment that was read before you upon yesterday afternoon stripped of the legal verbiage with which it abounds that the defendant at bar and Charles H. Moyer, George A. Pettibone and John L. Simpkins are charged with the explosion of a bomb on the 30th

day of December, 1905, at Caldwell, in Canyon County of this State, which caused the death of one Frank Steunenberg. I would say to you gentlemen, that this indictment was found, as it shows upon its face, and undoubtedly as you have observed from its reading, by the Grand Jury of Canyon County in this State, at the spring term of 1906; and it will develop in evidence that at the same time another indictment of the same import, charging precisely the same crime, in the same manner, was found against one Harry Orchard.

It may be well, gentlemen of the jury at the very inception of what I am about to say, to call your attention briefly to these different persons who figure in this proceeding, as far as these indictments are concerned. Frank Steunenberg, gentlemen, the man who it is stated was killed, was probably at the time of his death the best known citizen of the State of Idaho. He had filled many important positions; amongst others he had been Governor of the State from the year 1896 to 1900, and was prominent in private enterprises in different portions of the State and was thus brought to the notice of the people of the different sections until personally or by reputation, I presume he was known to all of us. The defendant at bar, William D. Haywood, is now and has been for some six or seven years last past the Secretary-Treasurer of the Western Federation of Miners, an association which will figure to a great extent in this case and to which I will make considerable reference before I take my seat. Charles H. Moyer, one of his associates in this indictment, a co-defendant with him, was and has been for a number of years last past the President of the Western Federation of Miners. George A. Pettibone, another co-defendant

was a prominent member of that organization and has been identified with its management to a great extent, as ~~the~~ we expect to prove to you; and John L. Simpkins, a resident of Wardner, in this State, was a member of the Executive Committee of the Federation for the State of Idaho. Harry Orchard was also a member of that organization. ~~That~~

This indictment, gentlemen of the jury, was transferred from Canyon County wherein it was found, at the spring term of 1907, in and for that county, in the District Court of the Seventh Judicial District, and sent to Ada County for trial. At the same time a separation of the defendants, so far as trials was concerned, was asked by the defense, and the prosecution, in accordance with the right vested in them under the statute, selected this particular defendant as the first one to be tried.

I desire to call your attention, gentlemen of the jury, at the very inception of my remarks, to another matter which I think it is well for you to know, because to a great extent depends the matters connected with it, the fate of this case. We have charged in the indictment as you have noticed, that this defendant and his co-defendants threw the bomb, or caused the explosion of the bomb that caused the death of ex-Governor Steunenberg, but in so stating, although we do state it in positive language, I desire to say here and now, gentlemen of the jury, that we do not expect to prove that either of these parties that have been named in this indictment as the parties guilty of this crime were personally present in Canyon County at the time of its commission. Under the laws of this State, gentlemen of the jury, accessories before the fact are not recognized, and persons

who under the common law would have to be indicted and tried, and punished as accessories before the fact for any felony are treated as principals, and it becomes necessary for the prosecution under that statute to charge in the indictment or the information, those who would formally be accessories before the fact, charge them as principals.

It is a principle of the law, gentlemen of the jury, that all who aid, advise, abet, counsel, encourage or assist, whether present or not present in the commission of a crime, are guilty of that crime, and in the eye of the law and in the consideration of the law, persons that act are personally present and commit it with their own hands. We expect to show to you, then, gentlemen, that these parties that are charged in this indictment with this offense, although not personally present as they are charged, in reality with being, in this indictment, ~~with this offense~~ but we are compelled to so charge them on account of the exigencies of the law itself, that they did aid, advise, encourage and assist the real perpetrator of this crime, the man who is charged in the other indictment to which I have referred, in the commission of this offense, and are equal and guilty with him if these facts are found.

This necessarily, gentlemen of the jury, brings to our attention another important matter in connection with this case. If not personally present, if only advising, encouraging, aiding, abetting in this affair, it must necessarily follow that there was a communication between these parties who we have charged here, and the man or men who actually committed the crime in their own person and by their own hands. This necessarily implies, gentlemen, a collusion. It necessarily shows

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that there must have been a combination,-- a conspiracy of some kind between those parties and the parties who did commit the crime.

Gentlemen, we expect to so prove. We expect to show, gentlemen of the jury, that this crime that is charged here is the result of a conspiracy of an understanding or collusion between the leaders of the Western Federation of Miners and other persons, and that those leaders are the ones that are responsible for this outrage and must be held responsible by the law, and the proof that we will adduce under the law in attempting to make our case before you.

It would be well, perhaps, gentlemen of the jury, at this stage of the proceedings, to briefly refer then to the Western Federation of Miners,-- to this organization, to their objects and purposes. We will show to you, gentlemen, as part of the evidence of the prosecution, and as sustaining our theories in this matter, that the Western Federation of Miners as an organization became an accomplished fact in the year 1893. That prior to that time throughout the mining regions of the west there had been organizations amongst the miners and those engaged in mining enterprises, patterned to a great extent after the ordinary labor organizations that prevailed in different places, although carried on very largely under different auspices and with different objects in view. But in the year 1893 persons interested in this matter came to the conclusion that these isolated unions, as they were called, should be united in one great body and the result was the formation of the Western Federation of Miners, forming the right to authorize miner's unions in different camps to exist, or is derived,

and which is the controlling body, so far as these different labor organizations amongst the miners are concerned. This organization as we will expect to show to you, gentlemen, has its headquarters at the present time in the City of Denver. A convention is held once a year composed of delegates from the different miners' unions in the different localities of the west who affiliate with this central organization, and this convention is the controlling and the governing body. This convention, however, meets but once a year and but for a few days time. Its main office and province is to select officers for the ensuing year, and they select at that convention a President of the organization and a Secretary-Treasurer. They also select, gentlemen of the jury, an Executive Committee composed of seven other members besides these two officers that I have named, and in the hands and in the charge and in the control of this executive committee is placed the destiny of this organization when that convention adjourns its session. You will readily perceive, gentlemen of the jury, that this executive committee, composed as it is of men residing in far distant places from the place where the organization has its head, necessarily only meets at certain times, and that the real power of the organization is vested in the President and in the Secretary-Treasurer, the two prominent of the organization, together with such other members of that executive committee as can be called together. The organization itself as effected, gentlemen, gives the absolute control of the entire body, of the entire organization then into the hands of a very few men, and from the time of its organization up to the present time, at least for the past eight or ten years

but few men have been in control of the destinies of the Western Federation of Miners. From the very inception of this organization, gentlemen, although we will prove it to you as part of our proof that the rank and file of it were innocent of any sinister motives, we will show to you by their acts and by the policies that they have pursued that there has been an understanding amongst the leaders which has existed to the present time and has been the reason and the cause not only of the death of Governor Steunenberg but of scores of others besides.

MR. DARROW: Your Honor, I object to that statement and ask to have it stricken from the record.

THE COURT: What is the ground of your objection?

MR. DARROW: That it hasn't anything to do with this case and it is not a part of an opening statement in a charge of the murder of ex-Governor Steunenberg. He has made a plain statement to this jury that the leaders of this organization are responsible for the death of ex-Governor Steunenberg, without stating any fact, and for the death of scores of others besides. It is no part of an opening statement in any case, certainly not a case by the State--

THE COURT: The court cannot tell at this time whether or not it is material, and the objection will be overruled.

MR. DARROW: I want to save an exception to the statement.

THE COURT: Exception will be noted.

MR. HAWLEY: It has been the policy, gentlemen of the jury, and the object of this association to control the politics--

THE COURT: The court understands you that you expect to show by the evidence the facts which you state.

MR. HWLEY: Yes, sir, I expect to do so, your Honor.

I am not desirous of going outside of the record and I propose to limit myself far within what the principles of law involved would rightfully entitle me to put before this jury as a part of the opening.

I have said, gentlemen, it has been part of their object and policy to control the politics of the various sections where they have lived, where they have existed, where their organizations, their subordinate lodges have had control. This conspiracy, this collusion, ~~through~~ these crimes, this understanding between the leaders of this organization, together with some that were associated with them in a subordinate roll, together at other times with others that upon the outside played into their hands who were necessarily brought into their confidence has, as I have stated before, caused the death and been the real cause of the death of Governor Steunenberg. It is well then for us to inquire as to the objects of this collusion and this understanding and this conspiracy. It is well to go into the objects of these leaders in accordance with the principles that actuated them in effecting this organization, so far as at least as is necessary in order to enlighten us as to this particular crime that is charged. And on this, gentlemen, I will say that we expect to prove, and I have been exact in this matter and will call it to your attention with words that I have considered, simply calling to your attention at the same time, gentlemen, that this was not the only object of this organization; that although the persons composing the executive

committee so far as their personality was concerned, have changed at various times their objects, the ideas of the leaders of this body have never changed. By mutual agreement and understanding of these leaders at the very inception of this organization certain objects were aimed at, and it has always been the object "Inner Circle" of this organization to accomplish them. In fact, we will prove to you, gentlemen of the jury, that at the inception of this organization a conspiracy was formed by the members of the inner circle the object of which was to perpetuate their own power, influence and control, both in the Federation itself and in the governmental matters of the different sections of the mining country wherein they had control by employing, gentlemen, desperate criminals to commit murders and other atrocious crimes by unusual and alarming methods against those who in official position refused to be influenced by their wishes and those who in private life ran counter to their interests.

MR. DARROW: Wait a minute, Mr. Hawley. Your Honor, if an opening statement has any function, it is to tell a jury what evidence they propose to offer in a case. Now, counsel says that he proposes to show, without stating any fact or any evidence or anybody that he proposes to show anything by, that certain men who originally formed an organization, without stating it was this defendant or the President or anybody connected with him or that ever was connected with him, at a time when he was not even a member, much less an officer, that they were engaged in committing murder of officials of all sorts throughout the country. It is a pure piece of rhetoric, if it is rhetoric,--

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THE COURT: Is this an objection, Mr. Darrow?

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MR. DARROW: Yes, your Honor, and a statement of why I object, and I object to it because it is no part of the statement of a case and it is thrown in for the purpose of prejudicing the jury about a matter which could not be in evidence and could be no part of this case.

MR. HAWLEY: On the contrary we say, if your Honor please, that it is a part of the evidence in this case and the very basis of this prosecution.

THE COURT: The court will permit nothing here in the shape of argument. You must make a statement of what you expect to prove.

MR. HAWLEY: That is what I am trying to make, your Honor, and I think I understand my rights and my duties as well in this matter.

MR. DARROW: It don't look as though you did.

MR. HAWLEY: I don't care sir what it looks to you. I am not running this case to meet your wishes or your ideas; and I ask, your Honor, not to be interrupted by this counsel or any counsel except by objection.

MR. DARROW: You will be interrupted every time I think you are trespassing.

THE COURT: The objection will be overruled and an exception will be noted.

MR. DARROW: I want to make a statement to the court.

MR. HAWLEY: We will object to statements to the court at this time or breaking into this showing.

MR. DARROW: I will proceed in a methodical way, your Honor,

and I don't intend to interrupt the gentleman any more than is necessary to preserve our rights.

MR. HAWLEY: We object, your Honor, to his making a statement.

THE COURT: If you have an objection to make, Mr. Darrow, make your objection and the court will rule upon it.

MR. DARROW: I want to state to the court--

MR. HAWLEY: We object to any statement to the court.

MR. DARROW: Don't you be so particular.

MR. HAWLEY: Don't you be so particular and don't you attempt to interrupt me in this way.

MR. DARROW: What I am going to say what is proper to be said by any lawyer in any case. What I want to say, your Honor, is this, that I don't care to be obliged to call this gentleman down every five minutes, but still it is my duty to my client if I think he is trespassing upon something that he shouldn't be saying. Now if we may have some understanding as to what the order of the court is going to be as to permitting the counsel to state anything that he deems relevant so we may save our exception, I would rather do it than to interrupt him. Otherwise I will have to interrupt him. I will try to cooperate with court and counsel to have matters proceed as orderly as possible.

MR. HAWLEY: If your Honor please, we will say this, that we will consider anything that is said in this opening statement-- it is being taken down-- as objected to.

THE COURT: Subject to objection?

MR. HAWLEY: Subject to objection, and our friends on the

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other side can have the full benefit of the objection and the exception.

MR. DARROW: Now, if your Honor please, if you will pardon us, so we will get it straight as we start out, if the court will indicate what its ruling will be.

THE COURT: The court does not intend to permit an argument of this case in the opening statement. The court will confine counsel to a statement of what he expects to prove, and he will be permitted by the court to announce the principles of law under which he expects to make out his case.

MR. DARROW: My objection was not so much to the argument but to their picking out specific things, and saying that covering a period from the birth of the organization, for instance, down to the present time, Mr. Hawley says that they can show from the birth of the organization down to the present time that there have been certain unlawful acts spread over all of this western territory-- now we insist that they have no right to make such proof and that it cannot have any bearing upon the question of whether Frank Steunenberg was murdered by this defendant and his associates.

THE COURT: The court cannot tell whether he can make that proof until it is presented and the court knows what it is.

MR. DARROW: My main objection was to the scope of this matter. Now with the understanding that we may consider anything objected to that we see fit, we will make as few objections as we can. Of course there will be here and there matters that ^{we} must necessarily object to as they go in.

MR. HAWLEY: We understand, Mr. Darrow.

THE COURT: The scope of this must be determined by the evidence and cannot be determined from the opening statement alone.

MR. DARROW: If the court means he will let them make practically any such opening statement as he sees fit and then determine as the evidence comes in, we would understand the court, and we will make our objection as the occasion arises.

THE COURT: The court will pass upon such objections as you may make at the close of the opening statement. But until the opening statement is made it is impossible for the court to determine the latitude that may be taken by the evidence.

MR. DARROW: Counsel has no right to make a statement which the court sees is beyond which they have any legal right to do, of course.

THE COURT: The court has not seen that yet, Mr. Darrow.

MR. DARROW: That is what we are trying to save our rights upon, that point.

THE COURT: You have had full opportunity.

MR. DARROW: Now we will save an exception to this, and we will make as few interruptions as we can, and consider, as Mr. Hawley says, that we make object to any particular part of this statement after you are through; is that right?

MR. HAWLEY: Any part of it.

MR. DARROW: And we will have to occasionally make a few specific objections.

MR. HAWLEY: In fact the whole address may be excepted to.
Gentlemen of the jury, I was calling ~~to~~ your attention to

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what we expect to prove as to the objects and purpose and the motives of the Federation from the time of its organization up to the present time so far as its leaders, the members of the inner circle who have controlled its destinies are concerned. We will go further, gentlemen of the jury, and prove as part of our case and as showing who is responsible for the murder of Frank Steunenberg, as showing the circumstances surrounding that murder and who caused it to be committed, that the leaders of this Federation, the men who composed the inner circle have for more than eight years last past made a record of deeds of violence and that their chosen methods and course and custom has left a trail of blood in the mining sections of this entire coast wherein they have had control. We will show that the leaders who comprised this inner circle have traded in blood, employed hired assassins to take life and destroy property as their interests seemingly required, and as part of their general practice of protection have raised by assessment levied upon the members of their order a large amount of money as an emergency fund and from it not only squandered large sums for their own personal purposes and in criminal methods but have also from it retained the best legal talent to defend those of their number charged with crime. We will prove the object and purpose and the practice of this inner circle, in part at least, as a means of exhibiting the causes and motives of the murder herein charged; for that purpose, gentlemen, and for no other, I desire here and now to call your attention to the fact in speaking of this matter that in making this proof we will urge upon you and make it as part of the proof that the killing of ex Governor Steunenberg was not the primary object of this conspiracy but was only an incident

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of it and a part of their general policy. We will show you, gentlemen, by the evidence that we will introduce that the defendant at bar, and his co-defendants Moyer, Pettibone and Simpkins, have for a long series of years been members of this inner circle who have controlled the destinies of the Western Federation, Moyer as President, Haywood as Secretary both before they occupied their positions have been members of the inner circle and prominent members of the executive committee, Pettibone who was connected with them in all of these enterprises to which we will afterwards refer and seems to have been guide, counselor and friend, and Simpkins the member of the executive committee residing in the State of Idaho and appointed as such by reason of his residence in this State.

Gentlemen, having called your attention to the objects of this conspiracy and this combination which we believe existed and upon which to a great extent this case depends, it is proper now to call your attention, I imagine, to the circumstances surrounding the death of ex Governor Steunenberg on the 30th of December, 1905. Governor Steunenberg, as I have before stated, gentlemen, was a resident of the town of Caldwell in our sister county of Canyon. He had been a resident of that place for nearly twenty years,-- of course called away often by reason of his official position and of his private business enterprises. The place wherein he lived in the town was on the eastern outskirts from a mile to a mile and a half from the main business part of the town. On the 30th of December, if any of you will remember, this country had been covered or was covered to a very

great degree with snow and ice. There had been a bad spell of weather and it made travelling somewhat difficult and it would therefore take a good while, gentlemen, to go the distance from the business part of the town that the Governor was compelled to go to his own house. About six o'clock on the evening of the 30th of December we will expect to show to you he had been in the lobby of the Saratoga Hotel, stopping for some little time, and finally to have made up his mind to go home, stopped at a bank for a few moments in which he was interested and then proceeded homeward. That his house was on the corner facing upon the main street and upon a side street. It was the usual custom and habit of Governor Steunenberg to go into the side door upon proceeding home. This custom had been observed by those interested in his death and they acted accordingly. As he approached the gate, started to open it, with the welcoming lights of his living room shining out upon him, a tremendous explosion occurred, one that acted almost as an earthquake would upon the surrounding country, one that was heard for miles around by the people of that section. The result was the gate and fence and the surroundings were absolutely destroyed. Governor Steunenberg was thrown for a considerable distance; every limb, I believe, was broken, flesh burned from his limbs and death resulted almost immediately. The loving wife who had been waiting for his coming rushed out of the house upon hearing the explosion. Neighbors came to her assistance. They approached the body of the Governor. They raised it up. A few incoherent or almost incoherent expressions passed his lips. He seemed to have been deafened by the explosion. No earthly aid could be tendered him. In less than a half

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an hour he died. Necessarily, gentlemen, this caused great excitement. The people came in from the surrounding county into the town. The news was flashed over the telegraph wire and over the telephones to this county and to other counties. The people in that vicinity, of course, who had heard the explosion had become alarmed and upon ascertaining what caused it and the results of it at least, they began to patrol the roads, they began to watch and see that no persons departed from the town. It was evident that a great crime had been committed. As special trains came in from the surrounding counties clear headed men were with them to give their assistance to the people of that vicinity in ferreting out the crime that had been committed and the Governor of the State together with other officials took charge of the matter. Every stranger who was there, gentlemen, was naturally under suspicion. All people who were in that little town and who evidently had no business there were placed under suspicion and many were put under arrest. It was so arranged that no one could leave without its being known to the authorities. While though these suspicions were not directed in any particular way or to any particular individual at the start, it soon became apparent that a man who had been there in that vicinity for some weeks and who was known under the name of Thomas Hogan had acted in a suspicious manner and one that was calculated to make people believe that he had something to do with the death of the Governor. It was found that his real name was Orchard. It was found that he was from the State of Colorado. That while he had been there ostensibly for the purpose of buying sheep that he had not accomplished any of the business interests that he had pretended to be

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there for the purpose of doing. It was evident after inquiries were made that there was no one in that vicinity who had private motives for killing Governor Steunenberg. It was evident to those who were pursuing these investigations that something deeper than private vengeance or a desire for revenge upon the part of any individual had prompted the death. The evidence began to center around Orchard. Investigations began to be made which showed that he had come into that section of the country without any business, without any real business, about the month of September; that he had stayed there for some little time; it showed that he had left there at that time and that he had returned along about the 1st of November and that with him was another party who had been identified by some parties as being J. L. Simpkins, commonly known as "Jack" Simpkins, one of the parties who was indicted here and a member of the executive committee of the Western Federation. It was ascertained from an inspection of the hotel records that not only was Orchard going under the name of Hogan, a name that he was not entitled to, but that Simpkins had registered himself under the name of "Simmons." All of these matters, gentlemen, were suspicious. All of these matters began to point, as those in charge thought, directly to Orchard as being the man that had committed this crime. His room in the hotel was examined. Incriminating evidence was found there against him. Implements were found there that would indicate that perhaps he had been engaged in the making of a bomb. He had a trunk at the hotel depot. That trunk was taken out. It was looked into, and in the trunk was found a fishing reel, and it was heard that near the body of

~~The body~~ of Steunenberg was part of the fish line, which would indicate that it had been used in connection with the explosion. There was a sawed-off shot gun such as is never used for hunting purposes or for any purpose I imagine except for the commission of crime, one that could be slipped in front of the body, hung with a strap around the neck and an overcoat buttoned over it and no one would know the possessor was on a dangerous mission although he might be contemplating murder. A number of these matters were ascertained. After these inspections it was found that as soon as the arrest was made that without his sending word to any place, gentlemen of the jury, a telegram was received from Spokane stating that parties would be there to attend to his defense, although, gentlemen of the jury, he had sent out no message of any kind to any person for that purpose, this telegram being signed "M", and being followed afterwards in due course of time by Mr. Miller, one of the present attorneys for the defendant in this case, who, I say, without solicitation from this party, without a request made either in writing or by telegram appeared as his attorney upon the charge of murdering Governor Steunenberg. A letter was received which, although it was not signed, evidently indicated that the writer was referring in his expressions to an attempted murder or a proposed murder of the ex-governor, taken in connection with the things that had happened after it had been written; and, although this letter was not signed, we will show you, gentlemen, that it was written by one of the parties who had been jointly indicted with this defendant here, Mr. Pettibone. A preliminary examination was had. Orchard was held. He was held without bail for this murder, as we will

show, and after he was held his attorney, Mr. Miller, who had come there, as I have said, without a request from him, to defend him upon this charge and who had defended him, went to the neighboring state of Colorado and Mr. Orchard was left temporarily alone. He was placed for safe keeping in the State's prison here at Boise, placed in a room by himself. He was there without visitors for a number of days. It looked to him, a man in that position, as if he was deserted. He was in a position, gentlemen, where the reproaches of his conscience, if he had been guilty of this crime and the other crimes that he afterwards confessed to, would either drive him to suicide or to insanity.

MR. RICHARDSON: That is argument pure and simple, and it isn't any statement of fact with reference to that feature.

THE COURT: I think you better make a statement and omit the argument. You have no right to make an argument at this time.

MR. HAWLEY: I beg pardon, and withdraw the expression.

Placed in that cell, gentlemen, under those circumstances, he finally unboomed himself and made a full confession to Mr. James McParland who had been brought into the case after his arrest and after his holding. This gentleman who will be upon the stand before you in the course of this trial --

MR. DARROW: You mean McParland?

MR. HAWLEY: Yes.

MR. DARROW: Or Orchard?

MR. HAWLEY: Both of them will be on if you desire.

MR. DARROW: I didn't know which, you said "gentleman".

MR. HAWLEY: That may be very cunning, those kind of

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remarks, but they are entirely out of place, Mr. Darrow, and if you chose to interrupt with those kind of expressions you will be answered in kind.

MR. DARROW: I wanted to know which he meant when he said gentleman.

THE COURT. There is nothing before the court, Mr. Darrow. Sit down.

MR. HAWLEY: This gentleman to whom I am referring was Mr. James McParland, the terror of the evil doers throughout the west and whose very presence in any community is security for the good order of that community.

MR. RICHARDSON: That will be proven I suppose.

MR. HAWLEY: You have probably run counter to him in defending your clients before this.

Now, gentlemen of the jury, Mr. Orchard made a full confession not only of this affair, not only of the killing of Governor Steunenberg, but of various other crimes of the same general character and nature in which he and others had been engaged in the neighboring states and territories.

THE COURT: Do you expect to show that these other offenses were a part of the same conspiracy as the death of Governor Steunenberg?

MR. HAWLEY: Yes sir, I was about to say that, if your Honor please. We will show to you, gentlemen, that these other matters to which I have referred and which we will with the permission of the court introduce in evidence, were, like the killing

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of Steunenberg, mere incidents of this conspiracy which had been borne by the inner circle to effect the object which we have hitherto detailed before you.

We will place Orchard upon the stand as one of our witnesses, gentlemen. We will show to you, gentlemen of the jury, by the evidence of all of the witnesses, including Orchard, that a condition of affairs has prevailed in this state and the neighboring state such as I have indicated by the remarks that I have heretofore made; that Governor Steunenberg had fallen under the bar; that by reason of official actions of his, in accordance with the practice and the custom of the Federation, his death was accomplished by Mr. Orchard. We will show to you as part of our evidence, gentlemen of the jury, and as explaining the motives, as explaining the reasons for his being assassinated at the request and by the connivance and desire of the defendant at bar and his co-defendants, that in 1899 he was governor of the state of Idaho and that at that time in the Coeur d'Alenes, in Shoshone county, in this state, trouble ensued; that the miners' unions, the subordinate unions of the Western Federation of Miners, banded together under a few of these leaders who have always been responsible for its crimes; that they took possession in the spring of the year, in the month of April I believe it was, of a train; that they filled some of the cars of that train with giant powder. That ten or twelve men proceeded with that stolen train and with that powder to the town of Wardner --

MR. DARROW: I object, your Honor. The objection is that what he states has nothing to do with this case, a matter which is entirely outside of it, disconnected with it, and before

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the defendant was ever an official of the organization.

THE COURT: The objection is overruled.

MR. DARROW: Save an exception.

THE COURT: Exception will be noted.

MR. HAWLEY: Then they proceeded down the canon a distance of about twenty miles from where they had started with this train to the town of Wardner or at least of Wardner Junction; that there was located the mill of the Bunker Hill and Sullivan Mining Company, a company which had been under their ban and with whom the leaders had waged continuous warfare almost for a number of years; that they placed under that mill two tons of dynamite and blew it into fragments; that in the course of that day two men were killed and a number were seriously injured. We will show you, gentlemen, after these men were killed after this mill was blown up that these parties in charge retired up the canon with their train and the next day went about their usual employments; that Governor Steunenberg, who was then governor, rose equal to the emergency, that although a union man himself he would not countenance violence in any form, and that doing his full duty as governor of the state he at once proceeded to the scene of this great outrage; that he declared martial law; that he brought in, or at his solicitation United States troops were brought into that jurisdiction; that hundreds of people were arrested who had evidently been engaged in these crimes; that a bull pen --- the prisons not being extensive enough--- was inaugurated, or at least a prison that became known by that term, and hundreds of them were incarcerated there until investigations could be made fixing the responsibility of this

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act and by his actions in that regard, gentlemen, such as I have stated, and others which I have not gone into but which will be related in evidence before you, Governor Steunenberg incurred the lasting enmity, the hatred of this organization, especially of the leaders of it which comprised the inner circle. Now, gentlemen, we expect to prove to you and we will prove to you that it was on account of the stand in favor of law and order and decency and good government that Frank Steunenberg took in 1899 in the Coeur d'Alenes that he was finally murdered by these parties who had charge of the same organization which employed those outrages in that section. Orchard, the man who had murdered, who did the actual murder, Orchard, the man whom we charge by the other indictment with having committed this murder, was in the Coeur d'Alenes at that time, gentlemen, and the proof will show that he was, but he was not arrested. He suffered no indignities. There was no reason for him having any personal feeling against the ex-governor, and I mention this as one of the matters we will prove, and I mention it in advance so as to disabuse your minds of the impression that he might for the sake of personal vengeance have carried out this crime.

MR. RICHARDSON: This is argument pure and simple.

MR. HAWLEY: It is not argument.

THE COURT: The court will overrule the objection.

MR. RICHARDSON: We desire to put the record in shape by objecting to it as being argument and not as a statement of any fact which is germane to any issue in the case.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

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MR. HAWLEY: Gentlemen, after this trouble in the Cosur d'Alenes, after order had been restored in that vicinity and very shortly afterward, the defendant and his co-defendants here, who had been prominent in the councils of the Federation prior to that time and who had been members and in authority in different branches of the Federation at the time of its inception came into power and from that time on controlled the destinies of the Federation. The original proposition and theory that the power of this Federation, of the inner circle at least of the Federation, could best be perpetuated by the murder of those who in official life or in private situation run counter to their interests became intensified seemingly after these gentlemen assumed the entire control. The inner circle, composed as it was of this defendant and his co-defendants to a great extent, brought around them a few choice spirits and to them murder became a trade and assassination a means of living. We will show, gentlemen, that a scale of wages was even devised fixing the amounts to be paid for different crimes by this inner circle to parties who committed those crimes; and chief amongst those who were doing the actual work that was planned by the inner circle and paid for out of the funds of the Federation by the members of the inner circle was this man to whom I have referred, Harry Orchard, and one Steven Adams. At the request of this defendant and those who had been indicted with him, by the desire and the wishes of the inner circle of the Western Federation to carry out the objects and purposes and plans, that they and their associates and their predecessors in this Federation had devised at the time of its organization and had built up from that time on

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changing the objects but never varying the original plan, they brought these parties in, gentlemen, and committed a number of crimes, to which we will make reference and to which we will call attention as part of this case. These crimes were committed, gentlemen of the jury, as I have stated before, as the result of a conspiracy and a collusion and a combination made not for the purpose of committing these crimes, but these crimes merely incident, and those conspiracies and these men to whom I have referred, this man Orchard and this man Adams, we will show to you, gentlemen, under the direction of this inner circle, under the direction and by the advice and consent and with the aid and assistance of this defendant and his co-defendants, committed some of the most fiendish crimes that were ever perpetrated anywhere in order to carry out the objects and purpose of this inner circle. They are responsible for the murder of Arthur Collins, we will show to you, gentlemen, in Telluride, and that this murder was simply an incident of this conspiracy. They were responsible for the killing of Lyte Gregory in the streets of Denver, gentlemen of the jury --

MR. DARROW: Excuse me one minute now. I suppose that each one of these matters he is referring to will be governed by the same rule the court has already announced, but I want to make the objection --

THE COURT: You may make it.

MR. DARROW: I want to object to his statement as to anything that occurred in Denver or which he claims occurred. I want to object to his statement as to Collins -- anything that occurred in Colorado, that he has already stated or intends here--

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after to state.

THE COURT: The court will overrule the objection. When it comes to an objection to the testimony involving these matters, then the court will hear you fully on the matter.

MR. DARROW: I object to that as immaterial, irrelevant and as incompetent, a matter that cannot be shown.

THE COURT: The objection is overruled. You understand that ruling will not influence the court when the evidence is sought to be introduced and by this ruling you are not precluded from renewing the objection at that time.

MR. DARROW: Yes, but I take it here is the time to make the objection, and that objection may be considered as made to each one of these matters as they arise?

THE COURT: Yes sir.

MR. DARROW: And an exception noted?

THE COURT: Yes sir.

MR. HAWLEY: I don't know, gentlemen of the jury, as I make myself intelligible, with these numerous interruptions which my friends on the other side seem to think it is necessary to interpose, but I hope I do. I have been recalling some of these matters which were incident to this conspiracy and combination, and which we expect to show before you as the evidence in this case progresses,-- the responsibility for which we expect to show will rest, as we will plainly show, upon the defendant and his co-defendants. In addition to those I have mentioned, the killing of Gregory and the assassination of Gleason and the murder of Arthur Collins, we will call your attention to another incident in this matter, the blowing up of the Independence depot at the solicitation and under the pay of this defendant and others, where fourteen unprepared souls were hurled into eternity. We will call your attention to the blowing up of the Vindicator mine, to the death of Walley, and we will call your attention gentlemen of the jury, to the attempts to assassinate ex Governor Peabody of that State at various times and on numerous occasions and in the manner in which Governor Steunenberg was killed, and for the same reasons that actuated the killing of Governor Steunenberg. We will show to you, gentlemen of the jury, that not only had Governor Steunenberg fallen under the ban, but we will show to you that other officers of the State of Colorado were equally under the ban, and for the same reasons they were urging the killing of these people I have mentioned, as they urged the murder of Governor Steunenberg by men in the inner circle of this Federation. Men were also attempted to be assassinated in Colorado by these same parties and others associated

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with them in the inner circle. Orchard and Adams committed all these crimes, and we will show you that they committed them at the request of this defendant; we will show you others besides these which we will prove that they committed at the request of the members of the inner circle and that they were paid for these crimes by these parties.

We will show you that Colorado, becoming too hot almost by reason of the crimes committed by these two paid assassins, that they were compelled to go into other states; that instead of their employment ceasing that they were sent under the orders of the defendant Haywood to these other sections for the purpose of accomplishing the same kind of crimes against men who had made themselves obnoxious to this inner circle. Orchard was sent into the State of California and from there into the State of Wyoming and afterwards was sent here in order to commit crimes--assisting in the general objects and purposes of this Federation. We will show to you, gentlemen of the jury, that Steve Adams, the other man who was employed as an assassin by this Western Federation, that he likewise was sent to various places. We will show to you, gentlemen, coming directly to the murder of ex Governor Steunenberg, that in the year 1904, these other murders in the State of Colorado and different places in that State, that we have referred to, having made it uncomfortably warm for these parties, that it was determined by the inner circle that the scene of their operations so far as these criminal matters was concerned, must be transferred to some other point, and in that year Steve Adams was sent by the defendant Haywood, and his co-defendants in this matter, sent to the State of Idaho-- sent to Jack Simpkins a member of the executive committee of

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the Federation in this State, and himself one of this inner circle, and he resided at that time in Wardner in the northern part of this State; he was sent there to go and act with Jack Simpkins in the taking off of Steunenberg, and it was the object of these parties at that time to secure that assassination through these two men; and we will show you, gentlemen, by reason of funds not arriving that had been promised, or at least of their having been misplaced in the course of transit, although Adams had been supplied with money to carry out this plan, not receiving this other money that had been promised, he returned to Denver without coming to Boise, although both himself and Simpkins had made preparations to do so; we will show you that afterwards, in the year 1905, in pursuance of their policy of never forgetting and never overlooking those who had injured them, and in pursuance of that policy of terrorizing those who ran counter to their interests, and in pursuance of this plan which I have outlined heretofore, they sent Harry Orchard to the State of Idaho with money furnished by Haywood for the purpose of accomplishing the assassination of Governor Steunenberg which had been heretofore neglected, and which their other agent had failed to accomplish the year before.

We will show to you that in the month of September Mr. Orchard came to the town of Caldwell-- that he came for the purpose of fixing a residence, of making himself acquainted with the habits, methods and customs of ex Governor Steunenberg, and that he brought with him at that time a bomb which had been prepared in the State of Colorado by himself and others at the request and with the assistance of members of the inner circle for the purpose of accomplishing the

murder of Governor Peabody. We will bring before you the men who assisted in making this bomb. We will show you that it was very heavy; that it would weigh about 50 pounds, and although it was kept in the possession of Orchard for some weeks, that finally after he had in September fixed the habits and customs of Governor Steunenberg sufficiently to enable him to intelligently proceed in the future, that he went to the town of Wardner for the purpose of consulting and advising with Jack Simpkins; that he took this bomb with him and that after getting there and consulting with Simpkins, under the terms of which they were to jointly carry out this murder of Governor Steunenberg Simpkins objected to the size of the bomb as being too large, and Orchard threw the bomb away, or at least disposed of it and it was afterwards found in the Coeur d'Alene river intact.

We will show to you, gentlemen, that after an arrangement was made in the early part of November at this place, that Orchard and Simpkins travelled some together; that they went to the city of Spokane, that there they purchased dynamite and other materials for making a new bomb and that they did make a new bomb for the purpose of procuring the death of Governor Steunenberg; that this bomb was composed of about ten pounds of giant powder or dynamite, and in it was placed giant powder caps, and over this was strewed chloride of potash and other materials which would become inflammable and start off the caps and the powder that composed the main part of the bomb; and that they devised a windlass to which was attached a bottle of sulphuric acid, and in this bottle was put a cork, and the cork was so arranged

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that if a cord was attached to this cork and it was placed in a gateway or doorway the cork would be withdrawn and the sulphuric acid would be thrown over the chloride of potash and thus procure an explosion.

We will show to you, gentlemen of the jury, that Simpkins and Orchard came to the town of Caldwell in pursuance of this plan, and acting under the general orders and directions of this defendant and the others associated with him, that, as I have stated before, Simpkins called himself by the name of Simmons; that they stayed there a number of days and continued to investigate the habits of Steunenberg, and attempted to cause an explosion of this bomb by planting it under the sidewalk, but for some unexplainable reason it failed to go off; presumably,-- or, I will not presume in regard to it; we will show you that afterwards, after staying there some time, Simpkins left there and went to the town of Silver City; that he returned within a short time and made this arrangement at that time with Orchard to carry on this plan alone-- the procuring of the death of Steunenberg alone, because the opportunity had not presented itself for them to procure it together. We will show you that within a short time after the departure of Simpkins that Orchard, always watching for an opportunity of disposing of his enemy, almost gave up the hope of being able to effect his object and purpose with the bomb, that at one time he attempted with this shotgun that I have mentioned to procure an opportunity to kill Governor Steunenberg, but that failed; but finally, upon the 30th of December, as I have stated, after awaiting Steunenberg

for a number of days, ascertaining his habits and knowing the time that he was going home, he saw him leave the ante room of the Saratoga hotel; he himself proceeded with the bomb in his possession to the gateway of the Steunenberg home, going a good deal faster than the Governor could go; he waited there a short interval of time and saw the man who had charge of the chores there leave, and then fastened this bomb to the side of the gate and so arranged it with a peg or tack or nail, fastened it with a piece of fish line from his fishing reel, and which was attached to the cork of the bottle of sulphuric acid in such a way that when the gate opened the explosion would be caused; then he left, and the Governor coming along afterwards and opening the gate as I have described caused this explosion which resulted in his death.

We will show you that this method of preparing a bomb was well known to this defendant and the other members of the inner circle. It was the same method adopted afterwards, for bombs of this same kind and nature were prepared for the purpose of attempting to murder one of the justices of the Supreme Court of Colorado, Judge Goddard. Also we will show you that after the arrest of Orchard this bomb was dug up from under his gate where it had been planted by Orchard and another emissary of this Western Federation and was found to be of the same description. We will show you that this was one of their favorite methods of assassinating those who they desired to deprive of their lives.

We will show to you, gentlemen of the jury, not only that these parties are supplied-- that these parties who are here charged in this indictment, rather, supplied the money to Orchard for carrying on

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or carrying out the murder of Governor Steunenberg, but they supplied the money to him and his confederates for carrying out these other crimes to which I have called your attention in particular.

We will show to you that in 1903, and also again in 1904, when Steve Adams was sent on one of these missions to which I have called your attention that money was sent to him; we will show you that their expenses were paid and that in all things they were acting under the directions, under the control and by the advice and request and wishes of this defendant and those who have been associated with him. We will show to you, gentlemen, these matters, I think, so as to convince you beyond a possibility of a doubt of the guilt of this defendant. We will elaborate upon these matters to a greater extent than I would be privileged to do in making an opening statement. In fact I have gone farther than I expected to when I commenced, because my idea was, merely in a general way to call your attention to these several matters, and, gentlemen of the jury, we believe that we will make a showing in regard to these matters that will satisfy you as reasoning and reasonable men, beyond a possibility of a doubt, as to the responsibility of this defendant and his co-defendants for the murder of ex Governor Steunenberg, and when we do, gentlemen of the jury, if we can so prove, if by this chain of circumstances, this recital of facts--

MR. RICHARDSON: I think this is over the border line, and I object to it.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

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MR. HAWLEY: If we can show, as I stated before, that this murder was only an incident of their conspiracy or agreement to effect the objects and purposes to which they were aiming, -- if we show their responsibility for this, in spite of the fact that none of these parties were present at the time, -- that this defendant had not perhaps for years been within the State of Idaho, under the rules of law as will be given by the court, under the statutes of this State, we believe we will be entitled to a verdict at your hands because the proof will satisfy you beyond all reasonable doubt as to the guilt of these defendants.

Gentlemen of the jury, I thank you for your attention. It must have been tedious for you to listen, with these interruptions, -- it has certainly been anything but pleasant for me to address you under the circumstances; but we will now proceed to develop these matters, first calling your attention to the facts surrounding the actual killing, then going into these other matters which we think will satisfy you in regard to the killing of the defendant. I thank you, gentlemen.

MR. DARROW: Your Honor, so far as our opening statement is concerned, we will reserve our statement until their case is put in. We wanted to object to one or two matters in connection with Mr. Hawley's statement. Mr. Hawley has related a number of acts of violence and crimes in different places, and those that they expect to show other than that, and I think he should be directed to state any others themselves, for this is the first time that we have had a chance to know of it, and it covers a wide area, and it might endanger some delay unless we know what we have got to meet fully. We will do all

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we can to prepare promptly, but we ought to have this information.

THE COURT: If you are not prepared to give them the information now, can you not furnish a written statement?

MR. HARRIS: Yes, I will do that willingly, and have it in their hands by to-morrow morning. I simply referred to those,-- that is all.

MR. BROWN: We want to expedite this case as fast as we can.

MR. HARRIS: We think the request is reasonable and we will report to counsel all those matters that we expect to go into.

MR. BROWN: If you will do that to-morrow morning we will take no exception.

MR. HARRIS: We will do it some time to-morrow, I think by to-morrow morning. We will call Mr. C. F. Wayne to the stand.

THE COURT: At this time, at the suggestion of counsel for the defense made yesterday, I am going to call the attention of the jury to a matter not often called to their attention in matters of this kind at this particular time, and that is that the defendant is presumed to be innocent until his guilt is established beyond all reasonable doubt, and no juror is permitted to form any opinion as to the guilt or innocence of the defendant either upon the statement of the State or the defense. In other words, it is your duty to hold your minds as free as you can until you have heard all the evidence in the case and then form your opinion thereon.

MR. RICHARDSON: Should not there also be a statement to the jurors that the opening statement, like the indictment, is not evidence in the case in any manner whatsoever?

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THE COURT: I think the jurors understand that.

MR. RICHARDSON: I think they do now, anyway.

THE COURT: Do you wish any other orders gentlemen?

MR. DARROW: I think the witnesses ought to be excluded.

MR. HAWLEY: We have not expected to ask for any order upon our side for a separation of the witnesses, for the reason that we find it very inconvenient to have witnesses in attendance who are not in the court room and for the further reason that it is impossible to keep the witnesses from knowing all that occurs in the court room as the papers will publish full accounts of the proceedings, and while we think—

MR. DARROW: We don't care. I guess there is a good deal of force in what you say.

MR. HAWLEY: Yes, for they will read it anyhow, but we believe it would be proper if certain seats could be reserved for witnesses or at least for a certain portion of the court room to be retained for the witnesses, and if that could be done I think it would be very advisable.

MR. DARROW: There may be cases where you know, or we know, that some two or three witnesses were to be called upon some one fact: where either one of us might want to have them excluded— I don't know of any such case now or that it will arise,— but we do not want to be precluded the right to make this request if such a case does arise. You would have the advantage on that because you will put in your evidence first. I don't know of any such case now, but it may arise.

MR. HAWLEY: Very well, that can be arranged. Mr. Wayne,

take the stand.

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C. F. WAYNE, being called as a witness on the part of the prosecution, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH.

- Q What is your name? A C. F. Wayne.
- Q Where do you reside, Mr. Wayne? A Well, I have been living at Caldwell for the last three years or a little over.
- Q Are you residing there at the present time? A Well, my family is here, but then we came up to camp here while this case is on, -- yes, my home is there.
- Q Did you know Frank Stenumberg in his lifetime? A Yes, sir; that is, I met him two or three times only.
- Q Where were you on the night of December 30th, 1906, about six or seven o'clock in the evening? A Well, I was at my home and at Mr. Stenumberg's place.
- Q How near was your place to Governor Stenumberg's place? A About 125 feet, I guess, to the gate.
- Q Which gate? A It was a gate on the south and west.
- Q What was called the side gate? A Yes, sir, the side gate.
- Q Opening from what street? A Eighth Street I believe it was called.

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- Q Your residence was about how far from that gate? A About 125 feet, I should judge, or possibly 150. I never measured it exactly, but in that neighborhood.
- Q Did you reside there at that time with your family? A Yes, sir.
- Q Had you seen the Governor that afternoon? A No, sir.
- Q Had you been at his place of residence at any time prior to five or six o'clock, or about that time? A I was there about six o'clock, yes, sir.
- Q In leaving his place of residence how did you go in going home?
- A Through that gate that was destroyed,-- the back was directly between my house and his. I went through that gate.
- Q State generally what your business was over there at the Governor's house? A The way I came to be there, he had a little boy doing chores there and going to school, and the boy came to me and wanted to hire me to do the chores while he went home during the holidays. I told him I would not hire out to do it but would do it for him as an accommodation and I was doing the chores there at the time.
- Q About what time in the evening do you think it was that you left the Governor's residence or place of residence and went to your own house? A Well, the whistles blew when I was milking his cows, or about the time I got through, and I went to the house and talked a little while with Mrs. Stansberg and then went home.
- Q Did you heard any explosion or noise as if an explosion had taken place about the time you went home? A Yes, sir.
- Q How shortly thereafter? A I should judge fifteen minutes,--

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somewhere in that neighborhood; it was not long.

Q You may state generally what you heard and the effect of the explosion as far as your immediate surroundings were concerned?

A We had just lighted the lamp--my wife had, when I came in from the barn, and we heard a terrific explosion which put out the light and tipped over the chairs and jerryed us all up considerably. I thought it was under my own house at first.

Q What did you do after hearing this explosion--where did you go?

A I lit a match the first thing and when I saw that the house was all right, that is, nearly so, why I opened the door and ran out to see where the explosion was.

Q Where did you go? A I then heard a sound over toward Mr. Steunenberg's and I hollered across and wanted to know if anything had happened, and Mrs. Steunenberg said, "Come here quick."

Q She said? A Mrs. Steunenberg.

Q Where did you go then? A I went over to Mrs. Steunenberg's.

Q Did you go to this gate leading from Eighth Street, did you say?

A Yes, sir.

Q State just what you find there as nearly as you can now recollect.

A I found the gate gone; that was my first idea of the explosion, what it was; I found the gate and a portion of the fence all gone and laying about ten or twelve feet to the right. As I entered from the west he was lying there with Mrs. Steunenberg behind him.

Q Who? You say "he". A Mr. Frank Steunenberg.

Q In what condition was he in? A He was lying on his back and Mrs. Steunenberg asked me to get her somebody to carry him in the house.

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and I said that I could do it myself, and I undertook to do so, but I found out he was pretty well mangled and I quit; he could not stand to be carried.

Q You may state what condition he was in as to being mangled or injured as far as you could observe? A His right arm was pretty much gone; his right leg was pretty badly mangled and broken up and both legs were broken. I am not positive as to the left arm being broken but both legs were broken and his right arm, and that is about as far as I could say.

Q Was he able-- what condition was his clothing in? A He had no clothing comparatively speaking from his waist down.

Q How long did you remain there, Mr. Wayne? A I just remained, that time, long enough to tell the little girl to phone for a doctor, and then I went to Mr. John C. Bryce's place for help to get him in.

Q Did you return to the scene? A I did not then. I next went to Mr. Leslie's and then I returned.

Q And did you assist in taking him in? A Yes, sir.

Q Where did you place him? A We placed him on the bed.

Q Was there a physician called shortly afterward? A A physician got there directly afterward, yes, sir.

Q Who was the physician? A I don't know as I can call his name now, but I believe he was a partner of Mr. Gae.

THE COURT: You will have to speak a little louder, Mr. Wayne.

Q How long did you remain after returning with the parties who assisted in carrying the Governor into the house? A I think about

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thirty minutes.

Q State whether or not the Governor was alive when you finally left there? A He was not.

Q About when did he die with reference to the time that you left him? You say you were there about thirty minutes? A I left directly after he died.

Q Who was present at the time of his death? A Well, there was a number but I don't remember them all. I remember Mr. Van Dusen, and his own son, and her brother which I am not able to call their names, and Mr. Lealie and I think Dr. Ous was there then, I am quite positive he was there.

Q Now, in what county and state did this matter take place, this affair which you have narrated, and in what county and state did he die? A In the county of Canyon, State of Idaho.

Q And on what day of the month and what year was this? A The 3rd of December.

Q What year? A 1905.

THE COURT: The 3rd of December?

THE WITNESS: The 30th.

Q Did you look about the premises any more in detail after you had carried the Governor in either that night or the next morning?

A The next morning I did, yes, sir.

Q I wish you would state a little more fully the effect of the explosion on the gate and the fence, and the house, etc., and the surroundings. A The gate was entirely gone, and the post which was

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a six inch square post was gone; the fence for some distance was shattered each way; the sidewalk was blown away, and the windows in the house were nearly all out on the side--

THE COURT: Which house-- whose house?

THE WITNESS: Mr. Stenmark's house.

- Q Could you give us an estimate of the distance of that gate from Governor Stenmark's residence? A Not exactly, but it is I should judge thirty or forty feet.
- Q Was the ground in any way disturbed by the explosion which had taken place? A Yes, sir.
- Q Give some idea of that. A There was a hole in the ground there of an oval shape.
- Q Where was this hole with reference to the gate or gate post? A Right at the north, or northwestern side of the gate post.
- Q Which way did the gate open, outward or inwardly with reference to the residence? A Out from the residence.
- Q In the direction of your house, toward the street? A Yes, sir.
- Q Opened into the street? A Yes, sir.
- Q A person going into the house, opening the gate and going into the house would have what side toward the post which was taken up or destroyed by this bomb? A In opening the gate he would have his left side toward the post which was destroyed.
- Q What kind of a night was this with reference to the weather? A Well, it was rather a dark-- rather a dark night, but I don't remember as to what the weather was.

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Q Was there any snow on the ground? A There was snow on the ground, yes, sir, but I don't remember whether it was melting at that time or not.

Q Now, can you give about the time of the evening that this explosion took place? A Well, somewhere near 8:00, I should judge.

Q And how long after you had gone through the gate? A Fifteen minutes I would consider; I never timed it.

Q Did you go through the gate? A Yes, sir.

Q Did you open it or was it open in order for you to go through?

A I opened it and closed it.

Q With reference to its being light or dark at the time you left Governor Stearnberg's residence, was it light or dark?

A It was just dusk. Mrs. Stearnberg had not lit the light when I left the house, that is, the lamp, she had not lit it, but it was just dusk—getting dusk; we could not see plainly in the house.

MR. BORAH: That is all.

MR. RICHARDSON: No cross examination.

THE COURT: Call your next witness.

MR. HAWLEY: We will next call Doctor Quist.

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J. W. GUE, being called as a witness on behalf of the prosecution, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH.

Q What is your name? A J. W. Gue.

Q What is your profession? A Physician.

Q How long have you been a physician? A Twelve years.

Q From what school did you get your diploma? A

MR. RICHARDSON: We will admit his competency.

A Columbian University, Washington, D. C.

Q Were you acquainted with Governor Steunenberg in his lifetime?

A I was.

Q Where were you on December 3rd, 1902? A At my home.

Q Were you called to see Governor Steunenberg? A I was.

Q About what time? A About seven o'clock.

Q Where did you find him? A In his bed.

Q At his residence? A At his residence.

Q In what condition did you find him in reference to injuries?

A He was badly mangled; that is, the back part of the right leg was badly mangled-- the right thigh; his right arm was mangled; the bones in his left leg were broken in small pieces and there were numerous penetrating marks in his body.

Q Upon what portion of his body were the severe injuries included?

A On the thigh and upper arm.

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- Q Which arm? A The right arm.
- Q Which leg was crushed as you spoke of? A The right leg, and below the knee on the left leg.
- Q Were you with the Governor before his death? A Yes.
- Q Were you there at the time of his death? A Yes.
- Q What would you say was the nature of the-- or, what was the cause of the injuries so far as the appearances were concerned? A Probably by some explosion.
- Q You say one of his legs was crushed? A Yes.
- Q Now, describe that minutely with reference to what extent the bones were crushed, etc? A Well, in the left leg near the ankle the bones were broken in small pieces, about a half inch in size.
- Q Well, to what extent on the leg, up and down, how much of the leg was covered? A Well, I would say two-thirds towards the knee.
- Q Now, what was the condition of the skin, the flesh over that portion of the leg that was crushed? A It was uninjured.
- Q What would you say then as to the cause of that kind of injury?
- A It was from concussion.
- Q Now, in reference to one of the arms that was badly mangled, which was that? A The right arm.
- Q Describe that a little more in detail. A The right arm was broken and the flesh was badly mangled-- the entire arm, that is, above the elbow.
- Q What would you say as to those injuries being the cause of his death? A His death was the direct result of those injuries.
- Q And in what county and state did he die? A Canyon County, State of Idaho.

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Q Did you arrive at the scene before he was taken into the house?

A No, sir.

Q Not until after he was carried in? A No, sir, he was in his bed.

Q Did you examine the gate where the explosion is supposed to have taken place? A I merely noticed that the gate was gone.

Q And the fence? A And a part of the fence was gone.

Q The earth round about it? A I did not notice the earth.

Q What kind of a night was it? A A dark night.

Q And with reference to there being snow upon the ground?

A There was snow upon the ground.

Q And when you were called to go was it dark at that time?

A Yes.

MR. BORAH: That is all, Doctor.

MR. RICHARDSON: No cross examination.

MR. BORAH: We will call John Rice.

JOHN C. RICE, being called as a witness on behalf of the prosecution, and being first duly sworn, on oath testified as follows:

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DIRECT EXAMINATION

BY MR. BORAN.

- Q What is your name? A John C. Rice.
- Q Where do you reside? A Caldwell, Idaho.
- Q What is your business, or occupation, or profession? A I am an attorney at law.
- Q Did you know Governor Steunenberg in his lifetime? A I did.
- Q Did you reside near his residence in the City of Caldwell?
- A About a hundred yards away from his residence?
- Q For how long had you resided there as his neighbor? A Nine years.
- Q Did you ever see or become acquainted with a party by the name of Thomas Hogan, or who was passing under the name of Thomas Hogan?
- A Yes, I saw him; I never became acquainted with him.
- Q Where and when did you first see Thomas Hogan? A I first saw Thomas Hogan about the 13th or 14th day of November, 1905, passing along the street in front of my residence.
- Q In what direction was he going at that time? A He was going, as we turn the direction, east.
- Q Where would that be in reference to Governor Steunenberg's residence?

- A It would be one block in front of his residence and passing on directly in front.
- Q In what direction was he going? A He passed it a block away.
- Q Did you see him at any other time after that? A Yes, sir, I saw him about daily for a period of ten days or two weeks after that.
- Q Whereabouts and in what vicinity? A Always on the street there, going up on that same street, going easterly; or on one or two occasions I saw him going west on the same street, but west of my house always.
- Q West of your house? A Yes, sir.
- Q How would that be with reference to Governor Steunenberg's residence?
- A It would be north and west of Governor Steunenberg's residence.
- MR. DARROW: You seem further out from the bank town?
- THE WITNESS: No, toward the town.
- Q How many times do you suppose you saw him in that vicinity of Governor Steunenberg's residence? A I think I saw him at least ten times.
- Q Did he have any business that you observed, or was he doing anything in particular? A Always walking up the sidewalk or down it.
- Q Did you ever have any conversation with him? A Only on one occasion.
- Q When was that? A That was-- I don't know exactly, but during those ten days; I think it was along about a week after I first saw him, after I had been meeting him, about a week, and at that time he inquired as to--
- Q You may state if you will?

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MR. RICHARDSON: If your Honor please, we object to any conversation between the witness and Mr. Hogan or Mr. Graham, as not being germane to any issue connected with this defendant and not binding upon the defendant in any way not being a party to the transaction involving the defendant.

THE COURT: Was this before or after the death of Governor Stearnsberg?

THE WITNESS: It was before; over a month before.

MR. BORAH: We propose to connect this. We could, of course, recall this witness, but the conversation itself is not so very important, but we will connect it in time.

THE COURT: With that statement of counsel that it will be connected up, the objection is overruled.

MR. RICHARDSON: Note our exception.

Q You may state this conversation. A On that day I met Mr. Hogan about half way from my residence, between my residence and the town, in front of a house owned by Walter Griffiths, and Mr. Hogan inquired of me as to whether the house was rented or not, and I told him I did not; I had heard a rumor that the house was sold but it was owned by Walter Griffiths, and I told him to see him. That was the effect of the conversation-- the subject of it.

MR. RICHARDSON: We move to strike that out as wholly immaterial, incompetent and irrelevant for any purpose.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

Q Did you afterwards see Thomas Hogan after the death of Governor

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Stausenberg? A Yes, sir.

Q Where did you see him? A In the bar room in the Stratoga hotel the next time I saw him.

Q Did you see him after his arrest? A Yes, sir.

Q Do you know whether or not the party whom you saw upon the street, going up and down the street as you have narrated, passing under the nose of Thomas Hogan in the same party afterwards arrested as Harry Greher? A Yes, sir, the same person.

MR. BORAH: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON.

Q The first time you saw him you say was about the 13th of November?

A Yes, sir.

Q That was in broad daylight? A Yes, sir.

Q About what hour of the day? A Approximately ten o'clock in the forenoon.

Q He was walking along there to exhibit himself, wasn't he?

A He was walking along.

Q Deliberately? A Slowly.

Q Now, there is a vacant square between Governor Stausenberg's house and the street on which he was walking? A Yes, sir, there is an orchard there.

Q A space that offered no obstruction to the view of the house?

A No, sir.

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Q Did you observe him walking down the street toward Governor Steunenberg's house as well as on the street to the north and east of the house? A No, sir.

Q Did not? A No.

Q What was there about him at that time which attracted your attention and caused you to remember the date upon which you saw him?

A He was pointed out to me by my wife on that day in connection with an incident a day or two before.

Q Your wife had seen him before? A Yes, sir.

Q And she had called your attention to him? A Yes, sir.

Q So that after that you observed him for eight or ten days?

A Yes, sir.

Q And maybe more than that? A I would not be sure of the number of days but it was ten days to two weeks, I think.

Q So that you had some wonder as to what he was there for? A Yes sir.

Q And each day that you saw him he was walking publicly in broad daylight down the street and back, on the street? A Yes, sir.

Q How far beyond Governor Steunenberg's residence did he go?

A I don't know.

Q Governor Steunenberg's house is nearly at the extreme southeast end of the town is it not? A Practically so.

Q How many houses are there beyond in the direction in which Orchard was going, in that part of the town? A At that time there were three houses on the same side of the street on which I lived beyond, and one house-- no, three houses on the other side; there

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were six houses.

- Q And those houses were scattered about considerably? A Well, there were none in the next block beyond me, but in the next two blocks.
- Q Did you take any particular notice of the date upon which these wanderings of Hogan ceased? A No, I could not specify the date.
- Q Did you call anybody's attention to the fact that he was out there at that time? A No, sir.
- Q And finally one day you met him in front of a vacant house?
- A Yes, sir.
- Q A house owned by Mr. Griffiths? A Yes, sir.
- Q And there he asked you if you knew anything about it that house was for rent? A Yes, sir.
- Q And that is all you know about it up to the event of Governor Stansberry's death? A Yes, sir.
- Q Do you know what time of day it was that Governor Stansberry met the condition that resulted in his death? A To say that I know personally, no.
- Q Was it about that same time that you met Hogan in the bar room?
- A It was the Monday following.
- Q You did not meet him on that night? A No.
- Q You said you met him afterwards in the bar room? A Yes.
- Q But it was not on that same day? A No, it was the Monday following.
- Q What day of the week was it that this event occurred? A Saturday evening.

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Q As you are informed--

A I saw him later Saturday evening.

Q How what time of the day was it when you saw Logan in the bar room of the hotel? A I think it was about ten or eleven o'clock in the forenoon, about that time.

Q You identified the man there as the same man whom you had seen walking day after day in the neighborhood of Governor Stearnsberg's residence? A Yes, sir.

Q Had he been in Caldwell constantly up to that time, if you know?

A Not to my knowledge.

Q And you don't know the exact number of days that he walked back and forth as you have stated? A I could not give the exact number of days, no, sir.

Q What was there that occurred therein the bar room when you saw him Monday morning? A Nothing. He was simply standing there talking with some one on the opposite side of the bar and I went in to see him to see if it was the same man or not.

Q Was that of your own notion or at the request of somebody else?

A I was told something about his answers that he had made to questions that had been put to him and he was described to me, and I wanted to know if that was the same man.

Q And that was the only interest you have taken in this matter?

A That is that.

Q That was the only interest you have taken in this matter? That is all you know about it? A Yes, that is the only interest I had in

it-- that is all I know about it.

Q And that is all you did on that day in regard to it? A Yes, sir.

MR. RICHARDSON: That is all.

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RE-DIRECT EXAMINATION

BY MR. MORAN.

Q You say your attention was called to him in the first instance by your wife, by reason of an incident having happened a day or two before? A Yes, sir.

Q You may state what that incident was? A I can state better by what my wife told me and in the conversation called attention to Moran.

MR. RICHARDSON: We will not object to that.

Q Go on and state. A She told me that the girl that was working for us at the time had complained to her that some one had looked at her through a pair of spy glasses and she says, "You know that man that goes through here, he threw his spy glasses on me;" and my wife called me to the window and told me, "That is the man."

Q Did your wife complain to you of the spy glasses? A No, sir, it was the girl.

MR. MORAN: That is all.

RE-CROSS EXAMINATION

BY MR. RICHARDSON.

55 Q Did she say which end of the glasses he used? A No, sir.

Q Whether it was the far end or the near end? A No, sir.

MR. RICHARDSON: That is all.

MR. BORAH: We will next call Mr. N. S. Ellis.

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H. B. HILLS, being called as a witness on behalf of the prosecution and being first duly sworn, on oath testified as follows:

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DIRECT EXAMINATION

BY MR. BORAH:

- Q What is your full name? A Horton S. Hills.
- Q Where do you reside? A In Caldwell, Canyon County.
- Q How long have you resided there? A A little over two years.
- Q What is your business or occupation? A Carpenter.
- Q Were you in Caldwell in the month of November of 1905?
- A I was.

MR. RICHARDSON: Let me ask. We have Mrs. S. Hills; is this the one?

MR. BORAH: I guess that is a mistake, for we have no such witness, and this is undoubtedly the witness.

- Q You say you were there in November? A Yes, sir.
- Q What were you doing? A I was at that time building a house for Mr. Kessler.
- Q Whereabouts was this house with reference to the neighborhood in which Governor Stearns lived? A It was a block north and east as we call it there in Caldwell.
- Q Did you at that time or at any time during the month of November observe any one in that vicinity—a stranger? A Yes, sir.
- Q Do you recall about the date? A Well, I should judge it was

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between; -- oh, from the 10th to the 15th; something like that, of November.

Q 1905? A Yes, sir.

Q Do you know under what name this party was going at that time?

A I afterwards learned.

Q What was the name? A Thomas Hogan.

Q Where did you see this man, Thomas Hogan? A On what we call the boulevard there, a block north of the Steunenberg residence.

Q A block north? A Yes, sir.

Q How many times did you see him? A Oh, some eight or ten times.

Q Where was-- was he generally upon the same street? A Yes, sir, always.

Q Did you observe any actions of his which called him to your attention particularly? A Well, I once saw him, or passed him, rather, on the corner in front of Mr. John C. Rice's house when he was looking in a southerly direction or in the direction of Mr. Steunenberg's residence with field glasses.

Q And where was he standing, do you say? A On the crossing.

Q And how far was that from the Governor's residence? A That was a block north.

Q Of the Governor's residence? A Yes, sir.

Q A block north-- simply one block? A Well, the distance that his house would be from the street.

Q Yes. Now, how long was he there? Did you observe him particularly?

A Well, no I did not.

Q Did you see the field glasses? A I seen them in his hand, yes, sir.

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- Q Did you observe him at the time he was using it? A Yes, sir.
- Q And in what direction was he looking? Did you see? A He was looking toward the Steunenberg residence.
- Q Did he accost you or did you speak to him? A Well, not at that time-- not at that date. I passed the time of day to him at different times.
- Q Did you afterwards see him at any time using these glasses?
- A Yes, sir, I seen him once about half way of the block-- half way of the block east of Mr. Rice's.
- Q What was he doing at that time? A He was looking in the same direction with these field glasses.
- Q Did you see him upon any other occasion, that is, with those glasses? A No, sir.
- Q How many times do you think you saw him altogether? A Oh, some eight or ten times.
- Q And always in the vicinity of the Governor's residence? A Well, yes, on the boulevard,-- what we call the boulevard, the sidewalk there.
- Q Did you see Thomas Hogan after he was arrested? A Yes, sir.
- Q Do you know whether or not the party whom you saw there was the party whom you afterwards saw? A Yes, sir.
- Q And who passed as Harry Graham when arrested? A Yes, sir.
- Q The same party? A Yes, sir.

MR. BORER You may inquire.

- Q How far was this house which you were building from Governor Stearnsberg's residence? A It was a block north and east.
- Q How far was it from the residence of Mr. John C. Rice? A It would be-- I should have said a block and a half, say it would be a block and a half east of John C. Rice's.
- Q Now, you saw this man on two occasions with spy glasses, or field glasses as you call them? A Yes, sir.
- Q The distance from Stearnsberg's house to John C. Rice's house is a trifle over a block? A Yes, sir.
- Q And the blocks there are not more than three or four hundred feet in length? A No, sir.
- Q What would you say, that they were about 300 feet? A Well, something like that.
- Q So that he was looking through the field glasses, if he was looking at Governor Stearnsberg's house, a distance not to exceed 400 feet, something like that? A Probably not.
- Q That would be your best idea of about the number of feet? A Yes, sir.
- Q Did it occur to you that he was trying to attract attention to himself there? A No, sir.
- Q Or did it occur to you that he was trying to conceal himself? A No, sir.
- Q Had you ever seen anybody before out in that vicinity with field

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A No, sir.

Q It is a perfectly level country? A Yes.

Q And not much to interfere with the eyesight? A No, sir.

Q And there is no difference in the country until you get to the mountains some 75 or a 100 miles away, no great difference I mean?

A No, no great difference.

Q And you saw him there at least eight or ten times? A Yes, sir.

Q And possibly as many as twelve or thirteen times? A I did not keep any track of it.

Q Did the fact that you saw him there a great number of times make an impression on your mind as to what he was there for? A No, sir.

Q Or why it was that he was acting in that manner? A No, sir.

Q But it did make enough impression on you so that you remembered a man having been there and having done that after this explosion occurred? A Well, when we were building that house there we often said between us, -- we wondered --

Q What he was there for? A Yes, sir.

Q The fact is that he was acting in a suspicious manner to some extent? A How was that?

Q The fact is that he was acting in a suspicious manner to some extent so that it excited your curiosity and you made some comment on it? A I don't know as we formed any suspicions.

Q Well, you wondered why he was there? A We wondered why he was walking up and down there every day.

Q And expressed yourself so? A Yes, sir.

61 Q Did he ever come out to the house you were building? A Yes, sir.

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- Q And went out beyond that house? A Yes, sir.
- Q How far beyond it did he go? A Oh, he would go up that way some-
times a block.
- Q And that would bring him practically in a direct line about a block
and a half or a block and three quarters from the other side of
Governor Stenmenberg's residence. A Yes, sir.
- Q So that every time you saw him he was a block or a block and a half
away from Stenmenberg's residence? A Yes, sir.
- Q When he went up there would he look toward Governor Stenmenberg's
residence? A No, not every time.
- Q But so far as you saw there was no business whatsoever that he had
there at all? A No, sir.
- Q Except that he was coming around usually in the direction of
Stenmenberg's residence? A I did not think of anything of that
kind.
- Q Did you miss him after he had been there so constantly for several
days? A I did.
- Q When did you miss him first? A I am not prepared to state that.
- Q Did you ever see him after that until after the explosion had
occurred? A No, sir, I believe not.
- Q And after the explosion occurred you went to see whether it was the
same man or not? A I did not see him until after he was arrested.
- Q How soon was that after the explosion occurred? A Well, it was
some-- I cannot tell you just what day but when I saw him first was
when he was in the hands of the sheriff and was waiting for the
train to be brought to Boise.

Q You had no talk with him at any time? A No, sir.

MR. HICKMAN: Very well, that is all.

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RE-DIRECT EXAMINATION

BY MR. HICKMAN.

Q You say he was looking at this house some three or four hundred feet away through a field glass? A Well,--

Q About that distance? A Yes, I should judge it is about that distance.

Q You could see the house very plainly without a field glass?

A Yes, sir.

Q But if you were looking for the close details of the house and the yard, etc., to find out how it is situated, you would need a field glass, wouldn't you? A It would were it more plainer, I would reckon.

Q You saw him after he was arrested? A Yes, sir.

Q Where was he? A Waiting there at the depot.

MR. HICKMAN: That is all.

RE-CROSS EXAMINATION

BY MR. HICKMAN.

Q If you were looking for the close details of a house and were three or four hundred feet away, you would go down toward where the house was wouldn't you, instead of looking at it with a field glass?

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A I might.

Q The gate was right close to the sidewalk, of that house, didn't it? A Yes, sir.

Q And there was a broad sidewalk that connected that with the street that you were working on, right down to that gate, was there not?

A I don't know as I understand you.

Q I don't know as I know the street that your house and Rice's house been but there is a broad sidewalk on the east side of that street that runs down to Steenbergh's house? A Yes, sir.

Q And right directly passed Steenbergh's gate? A Yes, sir.

Q And there was at that time? A Yes, sir.

Q And nothing would prevent a man from walking down that walk and looking and making as close an inspection as he liked? A No, sir.

Q And no house in the immediate vicinity that would prevent him from taking a view of it? A Nothing but one house across the street where Mr. Wayne lived.

Q There was only one and one only, is that right? A Mr. Rice's house was on the corner.

MR. HICKAMANN: I think that is all.

MR. BOHAR: That is all. We will call Mr. Valentine.

A. BILMANTER, being called as a witness on behalf of the prosecution, and being first duly sworn, on oath testified as follows:

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DIRECT EXAMINATION

BY MR. BORAH:

MR. BORAH: Before closing I would like to suggest to counsel for the defense that we would like to allow these witnesses from Colorado to go away after they have testified.

MR. RICHARDSON: There will be no contention about this testimony at all. They may go home as far as we are concerned.

MR. BORAH: Shall I proceed?

THE COURT: I think we will stop here.

Thereupon the court dismissed the jury in accordance with the provisions of the statute and a recess was taken until 2 o'clock.

R E C E S S.

Boise, Idaho, Tuesday, June 4, 1907.

Two o'clock P.M.

THE COURT: Call the jury, Mr. Clerk.

Thereupon the clerk called the jury and announced
all present.

WITNESS ALEX BALLANTYNE on the stand.

DIRECT EXAMINATION

BY MR. DEWITT:

- Q. What is your full name? A. A. Ballantyne.
- Q. Where do you reside, Mr. Ballantyne? A. Caldwell, Idaho.
- Q. What is your business? A. Merchant.
- Q. Did you know Governor Steunenberg in his lifetime? A. Yes sir.
- Q. Did you ever see a man passing under the name of Thomas Hagan?
- A. Yes sir.
- Q. When did you first see him and where? A. Why, I couldn't just
say when I first saw him -- about two or three weeks before
the tragedy happened.
- Q. Whereabouts did you see him? A. At the Saratoga Hotel.
- Q. Caldwell, Idaho? A. Caldwell, Idaho.
- Q. Did you see him from time to time after that up until the time
of the death of Governor Steunenberg? A. Yes sir.
- Q. Where was he stopping? A. Why, he was stopping at the Saratoga
Hotel.
- Q. Were you stopping there? A. Yes sir.
- Q. Do you remember the date of Governor Steunenberg's death?
- A. Yes sir.
- Q. What was the date? A. That was December 30th, 1906.

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- Q. And what day of the week was that? A. It was Saturday evening.
- Q. Did you see Thomas Hogan upon that evening? A. Yes sir.
- Q. Whereabouts did you see him? A. I met him just outside the door of the Saratoga Hotel, coming out of the hotel, leaving the hotel rather.
- Q. He was leaving the Saratoga Hotel? A. Yes sir.
- Q. In what direction did he go so far as you observed his actions? A. Why, he passed to my right going down main street, I suppose that is to the east I should judge from the direction there.
- Q. Where were you going, in what direction? A. I was just entering the hotel, going to dinner I believe.
- Q. Did you see Governor Stearnsberg in the hotel? A. Yes sir, he was sitting in the lobby of the hotel.
- Q. What was he doing? A. He was reading a paper.
- Q. Where did you go after passing through the lobby of the hotel? A. I passed into the dining room to dinner.
- Q. Did you see the Governor any more that evening? A. No sir.
- Q. Did you see Thomas Hogan any more that evening? A. Well, not that I remember of, no; I don't remember seeing him after that.
- Q. Now about how long was it after you saw Hogan, in which he passed you on the street, until you saw Governor Stearnsberg sitting in the Saratoga lobby? A. Well, I saw them both practically at the same time, because right in front of the window was where I met Hogan.
- Q. And, as I understand, Hogan was going away from the hotel? A. Yes.
- Q. The Governor was sitting in the hotel? A. Yes sir.
- Q. In what direction was Hogan going with reference to Stearnsberg?

house when you saw him? A. Why, he was going in that direction naturally that a person would take going that way, right straight.

Q. Did you hear any noise that evening that indicated an explosion?

A. Yes sir, I heard the explosion very distinct.

Q. Where were you when that occurred? A. I was in the store room.

Q. In your store room? A. Yes sir.

Q. How far is that store room from the Saratoga? A. One block.

Q. What had you been doing from the time you saw Thomas Hogan and the Governor at the hotel or about the hotel and the time that you heard the explosion? A. Why, I was in the dining room possibly twenty minutes and I left the hotel and came back to the store and sat there I suppose about ten minutes before the explosion, before I heard the explosion.

Q. Was it distinct, the noise — could you hear it where you were?

A. It was very distinct.

Q. How far was that from the place where the Governor lived, how many blocks? A. About eight blocks I should judge without knowing exactly.

Q. Did you ever see Thomas Hogan after that night? A. Yes sir.

Q. Where did you see him? A. I saw him in the lobby of the hotel the next morning and also that afternoon.

Q. Did you ever see him after he was arrested? A. Well, just — well, yes, I saw him as they were holding him waiting for the train. They were going to bring him to Boise but I don't believe they did; I seen him standing there.

Q. How did you recognize the party that they had under arrest as the same party whom you saw coming out of the hotel that night?

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A. Yes s ir.

Q. And the same party whom you know as Thomas Hogan? A. Yes s ir.

Q. And was arrested as Harry Orchard? A. Yes s ir.

MR. BORAH: You may excuse.

MR. RICHARDSON: No cross examination.

JULIAN P. STEINBERG, a witness on behalf of the
People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. What is your full name? A. Julian P. Steinberg.

Q. Where do you reside, Julian? A. In Caldwell, Idaho.

Q. Are you a son of ex-governor Steinberg? A. I am.

Q. Where were you in the latter days of December, along from
about the 24th to the 30th, where were you residing?

A. I was in Caldwell.

Q. Were you residing at your father's home? A. Yes sir.

Q. Did you ever see a man who was passing as Thomas Hogan?

A. I did.

Q. Where did you see him? A. I saw him at the Oregon Short Line
depot in Caldwell.

Q. About what day was this, if you remember, Julian?

A. It must have been about the 27th or 28th of December, 1905.

Q. Was it train time at the occasion of your seeing him?

A. Yes sir.

Q. What were you doing there at the depot? A. I was waiting for
a man that was coming in on the train.

Q. Did you have any conversation with this man Hogan? A. Yes sir.

Q. Was this conversation had at a time prior to your father's
death? A. Sir?

Q. This was prior to your father's death? A. Yes sir.

Q. You may state what that conversation was.

MR. RICHARDSON: We object to that as incompetent,
irrelevant and immaterial, not connected with the issues
herein involved in any way, shape or form, and could not be said

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is not binding upon the defendant.

MR. BORAH: This is upon the theory, if your Honor please, that this defendant was of course a member of this conspiracy which we expect to prove.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

- Q. You may state this conversation, Julian. A. I was standing at the depot, on the east end, on the platform, and a man approached me, asked me if my name was Stansberg. I told him it was. He told me that Mr. Schree had pointed me out to him. I asked him his name. He replied "Thomas Hogan" -- or, rather, "Hogan".
- Q. Go ahead and state anything further which you recall.
- A. He asked me when my father would be home, and I told him Friday. He said that he had had a deal previous to this time with my father in sheep, and they were going to have another transaction in the future and he wanted to find out when he would be home so he could make the deal. He wanted to know where he could find him after my father arrived in Caldwell, and I told him at the Caldwell Banking and Trust Company or at my father's residence. He wanted to know where he could get him by phone, and I told him at the company ranch at Gooding, Idaho. That was where he was at that time. That was about all there was to the conversation.
- Q. Did you have any other or further --

MR. RICHARDSON: Just a moment, Mr. Borah. I move to strike out the testimony of the witness relative to the conversation with the man named Hogan, for the reason that it

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is immaterial, irrelevant and incompetent, and not binding upon the defendant, and could in no event be connected up for the purpose stated by counsel for the prosecution.

MR. BOBAH: Let the record show that counsel for the prosecution undertakes to connect it by proof.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

THE COURT: Exception will be noted.

- Q. Did you ever meet Thomas Hogan or see him after that prior to your father's death? A. No sir.
- Q. Never had any further conversation with him? A. Not any after that.
- Q. Where were you on the night of December 30th? A. I was in Caldwell.
- Q. How far were you behind your father when he went home? A. About two blocks.
- Q. Where were you when you heard the explosion? A. Well, I was about two blocks behind him when I heard the explosion. I don't know the street I was on, that is, the cross street. I was on the boulevard that runs between Caldwell andampa.
- Q. Who was with you? A. My mother's brother, Will V. Keppel.
- Q. Did you ever see this man Hogan who had spoken to you at the depot after your father's death? A. Yes sir.
- Q. Where did you see him? A. Well, I saw him at the Saratoga hotel the next morning after, Sunday; and at the Oregon Short Line depot Monday evening about five o'clock waiting for the west bound train.
- Q. Was he in custody at that time, the last time you saw him, was

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he with an officer? A. I believe he was, yes sir.

Q. Did you see him at the preliminary examination? A. I did.

Q. And you recognized him as the same party with whom you had had the conversation two or three days before your father's death? A. Yes sir.

MR. MORAN: You may cross examine.

MR. RICHARDSON: No cross examination.

L. J. BOSMAN, a witness on behalf of the People,
being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BOSMAN:

- Q. Where do you reside, Mr. Bosman? A. About twelve miles west of Caldwell.
- Q. What has been your occupation generally? A. Laborer.
- Q. Laborer? A. Yes sir.
- Q. How long have you resided in Caldwell or about there, in that neighborhood? A. Well, for about thirty-six years.
- Q. About thirty-six years? A. Yes, that is in Caldwell, and near there before the town was built.
- Q. Where were you stopping in the latter part of October and the fore part of November, 1905? A. Pacific Hotel, Caldwell.
- Q. Who was keeping the hotel at that time? A. Mr. Dempsey.
- Q. Steve Dempsey? A. Yes sir.
- Q. About how long were you stopping at that hotel? A. I was there about four months, between three and four months.
- Q. Were you in bad health at that time? A. I was.
- Q. Did you meet or make the acquaintance of a party at that hotel passing under the name of Thomas Hogan? A. I did.
- Q. Do you remember about the time that you met him? A. Along the last of October or first of November.
- Q. State whether or not he was stopping at the hotel, whether he had a room there or not. A. He had.
- Q. Did he have a room there? A. Yes sir.
- Q. Do you know how long he was there, about how long?
- A. I should judge he was there four or five days probably more or less.

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- Q. That was in the latter part of October or the fore part of November? A. Yes sir.
- Q. Were you about the house a good deal? A. Yes sir.
- Q. There was your room with reference to Hogan's room?
- A. Why, I should judge my room was thirty feet or more.
- Q. On the same floor? A. Yes sir, on the same floor.
- Q. Did you make -- did you form a personal acquaintance with Hogan? A. No sir.
- Q. Was there anyone in company with Hogan? A. Yes sir.
- Q. State whether or not this party who was in company with Hogan occupied the same room that Hogan did. A. Yes sir, he did.
- Q. State whether or not you saw them going to and from their room. A. Yes sir, I seen them going into their room.
- Q. Do you know the name of this party who was with Hogan, of your own knowledge? A. He went by the name of Simmons.
- Q. Did you have any conversation with Simmons? A. I did not.
- Q. Would you know the photograph of this man if you saw it?
- A. I believe I would.

MR. BORAH: I will ask to have this marked. Will these be marked by the clerk or the reporter?

THE CLERK: The reporter.

MR. BORAH: Will you mark that for identification Exhibit A.

(The paper handed by counsel to the stenographer was marked by the stenographer for identification "Exhibit A").

- Q. Exhibit A for identification handed to witness: You may state whether or not you recognize that as the picture of the man who was with Orchard? A. I do.

Q. Did they engage in any pastime, card playing or anything of that kind, either Mr. Hogan or Mr. Simpkins -- or Simmons?

A. I don't know. He may have but I didn't notice him.

MR. DOUTH: You may cross examine.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. You say this was in the latter part of October or fore part of November that Hogan was there? A. Yes sir.

Q. How did you come to know him as Hogan? A. Why, I saw him register, sign his name on the register.

Q. Saw his name on the register? Did you see him write his name himself? A. Yes sir.

Q. Was this other man with him at the time that he registered?

A. He was.

Q. The man whose photograph you have identified? A. He was.

Q. Did you see him register also? A. Yes sir.

Q. Is that how you know his name? A. That is how I know the name that he had there.

Q. And that name was Simmons as registered, was it? A. Simmons, yes sir.

Q. S-i-m-m-o-n-s, is that the way you remember it? A. I couldn't say just how it was spelled.

Q. But something like that? A. Yes sir.

Q. How long did Hogan remain there? A. Why, I should judge four or five or six days, something like that; might have been more or less, I can't remember.

Q. Did Simmons remain the same length of time? A. He did.

Q. Where did they go to then, if you know? A. I don't know.

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THE COURT: That is the State's Exhibit A?

MR. BORAH: The State's Exhibit A.

MR. RICHARDSON: Do you offer this now?

MR. BORAH: Not yet. I will in a few minutes.

MR. RICHARDSON: All right.

Q. How long were those parties together with reference to the time they were there, were they together all of the time or were they not? A. They were together, as near as I know, all of the time.

Q. What did they seem to be doing during the day? A. Well, sir, all I can say was just walking around town.

Q. Did you observe their time of coming in or an evening?

A. No, not in particular I didn't.

Q. Did they engage in any pastimes there with the rest of the boarders?

MR. RICHARDSON: Yes, if your Honor please, object to my testimony with regard to the person whose photograph that is supposed to be, for the reason that it is immaterial, irrelevant, incompetent, and in no wise connected with the defendant who is on trial here, and in the nature of things could not be material as against him.

THE COURT: If it is not connected the court will instruct the jury to disregard the testimony.

MR. RICHARDSON: Yes, but your Honor will observe that I am just keeping the record. I am not arguing it to your Honor.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

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- Q. There was no occupation at all while they were there that you could observe? A. No sir.
- Q. During the day time they went out on the streets of Caldwell?
A. Yes sir.
- Q. You saw them frequently walking around and about the town?
A. No, I didn't.
- Q. Where did you see them? A. I seen them in the hotel and seen them leave the hotel. I seen them going on out on the way to the street.
- Q. You yourself were so ill that you didn't go out much at that time of year, is that right? A. Yes sir, that is right.
- Q. Was there any attempt upon their part to conceal themselves in any way? A. Not that I seen.
- Q. Or anything mysterious about their actions at all at that time? A. Nothing whatever.
- Q. What was there then that attracted your attention to these men so that you remember them readily, anything in particular?
A. There isn't anything that attracted my attention to remember them more than anyone, more or less than that I seen them. I usually remember a face.
- Q. What is that? A. If I see a man's face I usually remember it.
- Q. And in identifying this photograph or this picture that you have identified here marked Exhibit A you rely simply upon the memory that you have of seeing this man at the hotel?
A. Yes sir.
- Q. That was a public hotel, was it not? A. It was.
- Q. One where guests were coming and going constantly, I suppose?
A. Yes sir.
- Q. About how many guests on an average were there at the hotel?

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A. Well, there wasn't a great many.

Q. Not a great many? A. No.

Q. Well, I don't know just what your idea is of a great many.
Ten or fifteen, something like that? A. Yes, ten or fifteen
more or less.

Q. And that continued all of the time during the months of
October, November and December, did it not? A. Yes sir.

Q. And the first time that your attention was called to this
matter as being of any importance I suppose was after the
30th of December of 1908? A. After which?

Q. After the 30th of December. A. Yes sir.

Q. Didn't regard it as a matter of any importance up to that
time, did you? A. I didn't regard the matter at all until
after the arrest.

Q. That is what I mean, and then you say that you saw Orchard
after that time again? A. I saw him after that time.

Q. After December 30th? A. After December 30th?

Q. You didn't see him after December 30th? A. Not that I
remember of.

Q. Nor before December 30th in the month of December?

A. I don't remember of seeing him.

Q. So that the only time that you saw him was during those five
or six days in the latter part of October and the fore part
of November? A. That was the only time I remember of seeing
him.

MR. RICHARDSON: That is all.

MR. BORAH: That is all at present.

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JAMES RUSSELL, a witness on behalf of the People,
being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORUM:

- Q. Where do you reside, Mr. Russell? A. Springville, or Dumont,
California.
- Q. How long have you resided at that point? A. Since August
of 1906.
- Q. Did you at one time reside in Caldwell? A. Yes sir.
- Q. Where were you stopping at Caldwell in the latter part of
October and the fore part of November, 1908? A. In the
Pacific Hotel, Caldwell.
- Q. Who was running the hotel? A. Mr. Steve Dempsey and wife were
managing it.
- Q. What is your profession or occupation? A. I was at that time
a missionary under the Board of Publication, Sabbath School
work, of the Presbyterian Church of Philadelphia.
- Q. How long had you been stopping at Caldwell? A. We were in
Caldwell nearly two years.
- Q. Were you boarding at the Dempsey hotel or simply rooming there.
A. We had a suite of rooms at the hotel only; we did not board
there, we did not take meals in their dining room.
- Q. Did you meet a gentleman there passing under the name of
Hogan, Thomas Hogan? A. Yes sir, I did.
- Q. Where did you first meet him? A. In the office of the hotel.
- Q. Did you become acquainted with him? A. Well, I have spoken
to him, I had a speaking acquaintance.
- Q. Did you learn from him what his name was or the name under which

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- he was passing? A. I was introduced to him by the proprietor of the hotel as Mr. Hogan.
- Q. You was introduced by Mr. Dempsey? A. By Mr. Dempsey, yes sir.
- Q. State whether or not any was in company apparently with Mr. Hogan at the hotel. A. There was part of the time.
- Q. Do you know the name of the party who was in company with him? A. Only by hearsay.
- Q. Did you hear it from Hogan? A. No sir, from Mr. Dempsey.
- Q. Did you become acquainted with the party with whom Hogan was associating, have any talk with him? A. No sir, he never talked with me. I offered to speak to him but had no reply from him.
- Q. How long was Hogan there do you think? A. Well, it is my recollection ^{I remember him} ~~that he was there~~ the greater part of a week, during the first week in November.
- Q. How long was the man who was with him around there, if you remember? A. I could not state. I have seen him on two occasions but I could not remember dates.
- Q. Did you see whether or not they were occupying the same room or know whether they were or not? A. Yes sir.
- Q. Were they? A. They did.
- Q. Would you know the photograph of this party who was with Hogan do you think? A. I believe so.
- Q. Exhibit A for identification handed witness: You may state whether or not that is a photograph of the party who was with Hogan and occupied the room with him? A. I believe it is, yes sir.
- Q. Is that your recollection of the man as identified by this photograph? A. Yes sir.

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- Q. Have you ever seen this party since, since he left the hotel?
A. Pardon me, I didn't quite catch that.
- Q. Have you ever seen this party since? A. No sir, not to my knowledge.
- Q. Did you ever see Hogan after he left that hotel? A. Yes sir.
- Q. Where did you next see Hogan after he left the hotel?
A. I saw him once about to enter the Saratoga Hotel in Caldwell?
- Q. Do you remember the time of that event or incident?
A. I do not. I cannot recall that date.
- Q. Did you see him at any time after that? A. Yes sir.
- Q. Where did you next see him? A. I saw him waiting near the depot in Caldwell, waiting for the train, under arrest.
- Q. You may state whether or not the party whom you saw at the depot under arrest was the same party whom you saw at the hotel in November with the party whom you identify here as a party being with him identified by the photograph? A. Yes sir, it was Mr. Hogan, as I had been introduced to Mr. Hogan.
- Q. The same party who was with this party whose photograph you have identified? A. Oh, yes sir. I didn't just catch the question.
- Q. This time that you saw him when he was at the depot, the last time, was after the death of Governor Stansberg?
A. It was, yes sir.

MR. BORAH: You may cross examine.

MR. RICHARDSON: I move to strike out all of the testimony of the witness, if your Honor please, upon the ground it is incompetent, irrelevant and immaterial and in no wise connected with this defendant, and could not in the nature of the testimony be connected with him.

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THE COURT: The motion is denied.

MR. RICHARDSON: That is all. Note our exception.

THE COURT: The stenographer will note an exception without being specifically directed by the court each time when an exception is taken. Has there been any stipulation in relation to the exceptions?

MR. RICHARDSON: I am perfectly willing to agree to that. If there is any doubt about it, of course we will take the exceptions.

MR. HASKIN: Any objections noted let an exception be noted by the stenographer as a matter of course.

MR. RICHARDSON: I want the record to show that an exception is entered every time there is an adverse ruling, and I am perfectly willing it should be so on each side.

THE COURT: The court will direct the stenographer to note the exception whenever an exception is requested by either side without being directed to note it by the court./

MR. RICHARDSON: We are willing to go further than that and stipulate that the stenographers shall note an exception each time there is an adverse ruling in favor of the party whom the ruling is against.

MR. HASKIN: I suppose there ought to be an exception taken.

THE COURT: You may take an exception to each ruling and the stenographer will then note the exception in the record.

MR. RICHARDSON: Very well.

STEPHEN DEESNEY, a witness on behalf of the People,
being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BURMAN:

- Q. What is your full name? A. Stephen Deesney.
Q. Where do you reside, Mr. Deesney? A. Boise City, Idaho.
Q. What is your age? A. A very delicate question; I expect to
get married again. I am over ~~thirty~~ fifty.
Q. You are also under oath.

MR. RICHARDSON: We will admit he is old enough to
testify. That will save the record for you.

- Q. Where is your wife at the present time? A. She is visiting
her daughter in Wyoming.
Q. Mr. Deesney, were you keeping a hotel in Caldwell in 1908?
A. Yes sir, I think I was.
Q. What was the name of that hotel? A. Pacific hotel.
Q. Were you keeping that hotel in the month of October and
November, 1908? A. Well, I formerly kept a hotel for three
years and two months there, and after it was moved off of
the ground I had it pending an option there four or five
months, so I didn't run the dining room but run the hotel.
Q. You kept the rooming house? A. Yes.
Q. Were you keeping that hotel after it had been moved as a
rooming house during the months of October and November, 1908?
A. I believe that is about the time, yes sir.
Q. Did you ever meet a man who was passing under the name of
Thomas Hagan? A. Yes sir.
Q. Where did you first meet Thomas Hagan? A. At the hotel.
A. At your hotel? A. Yes sir.

- Q. In Caldwell, Idaho? A. (Witness nods affirmatively).
- Q. When about, if you remember, did he come there? A. I think the first time was in September.
- Q. 1905? A. Yes, I think so.
- Q. Was he there more than once? A. Yes sir, he was.
- Q. Did he come there after September? A. Yes, I think in November was the last time he was there.
- Q. Was he ever there in company with anyone else? A. Well, there was a friend come there in company with him that recognized Hogan, and there was a man come there and registered as Simmons.
- Q. Did he come with Hogan? A. I wasn't present, and they asked me if they could room together, and they were transferred from No. 7 to No. 1, and were there I believe two nights at that time.
- Q. Were they there together, did they occupy the same room, Hogan and Simmons? A. Yes; by request, yes.
- Q. Were you introduced to Simmons? A. Well, now I don't remember anything about that, about being introduced.
- Q. Did you get acquainted with him? A. Oh, yes.
- Q. Would you know him now if you should see him, do you think? A. I believe I would.
- Q. Do you know John L. Simpkins? A. Well, I know Simmons but I don't know Simpkins.
- Q. How many times was Simmons at your place with Hogan, more than once? A. I think they left like today and come back either in the evening or the next day again.
- Q. Did they occupy the room together at all times when they were

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- together? A. Yes; by request, yes sir.
- Q. By whose request? A. Request of Hogan.
- Q. Would you know the photograph of this man who was with Hogan if you should see it, do you think? A. I think I would.
- Q. You may look at Exhibit A, marked for identification as Exhibit A, and state whether or not that is the photograph of the man whom you met with Hogan and who was at your hotel?
- A. Yes sir.
- Q. Is that the same party who occupied the room with Hogan --
- A. Yes sir.
- Q. -- at your place in October and November, 1908? A. I think that was the year, yes sir.
- Q. Did you keep a hotel register? A. Yes. The hotel register I had while I ran the Pacific hotel before it was moved to a railroad house, I just cut that out, and I was subjected to an option ~~that~~ ^{that} Mr. Frauman and Mr. Little had on the house, and I had no lease on it and was there only a few months. I believe the court is in possession of the register now.
- Q. (Showing book to witness). You may state whether or not this is the hotel register which you were keeping at the time you were running this logging house? A. Yes, it is.
- Q. This register was kept for the purpose of permitting parties to register when they would come in? A. Yes sir.

MR. BORAH: You may mark those two pages as Exhibits B and C.

THE COURT: Are the pages numbered, Mr. Borah?

MR. BORAH: No, they are not numbered, if your Honor please.

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- Q. You may state whether or not there appears upon the pages marked Exhibit B and C for identification the names of those two parties who occupied the rooms whom you have referred to as Hogan and Simmons? A. Yes sir; the two were together. I wasn't present at the time, and my wife or whoever was in possession there, gave them No. 7, and when I came in I transferred them from 7 to No. 1. It was a larger room.
- Q. At whose request was the transfer made? A. Hogan said that they wanted to room together if I had no objection.
- Q. Is the name "Thomas Hogan" and "J. Simmons" the names of the parties whom you have referred to here as being there together and one of whose photographs you identified? A. Yes sir; this is Thomas Hogan's name and this is the man that I had reference to.
- Q. Simmons? A. Yes.
- Q. Do their names appear again? A. Yes, on the 4th. This was on the 3rd and on the 4th I transferred them myself to the same room, they were about to leave you know, or did leave probably, and came back that evening.
- Q. Did they make that entry or yourself? A. I made it, that is my handwriting there, transferred from here, from this first place to that one.
- Q. Who wrote these names? A. Well, I suppose it was the two themselves.
- Q. When you made the transfer you made that entry yourself.
- A. Yes sir.

MR. BORAH: The last entry referred to is on the page marked Exhibit C for identification; the first entry is upon the page marked Exhibit B for identification.

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- Q. Now you may examine this register at the bottom of page marked Exhibit **A** for identification and state who made the last two entries upon that page, whether yourself or they.
- A. It was myself. That is their handwriting here, the register.
- Q. And I understand the only entry which was made by the parties themselves was the first entry of their names upon page Exhibit B. A. Yes sir, and when I made the transfer, why, I done it here, and then when they remained the second night and transferred them to the same room I didn't require them to register three times.
- Q. You may look at the same hotel register upon page marked Exhibit B for identification; state whether or not the name of the same Thomas Hogan appears upon the register on that date.
- A. What is the date you say?
- Q. September 2nd. A. Yes sir, this is the same man.
- Q. Speak a little louder. A. Thomas Hogan, yes.
- Q. Does Thomas Hogan's name appear upon that register on September 2nd? A. Yes sir, that is his own signature, because I was there at the time.
- Q. State whether or not he had left your hotel between the time registered upon page Exhibit D and the time registered upon the page Exhibit B or whether he had been there all the time.
- A. Oh, he was gone and came back again.
- Q. Does the name of Simmons or this party who was with Hogan appear at any other place upon your register that you know of other than that which you have identified? A. No, not to my knowledge.
- Q. Did you have a talk with Hogan when he was there in September about his business or what he wanted to do?

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A. Well, nothing more than usual. He told me --

MR. RICHARDSON: One moment. If your Honor please, we object to any conversation with Hogan, for the reasons stated in an objection to a former question of the same nature on another witness -- immaterial, irrelevant and incompetent, not binding upon this defendant and not germane to any issue in the case.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q. Go ahead, Mr. Dempsey. A. This is when he first came, he introduced himself after signing his name and told me that he was buying sheep for a stock company in Colorado I believe I told him I was not a sheep man but when I had leisure that I would introduce him to a man that was in the business, to some of the business men in town, like I would any other travelling man, for information. And I asked him over to Ballantyne Brothers' Store and introduced him as a guest of the hotel inquiring for stock sheep, and I turned him over to Ballantyne; I don't know whether it was Hiram or Alce, it was one of the two boys, and left them talking.

Q. Did you have any talk with this man Simmons? A. No, nothing that I know of only --

Q. Did he engage in any conversation around there with anyone that you noticed at all? A. Well, the boys used to play cards for pastime, waiting on the train, you know, just for pastime, so did Hogan, --

Q. Of course not for money? A. Oh, no, nor for cigars either, and the boys mixed in and were very social so to speak.

Q. You didn't have any conversation yourself with him?

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A. None whatever.

MR. BORAH: You may cross examine.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. What was the date of the registry which you examined as to the first time Hogan stopped there? A. September the 2nd, I believe.

Q. And what was the date that he stopped the second time?

A. That was late in November.

Q. MR. RICHARDSON: He were not shown the register.

MR. BORAH: We will show it to you. It was the 3rd and 4th.

Q. Third and fourth of November? A. Third and fourth.

Q. So there was about a month between the two times? A. Yes sir.

Q. And the man whom you have identified as Simmons was the man who was there the second time? A. Yes sir.

Q. He was not there at all the first time? A. No sir.

Q. Was there any effort upon the part of either of these men to conceal themselves in any way? A. None whatever.

Q. Did they act mysteriously in any way that you could see?

A. No sir.

Q. Went out on the street, did they? A. Yes.

Q. You saw them out on the street? A. Yes sir, not them.

Q. Saw them conversing with men around in different parts of town? A. Yes sir.

Q. And that was true of this man Hogan all the time he was there?

A. Yes sir.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. BROWN:

Q. When did you see Simmons talking with down town?

A. Well, I don't recollect any one in particular. The men went around town just like any other travelling men would and talking.

Q. What I want to get at is whether or not you remember anyone with whom Simmons talked? A. No, I do not.

Q. One thing I perhaps overlooked: Did you see Thomas Hogan after he was arrested as Harry Orchard? A. Yes sir.

Q. Was that the same party who was there with this Simmons in November? A. It was.

MR. BROWN: That is all.

MR. RICHARDSON: For the purpose of preserving the record, I move to strike out all of the testimony of this witness, on the ground it is incompetent, immaterial and irrelevant, neither connects nor tends to connect the defendant with any transaction charged in this indictment, and in the nature of things could not do so.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

THE COURT: Any more questions, gentlemen?

MR. BROWN: No, no more questions.

THE COURT: Step aside, Mr. Deasney.

THE COURT: Swear the bailiffs, Mr. Clerk.

(Five bailiffs sworn).

THE COURT: Gentlemen of the jury, the court will again give you the statutory admonitions, that you shall not converse among yourselves or with anyone else on any subject connected with this trial, or form or express any opinion thereon until the case is finally submitted to you for your consideration. You may retire with the bailiffs. The bailiffs will bring the jury into court tomorrow morning at nine o'clock.

The defendant will be remanded to the custody of the sheriff.

Adjourn court, Mr. Sheriff, until tomorrow morning at nine o'clock. Remember, gentlemen, it is nine o'clock.

An adjournment was hereupon taken until nine o'clock tomorrow morning.

Boise, Idaho, Wednesday, June 5, 1907.

9 O'clock A. M.

Parties met pursuant to adjournment. Minutes of yesterday's session read and signed by the court.

Clerk called the names of the jurors and announced all jurors present.

THE COURT: Proceed, Mr. Borah.

JOHN W. BRUNSALL, a witness on behalf of the people, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

- Q. Where do you reside, Mr. Brunsall? A. Hampa, Idaho.
- Q. What is your business or occupation? A. Hotel keeper.
- Q. How long have you been a hotel keeper in Hampa? A. Two years and a half.
- Q. Were you running a hotel in Hampa in the fall of 1906? A. Yes sir.
- Q. And during the late summer of 1906? A. Yes sir.
- Q. Do you remember of a party stopping at your house by the name of Thomas Hogan? A. Yes sir.
- Q. Do you remember a party stopping there under the name of J. L. Simpkins? A. Yes sir, I do.
- Q. You kept a regular hotel register, did you, Mr. Brunsall? A. I did.
- Q. You may examine this book and state whether or not that was your hotel register during that period. A. That is mine, yes.

MR. BORAH: We will ask to have the page under Monday, (1)

November 13, 1935, marked as State's Exhibit E.

(Page referred to by counsel marked by the stenographer as State's Exhibit E for identification).

Q. You may state whether or not the parties whose names are entered there as Thomas Hogan and L. J. Simpkins were at your house at the time that appears upon this register.

A. Yes sir, they was.

Q. State who with reference to the particular parties wrote the name "L. J. Simpkins"; was it the party who was stopping under the name of Simpkins? A. That is what I think it was because he came there and registered under that name.

Q. This was the book in which your visitors registered when they came into the hotel? A. Yes sir.

Q. How about the name of Thomas Hogan, do you remember that individual? A. No, I don't know the man exactly; I couldn't tell. I don't think I am acquainted with him.

THE COURT: You will have to speak louder, Mr. Brunzell. The jury complain that they cannot hear you.

THE WITNESS: I am not acquainted with Mr. Hogan at all.

Q. You may examine this book and state whether or not that was a hotel register which was being kept at your hotel during the time designated in the register. A. Yes, that is my book also that I ran at that time.

Q. This is the hotel register which was kept by you at that time is it? A. Yes sir.

MR. BOHANN: Mark page under date of September 10, Prosecution's Exhibit E, at the top of the page.

(The stenographer marked page indicated by counsel

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as State's Exhibit P for identification.)

MR. BOWEN: Do you wish to cross examine? (Hand
Exhibits X and Y to counsel for defendant.)

CROSS EXAMINATION

BY MR. RICHARDSON:

- Q. All you know with reference to these ~~registers~~^{books} that you have been examined with respect to is that you find them upon your book or register? A. Yes sir.
- Q. You produced the registers and you know that the registers were kept in the ordinary course of your business over there? A. They was.
- Q. But as far as the individuals are concerned you know nothing about them? A. I don't know anything about these men at all.

MR. RICHARDSON: That is all.

MR. BOWEN: That is all, Mr. Brunell.

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A. HIRKEY, a witness on behalf of the People, being first duly sworn, on as he testified as follows:

DEPONENT EXAMINATION

BY MR. BORAH:

Q. What is your name? A. -- A. Hirkey.

THE COURT: Mr. Borah, what was the date, what does the testimony show as to the date on that register?

MR. BORAH: 15th of November, the one in which Hogan and Blenkins both appear; and the other is under the date of September 26th in which Hogan alone appears.

MR. RICHARDSON: Of course I assume, if your Honor please, and Mr. Borah, that the last was simply preliminary to identifying the register; it is going to be connected up I assume.

MR. BORAH: Yes.

MR. RICHARDSON: So when you get through with your proof on that subject I want to make a motion in reference to it.

MR. BORAH: We will undertake to identify and to introduce them in a few moments.

MR. RICHARDSON: That is what I want, to save my rights with respect to the last witness on the stand.

THE COURT: It will be so understood.

MR. RICHARDSON: Very well.

(Examination of Mr. Hirkey continued).

Q. You reside in Hampa, Mr. Hirkey? A. Yes sir.

Q. How long have you resided in Hampa? A. Oh, about nineteen years.

Q. What has been your business? A. Hotel business.

Q. Were you keeping hotel there in November, 1905? A. Yes sir.

Q. What was the name of your hotel? A. Commercial Hotel.

Q. Commercial Hotel? A. Yes sir.

Q. And did you have a hotel register? A. Yes sir.

Q. Which you kept in the regular course of business? A. Yes sir.

Q. Where your guests registered when they came in there? A. Yes sir.

Q. (Shows book to witness). You may examine that book and state whether or not that was the register which you kept at that time. A. That is it all right.

Q. That is your register? A. Yes sir.

THE COURT: Speak louder.

THE WITNESS: Yes sir, that is my register.

Q. And the names which appear there are the names of the parties who registered at your hotel during that period? A. Yes sir.

Q. Do you find upon your register under November 7th, 1908, the name of "J. Simmons, Spokane"? A. Yes sir.

MR. BORAH: You may mark this page of November 7th as an exhibit, Mr. Stenographer.

(Page referred to by counsel marked by the stenographer State's Exhibit G for identification).

Q. Do you have any recollection of the individual who stopped there aside from the fact that his name appears here?

A. Why, not Simmons I don't. I don't recollect him stopping there, but I do recollect Hegan.

THE COURT: The jury cannot hear you.

THE WITNESS: I say I don't recollect of Simmons stopping there.

MR. BORAH: Any cross examination?

MR. RICHARDSON: None, preserving our right when the

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connection purports to be made.

THE COURT: Yes sir, it is so understood.

- Q. (By Mr. Borah) You may examine the book handed you and state what that book is. A. Well, that is a register, that is what they call a filler when the register runs out.
- Q. Speak a little louder. A. It is a register but it is what they send to you when your register runs out, they send you a small book to fill out you understand.
- Q. It is an addition to your original register? A. Yes sir.
- Q. But it was the regular register kept at your hotel? A. Oh, yes.
- Q. You may state whether or not the name of Thomas Hogan appears upon that register? A. Yes sir, it does.
- Q. Under what date? A. November the 11th.
- Q. What year? A. 1905.
- Q. Do you remember Hogan aside from the fact of the name being on the register there? A. Yes sir, I do.
- Q. Do you know whether or not this party who registered there as Thomas Hogan is the same party who was afterwards arrested as Harry Orchard? A. Yes sir, I believe he is.
- Q. Did you see him after his arrest? A. I did not, sir.
- Q. Did you see him after the time he was here at your hotel? A. Well, I saw him -- yes, I saw him in Caldwell once after he left the hotel.

MR. BORAH: You may mark November 11th as an exhibit.

(The stenographer marked page indicated by counsel as State's Exhibit H for identification.)

MR. BORAH: You may cross examine.

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MR. RICHARDSON: I move to strike out all of the testimony of this witness, other than that which identifies the two hotel registers, as not being connected with any matter in this case, nor germane to any issue in it -- immaterial, irrelevant and incompetent.

THE COURT: Motion denied.

(Exception to this ruling noted by defendant).

MR. RICHARDSON: No cross examination.

MR. HURSH: That is all, Mr. Hinkley.

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JOHN CONNORS, being called as a witness on behalf of the people, and being first duly sworn, on oath testifies as follows:

DIRECT EXAMINATION

BY MR. ROYAL.

- Q What is your name? A J. C. Connors.
- Q Where do you reside? A Silver City, Idaho.
- Q What is your business? A Hotel keeper.
- Q How long have you been a hotel keeper in Silver City?
- A Seven years.
- Q What is the name of your hotel? A The Idaho.
- Q Do you keep a hotel register? A Yes sir.
- Q Were you keeping a hotel in November, 1905? A Yes sir.
- Q You may look at this book and state what it is with reference to your hotel business? A This is the register of the Idaho hotel.
- Q And that shows the list of the names of the visitors, will it?
- A Yes sir.
- Q For each day? A Yes sir.
- Q You may state whether or not the name of J. L. Stephens appears on the register? A It does.
- Q Under what date? A November 5th, 1905.
- Q Did you know Jack Stephens? A No sir.
- Q You have no knowledge of the fact of his being there then aside from the register? A No.

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MR. BORAH: Mark this as an exhibit.

The page of the register was marked ~~XXXXXXXXXX~~ State's
Exhibit "I" for identification.

MR. BORAH: Do you wish to examine?

MR. RICHARDSON: No cross examination, reserving our rights
to move to strike this all out when further identification is made.

MR. BORAH: We will now call Mr. Wanta.

C. H. WENTZ, being called as a witness on behalf of the People, and being first duly sworn, on oath testified as follows:

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DIRECT EXAMINATION

BY MR. MORAN:

- Q What is your name? A C. H. Wentz.
- Q Where do you reside, Mr. Wentz? A Wallace, Shoshone County, State of Idaho.
- Q What is your business? A Bookkeeper in the office of the Federal Mining and Smelting Company.
- Q What was your business before taking that position? A Assistant cashier in the Webber bank, Wariner, Idaho.
- Q How long were you in that position? A Eight years and a little over.
- Q Did you know L. J. Simpkins? A Yes, sir.
- Q Popularly called Jack Simpkins? A Yes sir.
- Q How long have you known him? A Something over eight years.
- Q Were you intimately acquainted with him? A Yes sir.
- Q State whether or not that was his home, Wariner, for a time?
- A Yes, sir, it was.
- Q And you lived in the same village or city? A Yes sir.
- Q Did you ever have any business with him? A Yes sir, considerable.
- Q You may state whether or not exhibit "A" for identification is a photograph of Jack Simpkins? A A very good--

MR. RICHARDSON: No, he did not ask you to state that.

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Q That is all right; state that just as you want to.

MR. RICHARDSON: We object to that, that is not an answer to the question that was asked.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A That is a very good facsimile of his,-- a good photograph.

MR. BORAH: We offer Exhibit "A".

MR. RICHARDSON: We object to the exhibit "A" or to its reception, in evidence, for the reason that it is incompetent, immaterial and irrelevant, and is in no way binding upon this defendant, in any way, shape or form.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

THE COURT: The exception will be noted.

Q Did you ever have occasion to observe the handwriting of Simpson?

A Yes sir.

Q Did you ever have anything to do with teaching him to write?

A Yes sir.

Q Would you know his handwriting if you should see it? A Yes sir.

Q Have you seen him write? A Yes sir.

Q You may state whether or not the name which appears upon the Lido hotel register under date of November 2th, 1905, State Exhibit "1" for identification, L. J. Simpson, is the handwriting of L. J. Simpson? A Yes sir.

MR. BORAH: We now offer in evidence that portion of the Lido

hotel register under that date, insofar as it contains the name of L. J. Simpkins.

MR. RICHARDSON: We object to it as incompetent, immaterial and irrelevant and not connected with this defendant in any way, shape or form; he is in no wise responsible for it and it has no bearing upon this case.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Save our exception.

Q I direct your attention to the Commercial hotel register, under date November 7, 1905, State's Exhibit "G" for identification, and ask you if you find the handwriting of Simpkins upon that register and if so state where it is and what it is and read it.

A It is not Simpkins; it says Simmons.

Q I ask if it was in the handwriting of Simpkins? A Yes sir.

Q You may state whether or not the name, "J. Simmons, Spokane," is in the handwriting of L. J. Simpkins? A Yes sir.

MR. BORAH: I now offer in evidence the name, "J. Simmons, Spokane," or so much of the Commercial hotel register page under date of November 7, 1905, as contains the name, "J. Simmons, Spokane."

MR. RICHARDSON: To which we object for the reason that it is incompetent, immaterial and irrelevant, and not in anywise connected with this defendant, and he cannot be held responsible for its

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

104 Q I now call your attention to the hotel register under date,

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November 13, 1905, State's Exhibit "B" for identification, identified as the Pacific hotel register, and state whether or not you find the handwriting of L. J. Simpkins, or Jack Simpkins upon that register? A Yes sir.

Q Read it. A L. J. Simpkins, Halley, Idaho.

Q Is that in the handwriting of L. J. Simpkins? A Yes sir.

MR. BURAH: We now offer in evidence so much of the hotel register, under date of November 13th, 1905, Exhibit "B", as contains the name of L. J. Simpkins, Halley, Idaho.

MR. RICHARDSON: To which we object for the reason that it is incompetent, immaterial and irrelevant, and is in no wise connected with this defendant, and he can in no way be held responsible for it.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. BURAH: You may cross examine.

MR. RICHARDSON: That is all.

MR. BURAH: Call Guy Weight

GUY FEIGHT, being called as a witness on behalf of the People, and being first duly sworn, on oath testified as follows:

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DIRECT EXAMINATION

BY MR. BORAH.

- Q What is your name? A Guy Feight.
- Q Where do you reside, Mr. Feight? A Why, I am residing inampa now.
- Q How do you spell your last name? A F e i g h t.
- Q Where were you residing in the summer or fall of 1905? A I was at Caldwell, Idaho.
- Q Where were you stopping while at Caldwell? A At the Pacific hotel.
- Q Were you there in the latter part of October and fore part of November, 1905? A I was.
- Q Did you meet a man who was passing under the name of Thomas Hogan?
- A Yes, sir.
- Q Where was he stopping? A He was stopping at the Pacific hotel.
- Q What-- did you make his personal acquaintance? A No, sir, I just seen him around the office and heard other people, and seen his name on the register and knew him just from that.
- Q Did you see another party in company with him at the time? A Yes sir.
- Q Do you know who that party was of your own knowledge? A The fellow that is supposed to be Jack Simpkins.
- Q Did you make the personal acquaintance of Simpkins? A Not

personally; I walked down the street with him a couple of times from the hotel.

Q Here you ever seen Jack Simpkins since? A No, sir.

Q Would you know his photograph if you would see it? A Yes sir.

Q You may state whether State's Exhibit "A" for identification is a photograph of the party whom you saw with Thomas Hogan? A Yes sir.

Q Is that the photograph of the man you saw with Thomas Hogan?

A Yes sir.

Q The man whom you walked down the street with? A Yes sir.

Q Do you know under what name he was passing there at the hotel?

A Dr. Shenn, I believe.

MR. BORNH: You may cross examine.

MR. RICHARDSON: No cross examination, and we move to strike out all the testimony of this witness as incompetent, immaterial and irrelevant, and in no wise connected with the defendant.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

MR. BORNH: That is all then for this witness. The next witness will be herein just a few moments.

THE COURT: We will close this morning's session at half past eleven, and you may come in at one or half past one as you may desire.

MR. HAWLEY: How long do you intend to run this afternoon?

THE COURT: I don't know; perhaps two hours or two and a half, it will depend. Are you ready for your next witness?

MR. HAWLEY: Yes, sir, call Harry Orchard.

HARRY ORCHARD, being called as a witness on behalf of the people and being first duly sworn, on oath testified as follows:

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DIRECT EXAMINATION

BY MR. HAWLEY.

Q Mr. Orchard where do you reside at the present time?

A Up at the penitentiary.

Q Here in Boise City? A Yes sir.

Q How long have you been an inmate of the penitentiary here?

A Since the 18th of January, last year.

Q Of 1906? A Yes sir.

Q You were taken from where to the penitentiary? A From the county jail at Caldwell.

Q And since then have been in the penitentiary? A Yes sir.

Q What charge, if any, had been made against you by reason of which you were in the county jail at the time of being taken to the penitentiary? A I was charged with the murder of ex Governor Steunenberg.

Q And have you been held upon that charge? A Yes sir.

Q And indicted upon that charge? A Yes sir.

Q And are now awaiting trial upon that charge? A Yes sir.

Q Where were you born, Mr. Orchard? A I was born in Northumberland County, Ontario, Canada.

Q In what year? A 1886.

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- Q Then you are 37 years of age or thereabouts at the present time?
- A I will be about 40 years old.
- Q Oh, yes, 41? A 40, past.
- Q Is Harry Orchard your true name? A No sir.
- Q How long have you been known by the name of Harry Orchard?
- A About eleven years.
- Q What is your true name? A Albert E. Kerstley.
- Q When did you go-- how long did you reside in Canada,-- until what year? A Until the year 1895-- 1895.
- Q In what part of Canada-- the same one you have mentioned, the same part? A Nearly so, the same counties, about.
- Q What part of the United States did you come to in 1896?
- A I came to Spokane, Washington.
- Q Did you reside there for any length of time? A About a week.
- Q Where did you then go to and take up your residence? A I went to Wallace, Idaho.
- Q To Wallace, Shoshone County, in this State? A Yes sir.
- Q That is what is known as the Coeur d'Alene mining region, is it not? A Yes sir.
- Q At what time in 1896 did you go to Wallace? A In March or April, I think.
- Q What business or occupation did you follow while in Wallace?
- A I went to driving a milk wagon when I first went there, for Markwell Brothers.
- Q For who? A Markwell Brothers.

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- Q How long did you continue in that employment? A Until about Christmas of that same year.
- Q Christmas of 1896? A Yes sir.
- Q That would be? A Yes sir.
- Q What employment did you engage in after that? A I went to running a wood and coal yard in Burke.
- Q Where is Burke situated with reference to Wallace? A It is about six miles from Wallace, up Canyon creek.
- Q Wallace itself is situated on what stream? A On Canyon creek, or the Coeur d'Alene river, some call it.
- Q And does that river branch or split about Wallace? A I think it does.
- Q In Wallace-- on which one of those forks is the town of Burke?
- A It is on Canyon creek.
- Q At the southern or northern part of the stream after it leaves Wallace? A I could not say as to the direction; I am not positive about it.
- Q How long did you engage in this business at Burke? A Until the spring of 1899.
- Q Was you continuously engaged in that business there? A Yes sir.
- Q On your account or working for some one? A On my own account about two years after I went in there and then I sold a half interest to James McAlpin.
- Q When did you sell this half interest-- what year? A I sold it in

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1899.

- Q What had been your business before coming to this country from Canada? A I had been making cheese the last-- about six years before coming here.
- Q That was really your business, making cheese then, for the six years prior to your coming here? A Yes sir.
- Q After you sold to McAlphin the half interest in Burke, did you continue to run it? A I did for a time, for four or five months afterwards, with him.
- Q And after that what did you do? A I sold it all out to him and went to work in the mines.
- Q What mines did you go to work in? A Tiger and Poor man.
- Q They are situated at Burke or near Burke? A Yes sir, at Burke.
- Q Who was the manager of those mines at that time? A Frank Gilbertson.
- Q In what capacity did you go to work? A I went to work mucking.
- Q Mucking? A Yes sir.
- Q Had you had any experience prior to that time as a mine worker? A No sir.
- Q This was your first venture then in that kind of business? A Yes sir.
- Q How long did you continue to work in the mine? A About a month.
- Q What month was it that you went to work there? A It was in March when I went to work-- the latter part of March.
- Q March of what year? A 1899.
- Q Of 1899? A Yes sir.

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Q And you continued to work for about a month? A Yes sir, a little more than a month.

Q Was you working as a miner all the time? A Yes sir.

Q In this same mine? A Yes sir.

Q And under Mr. Culbertson? A Yes sir.

Q Who was the foreman of that mine? A Ed. Araborn.

Q State whether or not you became a member of any miner's organization at that time? A I became a member of the Western Federation of Miners about the time I went to work.

Q What particular local organization or union of that organization did you join? A I joined the Burke Union; I forget the number.

Q The Western Federation is composed of unions in different localities?

A Yes sir.

Q Does each have a number? A Yes sir.

Q But you don't remember the number of this particular union?

MR. RICHARDSON: We object to that method of examination?

MR. HAVENY: It is leading, I know, but it is immaterial.

MR. RICHARDSON: Yes, you do know it is leading, and you also know that that is not the proper method of examination.

Q What do you say about the number then, I will withdraw the last question? A I don't remember the number, but each union had a number-- each local.

Q What officers are there in a miner's union? A There is the president, secretary and recording secretary.

Q When you speak of secretary and recording secretary what do you mean? Is there an officer that has the title of secretary alone,

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and another? A There is a financial secretary and a recording secretary.

Q There were two secretaries then? A Yes sir.

Q State how long you continued to be a member of that lodge?

A A few days after April 29th of 1898.

Q Now, I will ask you if you were acquainted with other lodges, and know if there were other lodges of the Western Federation of Miners in the Coeur d'Alene country at this time? A I understood there were others but I never visited any others.

Q You never visited the one. Do you know whether there was a lodge at Gen or not? A Yes sir.

Q Where is Gen situated in reference to the town of Burke and to the town of Wallace? A It is between the two, about half way I think.

Q What is the distance did you say, from Wallace to Burke? A About six miles I think.

Q Do you know whether or not there was a Miner's union at the town of Mullen at that time? A I believe there was.

Q And where is the town of Mullen situated with reference to the town of Burke and to the town of Wallace? A It is over across the mountain further, pretty near straight as I understood it, up the Canyon from Wallace; the road is--

Q What is the means of communication between Wallace and Burke? What kind of roads, if any? A It is a wagon road from Burke to Wallace, and from Wallace to Mullen, and a railroad also.

Q State whether or not this railroad is the same that runs from

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Wallace to Millen as that that runs from Wallace to Burke?

A One line of it is the Northern Pacific.

Q Where is the town of Millen-- the town of Gem, so far as the railroad is concerned? A Gem is on the railroad between Burke and Wallace.

Q Where do these two roads join together, if they join, that connect Millen and Burke? A At Wallace.

Q State whether or not above Wallace on either of the branches of Canyon creek there were any other towns wherein there were lodges of the Western Federation at that time? A There was none that I know of.

Q Do you know where the town of Gardner is situated? A Yes sir.

Q Where is it situated with reference to Wallace? A It is about eight miles below Wallace I think, on the Coeur d'Alene river on the C. R. & N. railroad.

Q Have you been-- do you know whether or not at that time there was a lodge of the Western Federation of Miners in Gardner? A I believe there was.

Q Who at the time you joined, and while you were a member of the Burke lodge of-- the Burke union, who were the officers,-- the president, and financial secretary? A Billy Miller was president and Paul Cochran was secretary.

Q Do you remember who was the recording secretary? A No sir, I don't.

Q Did those parties continue to be officers while you were a member of it? A Yes sir.

Q What did you say the President's name was? A Mike Devay was president at the time.

Q Was Devay or Devers? A I am not sure; Devay, we pronounced it.

MR. RICHARDSON: You want that changed then from Billy Miller?

MR. HAWLEY: Yes, he corrected that statement.

Q Was there any notable occurrence in connection with the unions in April, 1939, in connection with the Burke union and other unions?

A Yes sir.

Q State what day it was that you referred to in connection with this?

A It was April 29, 1939.

Q April 29? A Yes sir.

Q State what this occurrence was that you referred to as being unusual and out of the usual course.

MR. RICHARDSON: We object to any testimony in reference to any unusual occurrence that occurred in Burke or Wallace or any other place on April 29, 1939, as not being material, competent or relevant in this case.

MR. HAWLEY: I think it is admissible for two reasons: One is the question of motive, and the other is the general question of this entire affair as was outlined yesterday.

MR. RICHARDSON: As to the question of motive, it is not competent to prove the motive of the man on the stand, and if it has a tendency to prove the motive of the defendant that is another question. But the general course that the counsel intend to pursue is apparent. It is well known to counsel that the defendant was

not connected with the Oscur d'Alone lodge at Burke, or any other Oscur d'Alone lodge, but that he was a member of the Miner's lodge at Silver City about that time and was not elected a member of the Executive board of this organization until long after this. And the statement has been made by the counsel that the rank and file knew nothing about the workings of the inner circle and therefore it could not be competent in a case where this defendant is on trial.

THE COURT: The court can readily see where this testimony may be material, and will overrule the objection.

MR. RICHARDSON: Note our exception.

Q Please read the last question, Mr. Reporter.

The question was then read.

A In the morning, as I got up, on the 29th of April, and was going up to breakfast, I was told there was a special meeting---

MR. RICHARDSON: We object to anything he was told in regard to the matter he is about to relate. That certainly could not be competent.

MR. HAWLEY: It is part of the narrative.

THE COURT: I think you must confine yourself to what this defendant knows.

MR. HAWLEY: To what he saw and heard. We are ready to be heard upon these matters if your Honor wants to hear it.

THE COURT: Read that answer.

The answer of the witness was then read.

THE COURT: The objection to that will be overruled.

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MR. RICHARDSON: Note our exception.

Q You were told by whom? A Some of the miners who were working there.

Q A special meeting of what? A The Burke union.

Q Go ahead and tell us in narrative form. A Every one was requested to attend that belonged to the union.

Q Did you go? A Yes sir.

Q What time in the morning was this? A About six o'clock when this happened, I think.

Q State whether or not you went to this special meeting?

A Yes sir, I did.

Q Where was it held, and at what time? A It was held about an hour later I think, or an hour and a half-- perhaps two hours, in the union hall at Burke, Miner's union hall.

Q Go on and state what occurred as far as you--

MR. RICHARDSON: To which we object as incompetent, immaterial and irrelevant and not binding upon the defendant as he was not there.

THE COURT: If the testimony later does not show that it connects it with the defendant it may be stricken out, but the objection will be overruled.

MR. RICHARDSON: Note our exception.

THE COURT: The testimony will be received simply on the assumption that it will be connected later.

Q Go ahead, Mr. Cochran. A The meeting was called to order by the Secretary, Paul Cochran, and he said the object of the meeting

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was, the Central union--

MR. RICHARDSON: We object to his stating what the object of the meeting was. That is his conclusion upon the subject of the meeting. And furthermore, the Supreme Court of this State has said, and of many other states the courts have said that this method of introducing testimony in a conspiracy case is not the proper method to pursue where there is any proof of a conspiracy; if they have any direct proof of a conspiracy we call for that proof before they go into such matters as the matter now being interrogated about. The course which is evidently being pursued is to show that the defendant is to be responsible for the specific acts of the Burke miner's union or of any other miner's union; and we cannot be said to have participated in any of these particular acts. We submit that that is not the law and cannot be the law that such specific acts upon the part of any union can be binding upon the defendant unless he was there and participated in them or had some thing to do with them, or had some knowledge of them and aided, abetted and encouraged them; and the opening statement itself advises us that it is not pretended that Mr. Haywood was connected with this organization other than as a member of some local lodge at this time. The fact is that he was not connected with the executive board of the Western Federation until in June of 1899. He did not take office until after this time, and was simply a member of the local union in Silver City of this State.

THE COURT: The objection will be overruled. Proceed.

MR. RICHARDSON: Save an exception. I want to change that

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year to 1900 instead of 1899.

MR. HAWLEY: I understand that the exceptions are saved to all these.

MR. RICHARDSON: May that be understood as the rule?

THE COURT: I want you to note your exceptions as you go along. There will be no exceptions considered unless they are noted as you go along.

Q Go right ahead and state in narrative form what was said and done.

A He said the central union had held a meeting the night before and had concluded to go to Wardner in a body that day and blow up the Bunker Hill and Sullivan mill and hang the Superintendent, or both.

MR. RICHARDSON: I move to strike out the answer as incompetent, immaterial and irrelevant. Mr. Haywood cannot be bound by any statement by the Secretary of that union.

THE COURT: The motion will be denied.

MR. RICHARDSON: I would like to ask this, in order that we may understand it: We would like to know the theory upon which, if Mr. Haywood was not there, he is to be connected with the transaction. Is it upon the ground that the organization is a criminal organization, and if so that disposes of the statement of Mr. Hawley made yesterday, and if not I cannot see any theory upon which he can be held responsible.

MR. BORAH: The theory is this: If we are successful in showing a condition of affairs in the Coeur d'Alene at this time with which Governor Steunenberg was connected and Mr. Haywood thereafter as an officer of this organization, having full knowledge

of what had occurred and of the feeling that had been created, after he became such officer joined in the conspiracy or combination that had been formed, the law is well established that whatever had preceded his being made an officer, he accepted and adopted, and we will show that he had full knowledge of all that had occurred, all that had happened, and afterwards took part in the matter and became a partizan in this entire transaction. We will show it not only by this witness, but by the written language of Mr. Heywood himself.

THE COURT: The only question in my mind is the extent to which you may go into the Coeur d'Alene matters. I have no doubt about your right to show generally what transpired there and the action of Governor Stansbury in reference to it. The only matter the court would care to hear anything upon would be the extent to which you would be permitted to go into detail.

MR. BORAH: I am inclined to think myself that we ought not to go into what might be called the details of the transaction, but we claim the right to go in sufficiently to show what the transaction was and what the action of Governor Stansbury was, and the basis of this entire transaction, not only to show the beginning of this conspiracy but also the motive for the crime which was afterwards committed, as it existed at that time. We would not be permitted to go into all questions of the details to show who was right or who was wrong in the transaction, but to show that certain things took place and that Governor Stansbury acted in a certain manner and thereafter the organization felt a strong ill will

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against him because of his action. It is not a question of who was right or who was wrong, but certain things happened which caused a feeling to exist which resulted in the killing of Governor Steunenberg on the 30th of December, 1903, and we will simply show enough to lay the basis for the feeling which existed between the organization and the party who was killed.

THE COURT: The objection will be overruled.

MR. RICHARDSON: I would like to answer that, and would like to be heard before your Honor rules on this. We think the complete answer to that is this: That it is sufficient to show Mr. Haywood's animosity if he had any at the time, and under the circumstances with which he became connected with the alleged transaction that he is here charged with. It doesn't make any difference what preceded that transaction unless he had knowledge of it and it was made the source of the animosity which had some time or another entered into his breast, and nothing more. That would be the time when the motive could be shown with reference to Mr. Haywood. Now, so far as the general proposition is concerned there is no dividing line, that I can see, between stating this matter as counsel has stated it and as the question is put as to what took place in this particular local union at which Mr. Haywood was not present, and going into the entire transaction.

THE COURT: If you want to go into it on cross examination, the court will permit you to.

MR. RICHARDSON: Yes sir, and on independent evidence also; but it ought not to be gone into at all at the present time; for if

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it is as to the question of motive as counsel has stated, it is a question of what the conditions were which were made known to Haywood, and what he did at the time he first became connected with the transaction.

THE COURT: The court will permit the prosecution to show generally what took place in the Coeur d'Alene in 1899, in reference to this affair,-- the connection of the members of the Western Federation of Miners with it, and generally the actions of Governor Steuneger, but I do not see the necessity of going into the details of that affair at this time.

MR. HANDEY: I do not propose to go into the details except to make a narration of facts to make it understandable.

MR. DARBOW: To prove what took place at the Hunter Hill and Sullivan mill is a detail.

THE COURT: No, I think not. You may save your exception.

MR. DARBOW: They can't pick out one thing here and there and keep us from picking out something else.

MR. BORAH: You can pick out anything you choose.

MR. DARBOW: Please remember that for we will need it later.

MR. RICHARDSON: Note our exception.

Go on and state what occurred and what was done. A Mr. Cochran said that arrangements had been made up to the Northern Pacific train up to Wallace that they would cut the wires-- the telegraph wires, and when the train got to Durte they would have five or six men ready to take possession of it and that they would get what cars they needed there and go on to Gen and the Gen union would be ready,

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and the Millen union would meet them at Wallace, and that they would go on down to Gardner.

Q What was done--

MR. RICHARDSON: Our objection of course goes to each question and applies to all this class of testimony without being further offered or repeated, and our exception will be considered as noted in each case.

THE COURT: Yes sir.

A What do you mean?

Q Put it in narrative form; what was next done? A Well, Cochran was telling these men this, and Mr. Devey came in, the president of the union; he said he had not been notified of the meeting and wanted to know what the object of it was, a meeting called at that hour of the morning. Mr. ~~Stewart~~ Cochran told him what he had said and what had been agreed on by the central union, and he said he objected to it, and there was quite a lively discussion between him and the secretary and which others took part in; and there was finally a vote taken the men dividing on either side of the hall. It was carried by a small majority I think, to go to Gardner. I think after the vote was taken most every man in the place that belonged to the union went to Gardner and to Burke.

Q How did you go? State the method and what was done in connection with it? A This train was made up out of what passenger coaches they had there, and box cars and flat cars, and we got on that train and went and stopped at the Priceo magazine and got about forty boxes of giant powder.

- Q How much did that make? A They were 80 pound box on.
- Q Who had charge of the train when it left Burke? A I could not say who had charge of it-- all of them, but Paul Cochran was one of the men on the engine.
- Q Did the railroad men have charge, or outsiders? A The railroad men ran the train, but there was six men commanded them.
- Q State whether or not the train was taken possession of? A Yes sir, it was.
- Q By whom? A These six men.
- Q Who did they represent, or who were they? A I couldnot tell who it was, but Paul Cochran was one; I don't know who the rest were.
- Q After running to Gen, or, you say they ran to Gen and took this powder? A Yes, sir.
- Q How did they get the powder? A They get it out of the magazine there at the Prince mine.

THE COURT: It seems to me that this is within the question of detail that the court indicated there was no necessity for. It seems to me that if there was property destroyed there you may show that but it is not necessary to go into the detail of where they got the powder.

MR. HAWLEY: Very well, your Honor.

- Q State whether or not, after leaving Gen and getting the powder, state what was then done-- go on and state the facts generally.
- A The train went on down to Gen and stopped at the Miners' Union hall at Gen and a good many of the men got off and went into the hall and there was several rifles distributed to them there. They

backed up again to the magazine and got about as much more powder as they had taken in the first place and ran on down to the hall again and the rest of them got on at Cox and went on to Wallace and the Mullen union was there at Wallace and they got on the train too, and we went on down to Gardner on the C. R. & N. track.

Q About how many were there aboard of the train? A I could not say how many, but we supposed there were about a thousand.

Q Were these men armed or not? A A good many of them were.

Q What was done after you reached Gardner? A They all got off the train and Mr. Davis, W. H. Davis, the man who was in command, ordered the men to line up in unions; all that had guns, calling Burke first-- I don't know what order the other unions came in, but he asked all that had long guns to fall in line, and then that only had six shooters to follow them. And they sent 12 men on a skirmish line around up on the side of the hill above the Bunker Hill mill to fire on the mill and see if they could draw any fire out of it-- from the mill. The other men marched around to within about two or three hundred yards of the mill and one of these men on the hill fired at the mill and when they did part of the men in the mine fired on them, not understanding that they were the same men, and when they stopped firing there was a man there at the mill, a watchman, and they said there was no men in the mill; the mill was not guarded at all. They marched up around the mill and gave the signal to bring the powder they had at the depot, had it taken off the train and they placed this powder in the mill at three different places. Previous to that they had set fire to the board-

ing house and the outbuildings,-- the office and buildings that were there and then the powder was touched off in the mill.

Q Who lit the fuse? A I lit one of them. I don't know who lit the rest.

Q How many of these fuses were there? A I could not say. There was probably have a dozen in each bunch.

Q Who did you say was running the affair? A W. F. Davis.

Q Where did he live? A He lived at Gam.

Q After the fuses were lit, what was the result? A The mill was all blown up-- blown to pieces.

Q After the blowing up of the mill what was done? A Got on the train and proceeded back to Wallace.

Q Anybody killed during this affair? A Yes sir.

Q How many and who? A Two men killed. The only man I know was Cal Smith, who was in the twelves that went up on the hill.

Q You did not know the other man? A No sir, I did not see the other man killed.

Q What time did you get home-- did this train reach Burke on its return? A The train did not go to Burke; it went to Wallace and we disbanded there, and I don't know what time I got home; about six o'clock, I think.

Q That night? A That night, yes sir.

Q What was done in the morning there at Burke so far as people going about their usual vocations were concerned?

MR. RICHARDSON: We object to that. We cannot be bound by what people were doing there in Burke.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

THE COURT: I suppose this question relates to the people there after they disbanded?

MR. HAWLEY: Yes sir.

A We went to work the same as usual.

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- Q. Had there been any work carried on the day and night before, if you know? A. No sir, there had not.
- Q. How long did conditions remain in this way, the usual work going on, after this blowing up? A. I worked four or five days and then began to quit, there wasn't a full crew on the last day, they was quitting, the crew, at the time right along.
- Q. What occurred, if anything, at the time to lessen the crew?
- A. It was reported that the United States troops was on the way there and a good many quit on that account; they gave that as their reason.
- Q. State whether or not United States troops did come in there, if you know? A. Yes sir, they did.
- Q. How long was it after this trouble? A. I think it was four or five days.
- Q. Where did you go? Did you stay there? A. I stayed until the troops came in.
- Q. Do you know whether Governor Stamenberg went in -- do you know who was governor at the time? A. Yes sir.
- Q. Who was it? A. Governor Stamenberg.
- Q. State whether or not his name was mentioned at this meeting in the Union hall on the morning of the 29th of April?

MR. RICHARDSON: We object to that for the reasons heretofore stated.

MR. HAWLEY: As part of these proceedings.

A. Yes sir, it was.

MR. RICHARDSON: One moment. Let us have a ruling on it.

THE COURT: What is the purpose of this, Mr. Hawley?

MR. HAWLEY: That it goes to show a part of the notice.

(11)

your Honor. It wouldn't be proper to state what I expect to prove here, but I expect to show it was a part of the notice and accounting for this feeling that afterwards was engendered.

THE COURT: I will overrule the objection.

MR. RICHARDSON: Note our exception.

MR. HANLEY: That was the question.

(Question read).

A. Yes sir, it was mentioned.

Q. What was said and by whom? A. Mr. Cochran said he didn't think we would have any opposition from the Governor as they had always supported him and they owed the governor, or some words to that effect; and that the only thing we would have to look out for was not to interfere with the Federal authorities, do anything that would come in conflict with them.

Q. You say you went out after the troops came in? A. Yes sir.

Q. Do you know anything of your own knowledge of the affairs as they occurred there afterwards in the Cour d'Alouca, of your own knowledge, at that time? A. The last afternoon that I was there I was up on the hill above Burke when the troops came in. We had made arrangements with Dr. Collins if it was all right for us to come down he would put a sign out on his house, put a flag out. We didn't see any, and we stopped up at the cabin that night. After it got dark we sent two men down and they found out through the women, some of the women of the place, that they had arrested every man there was in the place and taken them to Wardner, or taken them away, and the place was all picketed with soldiers.

Q. State whether you went down yourself or what you did do after

(11)

- ascertaining this fact. A. No sir, I didn't go down myself.
- Q. When was it with reference to this knowledge being conveyed to you that you went over into Montana? A. I left there the next morning with Pat Dennison, left the cabin, of the Humburg mine.
- Q. You have spoken about W. F. Davis as being the leader: Do you know what became of W. F. Davis or did you see him after this time? A. I did.
- Q. Where and when? A. At the Hercules mine, just after I left the Humburg, about three-quarters of a mile I think from there. The Hercules was on our way and we stopped there and got a lunch and I seen W. F. Davis there.
- Q. How does the country lay, this section of the country so far as the Montana line is concerned, how close to it?
- A. About forty miles I think, or forty miles to Thompson Falls.
- Q. Then the boundary line between the two states lies between Thompson Falls and Burke? A. I think so.
- Q. After going to Thompson Falls, Mr. Orchard, where did you go?
- A. I went to Missoula, Montana.
- Q. And from Missoula -- or how long did you stay in Missoula?
- A. I only stayed in Missoula about a day or two. I went from there up in the Bitter Root valley and stopped awhile with a man by the name of Pat McCarthy.
- Q. And from Bitter Root valley where did you go? A. I went on up in the Bitter Root valley from this place about ten miles to a man's place by the name of Davis, with Ales Betron and I, and we got Davis to go back over to the Coeur d'Alene and get what money we had coming to us and get our clothes and

grain shipped ~~xxxxxxxx~~ from there and we went from there, when I got there, I went from there to Butte, Montana.

- Q. You may state who at this time was the president of the Western Federation of Miners, if you know? A. Edward Boyce.
- Q. Where was Edward Boyce living at this time? A. He was living in Butte.
- Q. After you went to Butte what did you do? A. I didn't do anything, any work; I was sick for a while after I went there.
- Q. State whether or not you saw Boyce? A. Yes sir, I did.
- Q. If so, what was done? A. I told him I was going to leave there and that I didn't have any withdrawal card or any records issued from the Burke Union and asked him if he couldn't give me something so that I could get into another union if I wanted to. He gave me a withdrawal card with his name signed to it.
- Q. How long did you stay in Butte? A. About two weeks I think, possibly three.
- Q. Were you engaged in any business there? A. No sir.
- Q. From there where did you go? A. I went to Salt Lake City, Utah.
- Q. How long did you stay in Salt Lake? A. Just a couple of days.
- Q. And from there where did you go? A. I went to Bingham, Utah.
- Q. Bingham is what? A. A mining camp.
- Q. Where is it situated with reference to Salt Lake? A. About twenty-four miles from Salt Lake.
- Q. What did you do there, if anything? A. I went to work in a mine.
- Q. How long did you stay there? A. I stayed there until the Fourth of July.

- Q. Or --- A. That same year.
- Q. Or 1899? A. Yes sir.
- Q. What mine was this you was working in? A. I worked awhile in the Ben Butler and the other was a prospect, I have forgotten the name of it. I was working for a contractor driving a tunnel.
- Q. From there where did you go? A. I came back to Salt Lake.
- Q. How long did you stay there? A. It was two or three days.
- Q. And from there where did you go? A. I went out to the mouth of Little Cottonwood canon. I went to work in a shaft there for some contractors.
- Q. A mining shaft? A. Yes sir.
- Q. How long did you stay there at the Little Cottonwood?
- A. I stayed there until Christmas of that year, about Christmas.
- Q. After getting through with this what did you do, where did you go? A. I went over in Butterfield canon from Bingham to work, or near Butterfield canon, on the St. James mine.
- Q. How long did you stay in that vicinity? A. I stayed there until spring, that spring.
- Q. How long did you continue to live in the Utah country, in the state of Utah? A. I stayed there until November of 1900.
- Q. What was your business during this time? A. I was working in the mines all of the time.
- Q. From November, 1900, where did you go? A. I went to California.
- Q. What part of California? A. San Francisco.
- Q. How long did you stay there? A. About two weeks.
- Q. After that where did you go? A. I went up to Lake county, California to Vartlett Springs.

Q. Go on in a general way and give your movements until you reached Colorado, without further questions, go ahead and give it in a narrative form.

A. I stayed at Bartlett Springs until the next May, I think it was, I had a contract of getting out wood there. I went from there to Los Angeles, stayed there about three weeks, I didn't do any work, though, and I came back to Salt Lake City. I went to work for the Keystone dairy driving a milk wagon. I worked there until that fall and then I went down to work in Arizona.

Q. What kind of work? A. In a mine. I have forgotten the name of the mine. I worked there until March?

Q. 1901? A. Yes sir -- no, it would be --

Q. That would be 1902, I believe? A. Yes sir, 1902. I came back to Salt Lake City from there and went out and worked at Bingham about two months, I think -- Bingham, Utah -- and I went down to Nevada, state line, and worked in a mine there for a time, the Oghir mine, and came back to Salt Lake and came to Idaho, up in southern Idaho out near Paris, a little town called Paris. I went with Mr. Dulin of Salt Lake to look at some prospects he knew of there. I went back to Salt Lake in a few days. I only stayed there about a week or ten days, and his son, Arthur Dulin, and I went to Colorado just after the fourth of July, 1902.

Q. What part of Colorado did you go to? A. Went to Cripple Creek.

Q. After you went to Cripple Creek what business did you engage in if any? A. I went to work in the Trachite mine.

Q. How long did you continue to work there? A. About four months.

Q. In what capacity was you employed in the mine? A. Running a

(H)

machine.

Q. A machine drill? A. A machine drill, yes sir.

Q. Had you, after leaving Butte and receiving your card, affiliated with any branch of the Western Federation?

A. No sir.

Q. State whether or not the Western Federation had lodges at Cripple Creek at this time? A. Yes sir.

Q. State whether or not you joined the lodge. A. I did.

Q. And at what time with reference to the time you have mentioned?

A. I couldn't say just what time, it was some time after I went to work in the Trachite mine, during the time I was working there.

Q. What lodge was it you joined there? A. The Free Coinage Union, Altam, No. 19.

Q. Who was the president of that lodge? A. W. F. Davis.

Q. State whether or not he was the same W. F. Davis you have mentioned in connection with the Coeur d'Alene troubles.

A. Yes sir, he was.

Q. You worked four months, I understand you to say, in the Trachite? A. About four months, as near as I can remember.

Q. What did you do after that? A. I went to work on the Hill City mine, the Hill City placer.

Q. And you continued to work there how long? A. I worked there three or four months.

Q. In what capacity? A. Timbering part of the time, part of the time running a machine.

Q. Speaking of running a machine, what kind of a machine do you mean? A. A Burley drill.

- Q. What did you do after that? A. I went to work in the Vindicator mine, No. 1.
- Q. Where is the Vindicator situated? A. It is on Bull Hill just a little way from the Hall City.
- Q. How long did you continue to work there? A. I worked there until the 10th of August, 1903.
- Q. And then what did you do -- by the way, who was at the Vindicator mine at that time as manager or superintendent?
- A. Charles McCormick.
- Q. Who was the foreman of the mine? A. I guess he acted as superintendent and foreman. There was no foreman other than him, and shift bosses.
- Q. Do you know the shift bosses or did you know them? A. Yes sir.
- Q. Who were they? A. Mel Beck was one. I can't call the other man's name just now, I can't think of it.
- Q. What month was it you stopped working on the Vindicator, you say? A. The 10th of August, 1903.
- Q. What did you do then, Mr. Orchard? A. I went out on strike.
- Q. Was there a general strike in that district? A. Yes sir.
- Q. At that time. When you speak of the strike what do you mean, miners or -- A. Yes sir, the miners.
- Q. How many miners' unions were there in that section, or lodges, Federation lodges? A. Four.
- Q. State whether or not this strike was universal? A. It was with the exceptions of a few mines, the Portland mine and some other smaller ones I don't remember, were not called out at that time.
- Q. State whether or not Mr. Davis had continued to be the president of this union? A. Yes sir, he had.

- Q. How long did this strike continue? A. I don't know how long it continued -- as long as I was there.
- Q. How long did you stay there? A. I stayed there nearly a year off and on, not regularly though.
- Q. While the strike was going on? A. Yes sir.
- Q. What were you engaged in during this time? A. I didn't have any regular occupation.
- Q. Was there any work in the mines going on at all? A. There was in some of them; the Portland mine was working and some other smaller places.
- Q. But the other mines were shut down? A. They were for a time.
- Q. You may state if there was any trouble at the Vindicator mine in which you were engaged in this time.

MR. RICHARDSON: I object to that, if your Honor please, for the reason that there is no connection made or attempted to be made so far as the defendant Haywood is concerned with respect to that matter, and it is therefore immaterial, irrelevant and incompetent as to this case.

MR. HASKIN: We will withdraw that question for the time being.

- Q. Do you know where the headquarters of the Western Federation were at this time? A. Yes sir.
- Q. Where? A. Denver, Colorado.
- Q. Do you know who was the president and who was the secretary of the Western Federation at this time? A. Yes sir.
- Q. Who were they? A. Charles H. Moyer and W. D. Haywood. Charles H. Moyer was president and W. D. Haywood was secretary.
- Q. W. D. Haywood, the defendant at bar? A. Yes sir.
- Q. And were you acquainted at this time with these parties?

A. No sir.

Q. Who was it that had the charge of the strike matters of the Federation at this time at Cripple Creek? A. W. F. Berland, /^(Davis)
Sherman Parker and Charles Kemison.

Q. Who was Sherman Parker? A. He was financial secretary of the Altman Union No. 19.

Q. That was the same union that Davis was president of? A. Yes sir.

Q. Who was this other man that you have mentioned? A. Charles Kemison.

Q. And what was his position, if he had any? A. He was on the strike committee. He was from the Cripple Creek union. I don't know whether he was an officer of that union or not. I think he was president, though I am not sure.

Q. You may state whether or not there was trouble at the Vindicator mine at this time of any kind, in which you were engaged?

MR. RICHARDSON: We object to that for the reasons stated.

MR. HAWLEY: I am asking it as a preliminary.

MR. RICHARDSON: We will withdraw the objection until you get to the main question.

A. There was trouble there later, after the strike later on.

Q. Was you engaged in that trouble? A. Yes sir.

Q. You may state whether or not this trouble was in connection with the strike itself and in connection with those who had charge of the strike.

MR. RICHARDSON: If your Honor please, we object to that as incompetent, irrelevant and immaterial and as calling for a conclusion of the witness. He has not asked for any fact
(11)

whatever.

MR. HAWLEY: We think that the question does not call for a conclusion, if it does it is such a conclusion as we have a right to, your Honor. It is preliminary in effect.

THE COURT: I do not care to hear you upon that point, Mr. Hawley, as to whether or not it calls for a conclusion of the witness.

MR. HAWLEY: These are preliminary matters, your Honor. There will be a main question which I suppose will have to be threshed out in this matter, and it might as well come at one time as another and we would like to lead up to it because it is in regard to these different matters --

THE COURT: With the assurance from counsel for the state that these matters will be connected with the defendant, the court will permit this question to be answered.

MR. HAWLEY: We expect to connect these matters with the defendant himself.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: We are leading up to it.

- Q. Please go on and state what happened, in a narrative form.
- A. Shall I state what I did do you mean?
- Q. Yes sir. A. Well, I had been high-grading in the Vindicator after the strike commenced, and during that time I had discovered a car load of powder in the Vindicator mine in a tunnel, or in a drift in a tunnel. In talking to W. F. Davis I told him about this powder one day. He asked me if --

MR. RICHARDSON: One moment. If your Honor please, we object to any conversations with Mr. Davis with respect to this matter or any other matter as irrelevant, immaterial,

incompetent and not binding upon this defendant.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A. Mr. Davis asked me if I would go with "Slim" Campbell and set this powder off while the shift was working in the Vindicator mine. I told him I didn't know, I would think about it. He said if I would go he would give me \$200. I afterwards seen Mr. Davis, after two or three hours, and told him that I would get a man to go with me myself if I went. I went and seen this man and asked him about it and he said he would go with me.

Q. Who was this man? A. Joe Schultz.

MR. DABROW: How do you spell it? A. I don't know how he does spell it.

MR. HAWLEY: I think S-c-h-o-l-t-z, but I am not certain. I have that spelling of the name somewhere, but whether it is correct or not I don't know.

Q. You speak about the shift working at that time? A. Yes sir.

Q. You may state whether or not this mine was being worked.

A. Yes sir, it was.

Q. And you may state what class of miners or workmen were there, union or non-union? A. They were non-union, supposed to be non-union men.

Q. You may state whether or not any union men were supposed to be at work at the time. A. No sir.

MR. RICHARDSON: If your Honor please, we object to any dealing with supposition. He either knows whether they were union or non-union or else he doesn't know anything about it, and it is only facts he can testify to, and we object to it. (B)

THE COURT: Let him testify as to what he knows.

Q. What do you know with reference to that matter, whether this mine at the time was a union mine or not. A. The union men had been called out and I don't think there were any union men working there.

Q. Go ahead; you have stated now in regard to Mr. Davis and the proposition -- take up your narrative and proceed with it.

A. I asked Mr. Scholtz if he wanted to do that, go down there --

MR. DARROW: State that again. I didn't get that.

A. I asked Mr. Scholtz if he wanted to go with me down the Vindicator mine and blow up that powder, get it off -- blow up the mine. He thought a minute and he said he thought we were justified in doing it and said he would go, and we did go down there; and we got -- we had to cross the station on the 6th level to get to where the powder was and we waited until we thought the shift went up for lunch at midnight, when we went out on the station. The cager was there and he says "Come on boys, this is the last cage, hurry up." We begin to back up in the tunnel and he followed us, and we took a couple of shots at him after we got in the tunnel a ways and he went back.

Q. When you speak of a cager what do you mean? A. The man that puts the cars -- the cars on the cage, and takes off empty cars and attends to the signals at the mine as the cages run up and down, that runs the cages.

Q. Do you know who this particular party was, this person?

A. No sir, I do not.

Q. Don't know his name? A. No sir.

Q. Go ahead. A. Well, he went back again and we went on out of

the mine the same way we come in. We got out --

Q. Did you find the powder? A. No sir.

Q. Go ahead. What was done afterwards in regard to that particular mine? A. Well, we got out of the mine without being molested. There was nothing done about it, any more than there was several places where we could have --

MR. RICHARDSON: We are not to be bound by what they could have done.

MR. HAWLEY: No, we are not asking for that.

Q. Did you have further trouble in connection with the Vindicator mine afterwards? A. Yes sir.

Q. When was it? A. I couldn't say how long afterwards, it was in November some time

Q. November? A. The same year.

Q. You may state what that trouble was.

MR. RICHARDSON: Objected to for the same reason.

MR. HAWLEY: We will connect it, your Honor.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

A. Mr. Davis and Mr. Parker --

Q. Mr. W. F. Davis and Mr. Sherman Parker are you referring to?

A. Yes sir.

Q. Go ahead. A. They come to me again and wanted to know if we couldn't fix up some scheme to set a bomb down in the Vindicator or the Finley mine so that when the men went down to work and they would raise the guard rail they would set it off.

Q. What is this guard rail? A. Well, it is a rail that opens at the shaft where they get off on the stations, off the cage.

(11)

- Q. Go ahead -- the cage, by the way, is what, with reference to--
- A. The cage is what the men go up and down in the shaft on and what ore is hoisted on and everything.
- Q. And levels, explain what the levels are. There may be some on the jury who do not understand.
- A. The levels are at the stations, sometimes 100 feet apart, and sometimes 200 and sometimes less.
- Q. And every hundred feet or so from the top of the shaft is a station? A. Yes sir.
- Q. Opening into a level? A. Yes sir.
- Q. Go ahead with the narrative. A. I spoke to Mr. Easterly about that, W. B. Easterly, and I asked him if he thought that a six-shooter shooting into giant caps would set them off. He said he didn't know but we would go and try it. He got a box of giant caps and we went out and tried it.
- Q. Where did you go? A. Went up in an old shaft on the line a little ways from Albus on Hill Hill.
- Q. Who was W. B. Easterly? A. He belonged to the miners' union, had been financial secretary there.
- Q. Go ahead and state what was done afterwards. A. We tried this experiment and it worked all right, and then Sherman Parker and Davis came to me and wanted to know if I couldn't go down and try it in the Vindicator mine. He said he would give me \$500 if I would go. I went and seen Joe Scholtz about this, if he would go with me. He said no, that he didn't care to do it. He said they wouldn't give him any money for the other time he had been down and he didn't want to go. Parker said he would get a man to go with me. I told him of a man, Billy Ackerman. I went and spoke to Ackerman

and asked him if he wanted to go and do a little job like that, and he said yes; and we got some -- we got fifty pounds of powder, he got it rather from Joe Craig, we went down to Billy Ackerman's house, we stayed there until the shift went off at 2:30 in the morning in the Vindicator mine, or later than that, we went down in the mine, the Vindicator, placed this powder at the side of the shaft on the 6th level, nailed this gun on the timber at the side of the shaft so that when the guard rail would raise it would pull it off and shoot it into the giant cage and powder.

- Q. Did you know what level you were on at the time? A. I thought we were on the 7th level.
- Q. What had been your intention when you went down there so far as setting this bomb was concerned, as to the place?
- A. Well, it was our intention to put it on the 7th level so that when the shift went to work in the morning and they started off of the cage they would set it off by raising this guard rail.
- Q. State after you set this on the 6th level what was done.
- Q. Well, we went on home, left it there expecting it to go off the next morning. W. F. Davis came to my house and asked me if we put it in there the next morning about eight o'clock, eight or nine o'clock. I told him we had. He said there wasn't nothing unusual going on over at the mine and he didn't think it went off. We didn't hear nothing from it for a week or so.
- Q. Did it finally go off? A. Yes sir.
- Q. About how long afterwards? A. I think it was about a week, as near as I can remember.

- Q. You may state whether or not any work was going on in the 6th level at this time. A. No sir.
- Q. And where was the work in the Vindicator mine carried on, what level? A. Well, on from the 7th level mostly down.
- Q. How did you ascertain this bomb went off about a week after?
- A. Mr. McCormick and Mr. Beck got killed.
- Q. McCormick, the superintendent? A. Yes sir.
- Q. And was this the same Mel Beck that was shift boss? A. Yes sir.
- Q. Do you know from your own knowledge or from the statements of Davis how this happened? A. They were going to start work on the 6th --

MR. RICHARDSON: Let us find out which. We want to make an objection to it.

- Q. Do you know from your own knowledge or from the statements of Davis or other person who was in authority there for the strikers with reference to it. A. It was the statements of others I know it from.
- Q. Who were these others that made the statements? A. I couldn't say; it was generally the cause that was given.
- Q. You do know what the result was, though, do you? A. Yes sir.
- A. That these two men were killed? A. Yes sir.
- Q. And killed upon what level? A. Upon the 6th level.
- Q. After McCormick and Beck were killed state whether or not you saw Davis or Parker or any of these parties? A. Yes sir, I seen both.
- Q. State what talk you had with them in reference to the matter, state all that was said and done between yourself, Beck and Parker with reference to the killing -- to the explosion in the Vindicator and the killing of McCormick and Beck. (11)

A. I met them after that just an hour or so, in Victor, in Union Hall.

Q. Miners' Union Hall? A. Yes sir.

Q. Yes. Go on.

MR. BARNOW: Not whom does he mean?

THE WITNESS: Parker and Davis.

Q. Go ahead. A. We talked it over a little and I went home with them that night about five o'clock I think.

Q. Where were they living? A. Lived at -- Sherman Parker lived at Independence and Davis lived at Altman.

Q. Which place did you go to? A. We went home, we went to both places going through Independence and then going on up to Altman, I lived between the two, I went on up with Davis.

Q. Go on and state what was said and done with reference to this matter; State it fully. A. I wanted them to give me some money. I said I was broke, before this, and they said they would have to go to Denver to get it, Parker told me.

Q. To whom? A. He said he would have to go to headquarters, and Davis came to my house later that evening and wanted me to go over to Victor to the Union there -- the union met at Victor that night, on Saturday night. I told him that I didn't think it would be wise for me to go with him, but I didn't think I would be suspicioned there as I hadn't been very active but he had better not be seen. He said I was no good being afraid about it, I might as well go. He said they were talking of lynching Parker. So I did get ready and go with him and went to the union meeting, and when we come out from the hall they wanted us to walk back instead of going on the electric car, Parker did. So we did start and walk back

and we got pretty near to Independence. I told them they were liable to be arrested for that and they ought to dig up some money for me, I might have to get out of there, and Parker said he would give me some money the next day and then he would get the balance of the pay promised me when he went to Denver; the next day they were arrested, both of them.

Q. After they were arrested, what was done, if anything, in regard to the payment for this business?

MR. RICHARDSON: Wait a moment. If your Honor please, we move to strike out all references to the conversation, all of the conversation with either Parker or Davis, because the same has not been in any way connected with the defendant and no reference made to him.

MR. HARKIN: It will be connected.

THE COURT: On the assurance of counsel that it will be connected the court will deny the motion.

MR. RICHARDSON: Note our exception.

MR. DUNSON: What day is this you are referring to? The next day he was arrested?

THE WITNESS: It was on Sunday. I don't know the date.

Q. You mean the next day after this meeting? A. Yes sir.

Q. And the meeting was Saturday night I believe you said?

A. Yes sir.

Q. You don't know the day of the month? A. I don't know the day of the month.

Q. But you do know the day of the week? A. Yes sir.

Q. Which was Sunday. Now go on and state what was done in regard to this money and this affair between yourself and any of the other lenders. A. I didn't see any of them again for some

time; I don't know how long after — probably two or three weeks, maybe longer, a little longer. W. B. Easterly was released there on a habeas corpus writ. He had been arrested with the others. After he went away — I understood that he had gone to Denver, and I went to Denver some time in December of that same year.

Q. December, 1903? A. 1903.

Q. 1903? A. Yes.

Q. When you went to Denver who did you see and what did you do? Go ahead fully and relate. A. I went to headquarters of the Western Federation of Miners and met Mr. Haywood and Mr. Mayer.

Q. Mr. ~~Haywood~~ Haywood, the secretary, the defendant here, and Mr. Charles H. Mayer? A. Yes sir.

Q. Where were their headquarters there at Denver at this time?

A. They were in the Mining Exchange Bldg. on 15th Street.

Q. Who went with you, if anybody? A. I went alone up there.

Q. Did you know ~~either~~ either of these parties before this?

A. I knew them by sight.

Q. Had no personal acquaintance? A. No sir.

Q. State what you did, what was said and done. Go into the matter fully as to what was said and done between Haywood, Mayer and yourself, or between yourself and either of them?

A. I introduced myself, told them who I was and they said they knew me from reputation; that Easterly had told them who I was, and Mr. Mayer asked me if I wanted any money. I told him I didn't want any then, I might want some before I went home.

Q. He said Easterly had told them who blew up the Vindicator mine and killed McCormick and Besk. I asked him where Easterly was

(H)

He said he was down at Pueblo, that he would be back in a day or two. He did come back in a day or two and he went up to headquarters with me.

Q. You hadn't gone up in the meantime?

THE COURT: Who went up to headquarters with you?

A. Mr. Easterly. I think I was up once in the meantime — I think I was up twice before Mr. Easterly went with me; I am not positive about that.

Q. Had you had any further talk in the meantime in regard to the blowing up of the Vindicator or the killing of McCormick and Beck? A. Yes sir, I had had some talk, not very much.

Q. Did you go on into particulars or inform either Haywood or Meyer with reference to it? A. Yes sir.

Q. State what was said and done between you in regard to that. Go into that fully, what was said to them and what they said to you, as near as you recollect it. A. Well, they said that was a fine job. Haywood said he would rather have some of these bosses or managers than to have a good many scabs, as he called them, and that he was well pleased with it; there wouldn't be no work for me for a good while — ^{only night} ~~short~~ work. He said we had to clean up these fellows up there or they would run us out of there.

Q. This talk was had between Haywood and yourself, was it?

A. Haywood and Meyer and Easterly.

Q. Well, this was the talk that you had when you went up with Easterly? A. Yes sir.

Q. Go ahead and relate all that was said and done after that.

State this in a narrative way as near as you can, Mr. Orchard. How long did you stay there at this visit when you went up with

Easterly? A. I think an hour or two hours.

Q. Was anything done in regard to the money matters? If so, what?

A. Mr. Moyer had given me \$20 and wanted me — said I might as well stay down there a few days and enjoy myself before I went back. He asked me how much money — Mr. Haywood asked me how much money I wanted when I went back. I told him I wanted \$300 anyway.

Q. Did you speak to him anything about the amount that had been promised you by Davis? A. Yes sir, I told him I had been promised \$300. He said that was all right but I needn't take too much, that I could get more any time I wanted it.

Q. What, if anything, did he say, or what, if anything, did you say in regard to who it was that procured you to do this?

A. I told him it was Parker and Davis.

Q. What did he say with reference to that? A. He said it was all right.

Q. How long was it before you started and went back up to Cripple Creek? A. It was three or four days.

Q. State whether or not you got any money more than you have stated? A. I got \$300 in all. I got the rest a couple of days before I started back.

Q. Who was it that paid you \$300 to you? A. Mr. Haywood.

Q. Where did he pay it to you? A. In Mr. Moyer's office.

Q. What did he pay it for? A. He paid it for blowing up the Vindicator mine.

Q. After receiving this money you may state whether or not you returned to Cripple Creek? A. I did.

Q. After returning what did you do? A. I didn't do anything for quite a while.

- Q. For how long did this state of idleness remain? A. I haven't done any work since to the present time, to speak of.
- Q. When you say you haven't done any work you mean you haven't been engaged in mining or labor of any kind? A. No sir.
- Q. What were you engaged in after this or after you went back there, what kind of employment, if any, did you engage in? What was you doing, no matter whether you call it labor or not?
- A. Well, I wasn't doing anything any more than when I went back Mr. Haywood and Hoyer said they wanted anything like that we felt like pulling off there — they said they didn't care what we pulled off, if we would kill some of these soldiers it would suit them pretty well that was up there, or blow up some of these mines or blow up these cars which was on the electric road.
- Q. Haywood told you this, or Hoyer, or both? A. Both told me. They said it couldn't go any too fierce to suit them.
- Q. Who was present when they told you this? A. Mr. Heasterly.
- Q. What was done then, after you went home, in regard to any of these matters? A. There was no thing done for a good while. I didn't do anything for a month probably, or more; I don't know just how long.
- Q. What did you do next? A. I made some — a couple of bombs to throw into the Vindicator coal bunkers.
- Q. What kind of bombs? A. I made them with roof pitch and giant powder — took the giant powder and wrapped it up in burlap and wound it up and run this pitch around it.
- Q. What was inside of these, or what did these bombs contain so far as explosives were concerned besides the giant powder or the dynamite? A. There was a black powder fuse into them

filled full of giant caps.

Q. Who was assisting you in this? A. Oney Barnes.

Q. Who was Oney Barnes? A. He was a member of the union up there, lived at Independence.

Q. Did you have any communication with Davis or Barker in regard to this ~~matter~~^{effort}? A. No sir.

Q. Have you had any further communication with Haywood and Moyer in regard to it outside of the general instructions they had given you? A. No sir.

Q. What was the result of this? Go on and state what was done.

A. I took one of those down to Billy Asherman's saloon and he gave it to a man by the name of Dempsey and he was going to throw it into the coal bunkers.

Q. You don't know anything of your own knowledge of the result of it? A. No sir, I never heard anything of it.

Q. After this what did you do with reference to these matters, after you talked with Haywood and Moyer? A. I didn't do anything any more. I didn't make any more bombs then for a time.

Q. For how long? A. Some two months I guess.

Q. What did you next do? A. I next went to Denver.

Q. When you went to Denver what did you do, who did you see, that is, who did you see connected with the Federation?

MR. BARNOW: When was this he went to Denver?

MR. HANLEY: We will try to fix that date.

Q. After these matters state whether or not you saw the defendants there at Denver? A. Yes sir, I did.

Q. Do you remember the time, can you fix the time, Mr. Orchard?

A. I don't know and could fix it exactly.

MR. RICHARDSON: Sir?

THE WITNESS: I don't think I could fix it exactly.

Q. Could you fix the month? A. I think it was in January, but I wouldn't be positive.

Q. January, 1904? A. Possibly it might have been February.

Q. After you got to Denver state what you did in connection --

A. I went to Denver as a delegate from the Free Coinage Miners' Union to attend a convention that had been called by J. C. Sullivan, who was president of the State Federation of Labor.

Q. You was a delegate, was you? A. Yes sir.

Q. What was done at this time, without going into particulars -- state whether or not the convention was held? A. Yes sir, it was.

Q. State whether or not Haywood and Meyer had anything to do with it? A. Yes sir, they were both there.

Q. Did you have any further conversations with them or either of them at this time with reference to other matters to be brought off? A. Well, not only in a general way like we had had before.

Q. Well, what was the general conversation in regard to it?

A. They told me that -- Haywood and Meyer told me we would have to keep quiet over there until after the trials of Davis and Parker and Foster had been held there and some others that had been arrested.

Q. Parker and Davis were still under arrest, were they?

A. Yes sir.

Q. In connection with the blowing up of the Vindicator and the killing of McCormick and Beck? A. I think some of them were charged with that and some of them with train wrecking or attempted train wrecking.

Q. Go on and state if anything -- this train wrecking, I will

ask you in regard to that: Do you know anything about that?

A. Yes sir.

Q. From whom do you know it, of your own knowledge or from statements of these other parties? A. I know it from Sherman Parker and Foster -- or Davis, rather.

Q. Please go on and relate in regard to this.

MR. RICHARDSON: We object as immaterial, irrelevant, incompetent, not connected with this defendant in any way, shape or form.

THE COURT: Do you propose to connect it, Mr. Hawley?

MR. HAWLEY: Yes sir, we propose to connect it.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

A. This attempted train wrecking had been about a week or so before the Vindicator mine explosion.

Q. Well, tell us all about it so far as your knowledge extends or the statements made by Parker or Davis. A. My conversation with Parker was the night before the last attempt was made at wrecking the train, in Victor, at Union hall in Victor. He told me that he was going to wreck the Florence and Cripple Creek train that night, and if it happened there would be martial law there that day.

Q. Did he state why he was going to wreck the Florence and Cripple Creek train? A. Yes sir.

Q. Why? A. He said they had to do something there to kill some of them scabs and scare them out of there or they would run them out.

Q. How would this kill the scabs if they wrecked this train?

MR. RICHARDSON: If your Honor please, that is immaterial

MR. HAWLEY: We think it is material, because if there

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was an object and purpose I want to know it.

MR. RICHARDSON: He can state what was said and done, which must be the utmost limit, and let the jury determine the effect of it. He asks him for the effect of it.

MR. HAWLEY: The question was how would this kill the coals if they wrecked the train.

MR. RICHARDSON: We think the jury is just as able to answer that as the witness is.

THE COURT: He may answer the question. Objection overruled.

MR. RICHARDSON: Note our exception.

- A. This railroad -- they were going to wreck the train on a curve, on a high embankment, three or four hundred feet, the railroad was built on the side of a mountain; if it went down over this mountain it would go down there three or four hundred feet or something in the gulch below.
- Q. Who was it that was travelling upon this railroad or what was the object of this railroad? A. Well, they were -- this was the train that carried the non-union or the mostly non-union miners after they got out, got through with their shift about 2:30 in the morning back to Cripple Creek, as most of the miners resided at Cripple Creek.
- Q. They took them over there to work on the train? A. Yes sir.
- Q. Now go on, go ahead with the narrative.
- A. Parker said that he had two men to go and wreck that train that night. They was going to tear up the track near the Moonadic mill on the Florence and Cripple Creek railroad. As we started home it began to snow -- started from Victor to go around to Bull Hill -- Altman -- he lived at Independence

wouldn't be able to pull it off that night, it was snowing. He said it was hard luck they was having. I had been after him for some money for this other work I had done, I was broke, and he kept putting me off. He said he would have to come to Denver and get it before he could give me any. He said there was several others that had been doing a little work and he would have to get some money and he said he would have a hard time to get it because nothing had been pulled off, but he said we will get lots of money in the morning if this train is wrecked tonight, or get lots of money for that. I felt kind of provoked and made up my mind that I would go and tell the railroad officials and stop it. As it was snowing that night I thought they wouldn't attempt it and I didn't go over to Cripple Creek that night, but I did go over the next day.

Q. Who did you see? A. I seen D. C. Scott.

Q. What was his position, if any? A. He was a secret service man on the Florence and Cripple Creek railroad for that company.

Q. State whether or not you told him in regard to this attempt?

A. Yes sir, I did.

Q. Go ahead in regard to any other matters connected with this affair and your connection with the different affairs of the Federation. A. He asked me how I knew this. I told him I didn't care to tell him how I knew it but I knew there was no doubt an attempt could be made. He wanted to know --

MR. RICHARDSON: We object to any conversation between him and D. C. Scott for the same reason.

MR. HAWLEY: We don't insist on it at all.

Q. Go ahead and state what you did.

A. I told him that the man --

Q. Don't go into the details of the conversation with Mr. Scott. You may state it generally.

MR. BOSAH: State what you did.

Q. State what you did afterward. A. Well, I told him about the offense and how I knew it.

MR. RICHARDSON: They themselves have sustained the objection and now the witness is answering just the same.

MR. HAWLEY: The witness misunderstands.

Q. I ask you now after you told him in regard to this what was done: Don't go into the minutiae of the conversation between Scott and yourself, Mr. Orchard, but state in a general way what was the subject of any conversation and what was done afterwards.

MR. RICHARDSON: We object to any conversation at all with D. C. Scott.

THE COURT: He hasn't asked for a conversation.

MR. RICHARDSON: I understood him to tell him not to go into the minutiae of the conversations.

Q. You may state what you did. Go ahead, Mr. Orchard.

A. I told him the way I knew --

MR. RICHARDSON: We object for the same reason.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

A. I told him the man that made the first attempt -- this was second attempt they made on it -- walked along past there they had pulled out some of the spikes and took off one of fish plates and they broke their tools and didn't get the finish of, and this man that had walked along there the day

Train wreck

after to see if anyone had noticed where they had been working; and that when he went along there there was two men standing there looking at it, but I didn't know who the man was that went along -- Parker told me that this man had went along there and seen this and they thought they had discovered the attempt and was going to attempt to wreck the train in another place. So Scott told me that he didn't have no doubt but what I must know something about it or I wouldn't know that because he was one of the men that was standing there, and he said that man was arrested and they was looking for his partner there, and then he told me about the attempt they had made near the Economic mill, that I knew nothing of, that some night before; he ~~said~~ did make the attempt notwithstanding the storm, and he wanted me to come back again and see him, he said, the next day. I told him that I would but I wouldn't tell him anything how I knew these things.

- Q. Well, did you afterwards see him again? A. Yes sir.
- Q. After seeing him again what did you do? A. In the meantime this explosion went off in the Vindicator.
- Q. Oh, this was before then? A. Yes sir.
- Q. This talk with Scott was before the explosion in the Vindicator? A. Yes sir.
- Q. And it was after this talk the explosion occurred? A. Yes sir.
- Q. That killed McCormick and Beck? A. Yes sir.
- Q. Now go on and state, continue your narrative from there.
- A. As quick as this explosion went off, or soon after, he sent for me to come over there, Mr. Scott sent for me to come over, he wanted to see me; and I went over. He wanted to know if I knew anything about the explosion in the Vindicator mine.

I told him I did not. I told him I thought it was an accident likely.

Q. Well, now, we have gone into that after the explosion of the Vindicator, and is that all that there was in connection with the railroad so far as -- with the attempted railroad break or wreck so far as the Federation is concerned? A. I think so.

Q. Now go on and state after the Vindicator explosion and after this attempted wreck and after the matter of making the bomb that you have described, what, if anything, was done by you in the nature of committing outrages of any kind at the solicitation of those in authority in the Western Federation?

A. There wasn't anything for quite a good while after that, quite a while.

Q. Did you have any further communication with Haywood or with Moyer? A. Yes sir.

Q. State what that communication was. A. I had met Moyer several times during the trials up there that followed just after the Parker and Foster --

Q. Were trials going on? A. They started after that some time, I don't know how long or don't remember just how long.

Q. State whether or not Moyer was there in attendance on the trials? A. Yes sir, he was.

Q. State whether or not Haywood was there in attendance upon the trial. A. I don't think so; I never seen him.

Q. Go ahead. What talks did you have with Moyer in regard to matters. A. We talked over this -- he said we mustn't do anything while these trials was going on, and during these trials there was -- while McKenna was getting his evidence he referred to some fluid that would burn --

MR. DARBOW: Who do you mean, McKenna or Meyer?

- A. I mean McKenna, and Meyer said that we must be careful about that fluid, not to use any of it, for they would perhaps know where it came from if we used any.
- Q. Who was Meyer making this statement to? A. Making it to me.
- Q. Where? A. At the Union hall in Cripple Creek.
- Q. This was after McKenna's evidence in regard to this explosive?
- A. Yes sir.
- Q. Go ahead. What else did he say to you? A. He said Parker had been too free to talk to everybody and he expected every minute that they would be -- that they would refer to him as being connected with that liquid, dope. He said they had instructed their lawyers not to ask McKenna anything about this, and the lawyers for the State hadn't asked him anything more, only just referred to it slightly, but he said we mustn't use any of it. After the trials was over and he had gone back to Denver some little time they telephoned to Davis --
- Q. Who telephoned to Davis? A. Mr. Haywood or Meyer, I don't know which.
- Q. How do you know this? A. Davis told me.
- Q. The same W. F. Davis? A. Yes sir, that they wanted me to come down to Denver. So I went down to Denver and met Mr. Haywood, Mr. Meyer and Pettibone.
- Q. Where did you meet Haywood, Meyer and Pettibone? A. At the office of the Federation headquarters.
- Q. At the same place on 15th Street? A. Mining Exchange Building.
- Q. Go ahead and state what was said and done. State fully.
- A. Mr. Meyer said he wanted to go down to Cury or Telluride,

that he had an injunction out -- wanted to get an injunction there against the citizens of Telluride to send back some men that they had deported. He wanted me to go with him. He said that they had taken off some deputies down in the coal regions -- had taken off some of the United Mine Workers' officials and beaten them up on the train and that they had threatened to do the same thing with him if he went down in that vicinity.

- Q. In what capacity were you going? A. As guard, I suppose. We had a couple of sawed-off shot guns and shells loaded with buckshot to take along with us. We went on down to Montrose, and Mr. Murphy had already been there and got the injunction that he had asked for.
- Q. That was Mr. Murphy the attorney? A. Yes sir. We went on from there up to Cury.
- Q. You still remained in company with Moyer? A. Yes sir.
- Q. Go on and state all that occurred? A. We stayed in Cury three or four days I think. They had sent some men back on this injunction -- before that Mr. Moyer had sent a telegram to the governor, to Peabody, that he would inform him of the injunction he had and asked him if the men would be protected if they were sent back on this injunction to Telluride. I think he replied that all law abiding citizens would be protected. They sent some back the next morning, I believe, and they were put off the train going back, were not allowed to enter there.
- Q. What was done by Moyer then? A. When they come back again -- before they had come back Mr. Moyer had sent for Mr. Smetzer.
- Q. Who was Smetzer? A. Smetzer was president of the district union of the San Juan. He was going to consult with him what

He was going to consult with him what he was going to do with imported men, and they had concluded to run a big hotel up at Red Mountain and send the men all up there and get a car load or two of provisions and arms for them.

THE COURT: I think, Mr. Hawley, we will stop here.

Gentlemen of the jury, the court will again give you the instructions that it is your duty not to converse among yourselves nor with anyone else on any subject connected with this trial, or form or express any opinion concerning it until the cause is finally committed to you.

The witness on the stand will be remanded to the custody of the sheriff.

We will meet again at half past one.

Swear the bailiffs, Mr. Clerk.

Thereupon the bailiffs were sworn, the jury retired in charge of the bailiffs, and an adjournment was taken until 1:30

Afternoon Session

1:30 o'clock P. M.

DIRECT EXAMINATION of the witness Harry Orchard continued, by Mr. Hawley:

Q I believe you said you went down to Silverton with Smetzer from Ouray? A No sir, I went down with Mr. Moyer.

Q And where did you go with Smetzer? A I went from Ouray to Silverton.

Q That is what I thought. You went to Silverton from Ouray?

A Yes sir.

Q Did Moyer go with you? A No sir.

Q Where did he remain? A He was arrested at Ouray and taken to Telluride.

Q After Moyer's arrest at Ouray what did you do-- where did you go?

A I went over to Silverton with Mr. Smetzer.

Q And from there where did you go? A I went to Denver.

Q And when you was in Denver-- about what time was it that you reached Denver?, as nearly as you can state the day of the month, as you recall? A I cannot tell exactly; I think it was March or April and possibly might have been May.

Q State whether or not you saw the defendant or any other of the parties at the headquarters in Denver? A Yes sir.

Q State what you-- state any conversations that you had with them,

and your actions there with reference to such conversations--
state conversations fully. A I met Mr. Haywood and Mr. Pettibone--
Q Where? A At the Federation headquarters.

Q What was said and done between you? A I told them what had been
done to Meyer, that Mr. Meyer had been arrested, and that he had
telephoned to me from Telluride for me to get his grip and meet
him at Telluride a day or two after; I was in Silverton, and while
we were talking we were shut off but I learned afterwards that he
was held there by the militia and would not be released right off.
He told me to meet him at Durango, not Telluride. I went to Denver
and met Mr. Pettibone and Haywood there at headquarters and told
them, and they wanted to know if we could not work up some scheme
to assassinate Governor Peabody.

Peabody

Q Who was Governor Peabody? A The Governor of Colorado.

Q Was he at that time the Governor? A Yes sir.

Q What was their object and purpose or reason, as they expressed it,
for desiring to assassinate Peabody?

MR. RICHARDSON: We object to the object and purpose. Let
him state what was said and done.

THE COURT: Yes, let him state the conversation.

A They said they could not get any justice in the courts; that Pea-
body was holding Mr. Meyer down there under martial law and that he
had no right to, and the only way they knew of to get any justice
was to take the law in their own hands and put him out of business,
as they said.

Peabody

Q Who was present at this conversation the first time you had it?

A Mr. Pettibone and Haywood.

Q Who did the talking, Pettibone or Haywood, or both?

A They both did.

Q Was there any conversation had in regard to the assassination of Governor Peabody at this time?

MR. BARROW: We object to that. What did they say?

Q Yes, between you and Haywood and Pettibone? A Yes sir, they told me where he lived and they wanted me to go up around there and see if I could not get acquainted with him, to learn his ways and see what the chances would be to assassinate him.

Q Was that all the conversation you had at that time, or the substance of it? A That was the substance. We might have had some other conversation but that was the substance of it.

Q As the result of that conversation what, if anything, did you do? and

A I went up around Peabody's residence ~~in~~ the Capitol Building, and watched to learn his habits, for about a week.

Q Where did he reside-- do you know the name of the street?

A Yes sir.

Q What is it? A Grant Avenue.

Q Grant Avenue,-- where was that in reference to the Capitol Building.

A It is three blocks about, I think, from the Capitol Building.

Q And where was it he had his office? A In the Capitol Building.

Q After you had watched about a week, or, by the way, was any one assisting you at the time you watched his movements and his habits?

A No, sir, there was no one with me.

Q Had there been anything said in this first conversation, or in

subsequent conversations, while you were doing this watching, by Heywood or Pettibone with reference to your having assistance in removing Peabody? A Yes sir, after I told them that I thought I could do it, I told them I ought to have some one to help me.

Q When was it you had this conversation, this one with reference to this matter, -- that is, when with reference to the first conversation? A I think it was about a week after the first conversation.

Q And where was this last conversation had? A In Pettibone's store, I think, as I remember it.

Q Where was Pettibone's store with reference to the Federation headquarters? A Pettibone's store was on Stout Street, I think 1728.

Q And how far is it from Federation headquarters? A Five or six blocks, I think.

Q State that conversation which you had at Pettibone's store -- who was present and who engaged in it? A I told them I had watched Mr. Peabody and he came home usually or often in a hack; that he left in the morning, his house, for the Capitol Building about 9:30 or 10 o'clock and that there was a stone fence alongside his residence, and three or four vacant lots, and I thought we could stay behind that fence and shoot him with buckshot when he came home if I had some one to help me.

Q That answer was made? A Heywood told me that Steve Adams was the best man he knew of but he was pretty well known and he drank some, and he thought if he came down there and kept quiet for a while in the daytime and did not go around much he would not be

Peabody Canyon

noticed.

Q The best man he knew of for what? To help assassinate Mr. Peabody.

Q Was there any other conversation at that time with reference to the matter in Pettibone's store between you and Haywood and Pettibone?

A There may have been some other things spoken of, but that was the substance of the talk as I remember.

Q Was there any conclusion come to in regard to your future course in the Peabody matter, what you should do? A Yes sir.

Q What was it? A They told me I could go to Cripple Creek and see Mr. Adams and see if he wanted to come down and help do it.

Q What did you do? A I went to Cripple Creek.

Q How long after this conversation? A The next day, I think.

Q After getting to Cripple Creek, what did you do? A I went and saw Mr. Adams and asked him about it.

Q This was Steve Adams, was it? A Yes sir.

Q And what was the result of your conversation with Steve Adams in regard to the Peabody matter? A He said he was willing to do it or ready for any old thing, something like that.

Q Where was Steve Adams living at this time? A He was living at Independence, Colorado.

Q Is that in the Cripple Creek district? A Yes, sir.

Q Had you been acquainted with him prior to this time? A Yes sir, somewhat.

Q Did you know him by reputation? A I did slightly, a little.

Q Had you had any talk outside with either Haywood or Pettibone with regard to the matter, outside of this talk you have related at this

time? A Yes sir. I am not quite sure whether I did or not. but

I think I did.

Q You are not quite sure? A No sir.

Q Well, what was done then with reference to this matter? Did you go by yourself, or yourself and Adams, or yourself and anybody with you? A I gave Adams some money; I don't know how much, before I left there for Denver, and in a day or two after he came-- two or three days after.

Q What was the understanding between you in regard to his coming?

MR. RICHARDSON: We object to the understanding. What was said about it?

MR. HAWLEY: Yes, I understand that; I think you are right.

Q What was the conversation between you in regard to what your movements would be then? I will change that question.

A He said he would come to Denver and help me in two or three days.

Q You went to Denver, you say? A Yes sir.

Q How long was it until Adams came, if he came at all? A I think it was three days after I left.

Q Where did you stop before Adams came? A I stopped at the Belmont hotel, or the Belmont rooming house.

Q Where is that situated? A It is on Stout street, 1725, I think, Stout.

Q And with reference to the Federation headquarters, where is it?

A It is, I think, five or six blocks, I am not positive just how many.

Q With reference to Pettibone's store where was it? A It was over the store.

- Q Over the store? A Yes sir.
- Q What kind of a ~~nut~~ store did he have there? A Well, he had-- he was selling house specialties on the installment plan; wringers and clocks and rugs and some other things.
- Q Before Steve came did you have any further talk with May or Pettibone, or either of them? A Yes, sir.
- Q When and where did it occur? A Well, I think it was in Pettibone's store, or at headquarters, and it might have been in both.
- Q What was it in reference to? A I told them that Steve was coming down in two or three days and we would work on that assassination of Mr. Peabody.
- Q What did they say with reference to it? A Well, they said it was all right, that they wanted us to work on it.
- Q After Steve came what was done, if anything? A We met Mr. Haywood and Pettibone at Pettibone's store and they gave Steve Adams some money and Pettibone got him a suit of clothes to fix himself up with.
- Q Do you know how much money they gave him? A No, I don't remember how much they gave him.
- Q What was said if anything in regard to the Peabody matter?
- A They gave us a couple of sawed off shotguns and shells loaded with buckshot, and we made arrangements to watch him at night when he came home and we were to take the guns down, and Pettibone fixed a place in his back yard to hide them in if we found him.
- Q You speak of sawed off shotguns; what do you mean by that?

Peabody

- A A pump gun with six or eight inches sawed off the end of it.
- Q What was the object of that? A So as to carry them around under your coat.
- Q Carry them around under your coat, how? A With a strap over the shoulder and a holster that held it so it would not be seen.
- Q They would not be noticed then, you say? A No sir.
- Q Who was it supplied you with these guns? A Pettibone got them for us from headquarters. They were the shotguns that Mr. Moyer and I took to Curay.
- Q And who had brought them back to headquarters? A I had.
- Q State whether or not Pettibone turned these guns over to you after getting them from headquarters or not? A Yes sir, he turned them over to us at the store.
- Q Did you continue to room at this same place after Steve got there?
- A No sir, only a couple of nights or so.
- Q Where did you and Steve go so far as your rooms were concerned, your living places? A I think we went from there and roomed on 14th Avenue or 14th Street,-- it is a block from -- it is about a block and a half from where Pettibone's residence was.
- Q How long did you continue to remain there? A Remained there a week.
- Q What efforts did you make, if any, in regard to killing "somebody"-- you and Adams? A We watched him nearly every night up there, layed across in the yard across from his residence some times, and some times in this vacant lot opposite.
- Q What was the object of that? A If he came home in a hack to shoot him when he came home and got out.

Q Did he come home at any time? A No sir, not at the time; we did not see him if he did.

Q Did you at any time believe he was in the back? A Yes sir.

Q And make any attempt on the back? A We did after that.

Q How long was it? A We did after that, a few nights, maybe ten days or two weeks after we were there.

Q How long did you continue on Peabody's trail altogether?

A Maybe two or three weeks.

Q What was it about stopping this back or some adventure with the back?

A We seen the back coming home as it had done before and we was across in the vacant lot across the street and we run out and was up behind it when it stopped about 30 or 40 or maybe 50 feet with our guns expecting him to get out of the back, when there was three women get out of it.

Q Do you know that Miss Peabody was one of those ladies? A No sir, I do not.

Q After this failure then to get Peabody what, if anything, was done?

A Why, we were afraid to go up there, around there like that again, for the women stood on the porch and watched us for half a block away, and it was light so they could see and we did not attempt that any more, and then we thought we would get some powder and put a bomb under the sidewalk and pull it off in the morning when he left home.

Q Did you do anything towards preparing a bomb for this purpose?

A Yes sir.

170 Q Who did that? A Mr. Adams went up to some little mining town up

near Black Hawk and got about 50 pounds of powder and fetched it back and we took it to Pettibone's store and made a bomb-- that is we put it in a tight box with a cover on it.

Q Describe the kind of bomb you made on that occasion? A It was just a box with about 50 pounds of powder in it. We was going to dig a hole under the sidewalk and put that under there.

Q This was done in Pettibone's store, you say? A Yes, sir.

Q Did you talk with Haywood in regard to this? A Yes sir.

Q Did you talk with him in regard to this failure to kill anybody in the heck? A Yes sir.

Q What, if anything, was stated by him in reference to the failure and this other matter? A Well, we did not tell him about the other matter. We told Pettibone about and he said that would be a good thing and when we told Haywood he said that he did not want that done then because the executive board was in session and they might get introuble and be arrested if that was done while they were there.

Q What was month was this, if you recollect? A It was in May.

Q 1904? A Yes sir.

Q When you speak of the executive board being in session, the executive board of the Western Federation of Miners? A Yes sir.

Q State when the executive board meets? What is their custom?

A They meet twice a year, and they meet just before the annual convention, a week or ten days.

Q And at what time is the annual convention held? A It is the latter part of May, it is set for always.

171 Q Arter Haywood advised you not to do anything at that time with

*Read by Ex-actor
from transcript*

reference to the Peabody matter— A I beg pardon.

Q ——— did he give you any other advice outside of not attempting to do this at the time? A He told us to lay off for a while and not to work on that then until after the board—

Q What did you do then? A I stayed there for a while and did not do anything.

Q Were you around headquarters? A Not very much, no sir.

Q What was the next effort you made? A To assassinate Lyte Gregory.

Q Who was Lyte Gregory? A He was a deputy sheriff, I believe, that had been down in the coal mine district; that is what I understood he was.

Q In what part of Colorado? A Down in southern Colorado.

Q Had you had any acquaintance before this time with him— did you know him? A No sir.

Q Who was it that wanted him assassinated, that talked to you about it? A Pettibone talked to me first about it.

Q What reason did he give— what did he say in reference to it?

A He said he had been a detective in the Mine Owners' employ and had been very active at Lake Springs with the troubles there and had been down to the southern coal fields as a deputy during the United Mine Workers strike, and that he was in a saloon there drunk then, and that it would be a good thing to make an example out of some of these deputies.

Q Who did Pettibone tell this to? A He told it to me and to Steve Adams.

- Q And where was it you had this talk with Pettibone in regard to Gregory? A The first was over on 18th Street between Stout and Champa.
- Q In any particular building, or on the street? A No sir, it was on the street.
- Q Did you have a further talk with him in reference to it? A Yes sir.
- Q Where was this other talk? A In his store.
- Q At what time in reference to the first conversation? A About four o'clock in the afternoon.
- Q Of the same day? A Yes sir.
- Q State that entire conversation that you had at four o'clock in the afternoon? A He said a man by the name of Meliren, as I understood it, he was a man that belonged to the Federation from Litch Springs, and he said he had met Gregory that morning, that he come up from the southern coal fields and was drunk and he met Gregory, and Gregory was drunk, and he had gone over to the executive board of the Federation of Miners and told them about this.
- Q That Meliren had? A No, Pettibone had.
- Q Oh, Pettibone had told them? A Yes sir, and they said it would be a good thing to put him out of the way, and Jim Murphy from Dante spoke up and said it would be a good thing and they agreed that it would, and I met him when he came back, on the street, and Adams was with me and wanted to know if I wanted to go out and help him.
- Q Now, after this conversation was had-- you have stated all the conversation in effect, have you? A Yes sir.
- Q That you had with Pettibone in regard to it? A Yes sir.

Q Now, you may go on and state in a narrative form all that you and yourself and Adams did in this matter of killing Lyte Gregory?

A He told us where he was, in a saloon over on Curtis Street, and Pettibone, Adams and I went over there.

Q What time of day was it? A It was just at night, before dark. We went into the saloon and seen him and Gregory and Haldren and a big man whose name I don't know, talking in the back part of the saloon. We went out across the street and stood in front of the St. James hotel watching for him to come out, and Haldren stayed with me. Haldren knew we was looking for him and while we were standing there Pettibone made some excuse that he wanted to see somebody and would be back in a few minutes, and while he was gone Haldren and this other man and Gregory come out of the saloon and got on a car, or Gregory and the other man got on the car, and Adams and I got on the same car and we went out-- I can't tell the street it was, but it was out in South Denver I think, near Santa Fe Avenue, and we followed them to a saloon, and Haldren come out on the next car and they were sitting in the saloon then playing cards at a table, and we thought if we had a shotgun there we could shoot him through the window, and I went out to 35th and Downing where we were rooming and got the sawed off shotgun I had there and come back and they had gone into the inner room, a little room in the saloon, and we watched them there until after twelve o'clock and Gregory come out and started home and we followed him up and we about opposite an alley and he was just a little ahead of us, about

Gregory
 40 feet, and he turned around and backed up to the sidewalk and reached as if he was getting a gun, and when he did I shot him three times with the shotgun.

Q She was with you besides Steve Adams at the time you shot him?
 A Kaldron.

Q Did it kill him? A Yes sir, I believe it did.

Q What did you do after killing Gregory on this occasion, yourself and Adams? A We went down through the alley, and Kaldron went one way and Steve and I went together and took the shotgun and hid it where we had a place fixed in Pettibone's back yard and went up to our room at 25th and Downing.

Q Did you see Pettibone there while you were hiding the shotgun?
 A No sir.

Q State whether or not you had any talk with Pettibone or Haywood the next day in regard to it? A We had a talk the next day.

Q With whom? A With Haywood, Pettibone and Jack Simpkins.

Q Was Jack Simpkins there at the time? A Yes sir.

Q State what official position, if any, he held in the Western Federation of Miners at that time? A He was a member of the executive board.

Q And where was this conversation between Simpkins, Haywood and yourself and Adams held? A It was in Simpkins room in the Granite block.

Q You may state that conversation— what was said and done?

A Haywood, Moyer and Simpkins expressed themselves as well satisfied; said it was a fine job, and Haywood said he had been down to the

Sheriff's office, and the Sheriff had told him his men would not look for us much then, that was over jumped him off he: done a good job.

Q Who was present at this time, did you say? A Jack Stephens, Pettibone, Adams and myself.

Q Where was Meyer at this time? A He was in jail, I believe, at Talluride.

Q He had not been released? A No sir.

Meyer for Gregory

Q Did you have any-- what was done in regard to paying for this, if anything, or to receiving money? Did you or Adams receive any money on account of this Gregory matter? A We did not receive much more than we had usually. We had been getting money, fifty and a hundred dollars whenever we wanted; I think we got a hundred dollars the next day.

Q Was there any express understanding in regard to what you should get for disposing of Gregory? A No sir.

Q What, after the killing of Gregory, what did you do or what did Adams do? A Adams got drunk a few days afterwards and went back to Cripple Creek, and I stayed there during the convention that met just after.

Q That is, the convention of the Western Federation. Yes sir.

Q Were you a member of that convention? A No sir.

Q Did you in the meantime have any further talks with Maywood or Pettibone in reference to this matter, or with Stephens? A We talked about it when we met, in a general way. They told us that

they had Halgren up-- the police had, or detectives, sweating him, and Hayward said he was a good level headed fellow and did not think they would bother him any; he had been skulored at the time that Gregory was going over to this saloon, but it could be shown where he was and they could prove an alibi that he was not there, by other witnesses, and they had only to send those men whose names he had given them and they thought he was all right and they would not bother him.

Q There was you in the habit of meeting these parties at this time? You speak of meeting them in a couple of places. A We used to meet in Pettibone's store sometimes, and some times in Simpkins room.

Q Where was Simpkins room? A In the Granite Block.

Q And did you talk with Simpkins more than once in regard to this particular matter, this Gregory murder after it was accomplished?

A Yes sir.

Q How long did this meeting of the executive committee and the convention last? A I think somewhere's about a month,-- probably a little more.

Q Did you have any talk with these parties with reference to doing anything, any other thing-- to executing any other desires of theirs?

A I did, yes.

Q During the time the convention was in session? A Yes sir.

Q Who did you talk with in reference to the matter? A I talked to Hayward and Pettibone and Sherman Parker, and Davis, Marion Moore and Maclear.

Q Who was Marion Moore? A He was a representative to the convention.

Marion Moore

Q Did you talk with Simpkins with reference to it also? A Yes sir.

Q What was this other affair that you talked with them in regard to pulling off? A They wanted something pulled off in Cripple Creek; said they was having a fight in the convention and was afraid the Federation was going to be split up, that some of the districts would pull out.

Q State who it was that you did this talking with in this regard; were they all present, or was it different talks at different times?

A It was different talks at different times at first, and then we were all present.

Q Haywood was there, was not? A Yes, sir.

Q And Simpkins?

MR. RICHARDSON: Let him tell who was there, if your Honor please.

THE COURT: Yes, don't ask leading questions.

A I talked with all of them at different times, and the last time we talked about what we was going to do Haywood and Pettibone and Parker and Davis were the only ones who were present.

MR. BARROW: Where does he say this was?

Q Where was this last talk had? A In the hall where they were holding the convention.

MR. BARROW: In Denver?

THE WITNESS: Yes sir.

Q At about what time of day was this? A Just when they was meeting in the afternoon, after they had had lunch.

Q And do you know the day of the month? A or the month?

A I think it was the fore part of June or last of May; I am not positive; I don't know the day of the month.

Q What was it that was said by Haywood and these other parties with reference to the disruption of the convention? A They said they were having a fight in the convention and they were afraid it was going to be split up, and they thought if we could pull off something up at Cripple Creek and get some excitement started they would be willing to finish up their business and go home, and we had been talking about blowing up the Independence depot.

Q Had you taken up the matter of the Independence depot prior to this conversation? A We had talked about it in a general way; said we could do it.

Q You say state whether-- if you know whether or not the strike was still on in the Cripple Creek mine country? A Yes, sir, it was on.

Q Go on and state in a narrative form all that was said and done and all that you did in accordance with the understanding that you had at that time if understanding you disagree? A I was in the lobby of the convention hall with Pettibone and Davis and Parker came in and the four of us were talking when Haywood came in, and we spoke to him about it and he said he would like to have something like that done, but he did not want me to get mixed up in anything like that then for he had some heavier work for me to do, and I told him that it could be done and I would not get mixed up if I did go up there and do it; and that afternoon I went up to Cripple Creek.

- Q Did any one go with you? A No sir. I went and seen Billy Schman and asked him if he wanted to help me do it.
- Q Who was he? A He was the man that went into the Vindicator Mine with me when we put the bomb in it.
- Q Go ahead. A He said he did not see how we could as he was working in a mine and working the night shift, and he would be missed; and so I went and asked Steve Adams if he was ready to help me do it and he said, yes, he was ready to help do it. I went over to where Floyd Miller was leaning.
- Q Give us the locality-- where was this? A I cannot give you the exact locality; it is down from the Eagle mine; I don't know hill they call it, but I think probably it is Reason hill but I am not sure about that. It is about opposite from Altman, over from the Golden Eagle mine on Hill Hill, about a mile from there I think. He said he would get the powder the next day and I gave him the money to get it with, and we went over that night to see if it was there; he told us where he would put it, but we did not find it and so the next day we went to see him and he said he had ordered it but they had not delivered it, but it would be there the next day; and the next night Adams and I went and got it and put it in a cabin at Independence. Steve Adams owned the cabin, or had possession of it,-- he had the key, and we hid it in there in the back cellar and were going to use it the next night, and the next day Mastertly came to us at just night and told us that Parker was there and want to see us.

Q Sherman Parker? A Yes sir. We went down to his place at Independence and seen him and he said the convention had appointed a committee to come up there and investigate the strike conditions and they wanted him to come up with them and he wanted us not to pull that off until they was gone. And so--

Q What was he speaking of when he said he did not you to pull that off? A Blowing up t e Independence depot; but he said if it made any difference he would take his chances, but he would rather not catch the strike committee when they was ~~going~~ coming on, or the committee that was sent up there; and I told him that we would wait until they went away. And they left there on the Sunday morning, and Sunday I had made arrangements with Johnnie Neville-- we were going off on a prospecting trip and I had got already and we had a team and were all packed up, and I left the district that Sunday about noon, and I had made arrangements with Steve Adams to meet him at this cabin where the powder was.

Q At what time? A About ten o'clock.

Q At night? A Yes sir.

Q Go ahead. A We drove down this canyon toward Colorado Springs.

Q Who? A Johnnie Neville and I and his boy; I don't know how far, maybe seven or eight miles and camped there; and that night I saddled one of the horses and rode him back within about a mile of the Independence depot and tied him up at some brush and came up and met Mr. Adams at this cabin.

Q The cabin at-- A Where the powder was at, and we took the

powder up and placed it under the depot and stretched the wire out around the depot and waited there until 2:30.

Q What was this Independence-- was it a town there or just a depot?

A No, sir, it was a depot-- the Golden Cycle depot.

Q What was it used for? A It was not used at that time any more than the train stopped there and the men that was in the mines got off and on there.

Q Working in what mines? A The Finley, the Shurtleff, the Golden Cycle and the other mines there.

Q What were these men so far as being union or non-union men that worked in this mine? A We called them non-union men.

Q Well, you may go on now with your narrative. A There was a big platform around this depot; it was built on the side of a hill and in front of it you could walk under there and as we went in close to the track it was close to the ground, and we put that powder under there as close in as we could get it.

Q How much of it? A 100 pounds. We fixed it with a little windlass.

Q Describe the windlass. A It was two little sticks, one on each side of the box and a windlass across it and a couple of bottles between the sticks, and we wound a wire around there so that when you pulled the wire it turned the bottles over and allowed the contents to run out.

Q And how many giant caps were there in there? A A box.

Q How many are there in a box? A A hundred, I think.

Q What ~~things~~ else did you have besides the hundred pounds of giant

powder and the caps? A We had a mixture of chloride of potash and sugar and sulphuric acid in the bottles.

Q Where did you run this wire you had connected with the bottles,-- with the windlass which worked the bottles? A We ran it around the depot and off along a spur of the track along the lower side of the depot, about 200 feet, I think.

Q Where did you procure this wire-- from what source had you got it?

A I got it in Denver.

Q When had you gotten it in reference to this matter? A I got it when we was talking of stretching the wire across town to use to assassinate Governor Peabody.

Q And when had you taken it to Cripple Creek with you? A When I went to Cripple Creek on that trip.

Q Had you taken it for any particular purpose with you? A Yes sir, I took it for that purpose.

Q And after you got this wire stretched this distance what did you do, you and Adams, if anything? A We waited there until the train pulled in, or within about a hundred feet of there and pulled this wire off-- pulled this wire and upset these bottles and exploded the powder.

Q Who was it that pulled this wire? A Steve Adams and myself.

Q How did you pull it? What arrangement did you have to pull it with? A We had a stick, a chair rung with the wire around the middle of it and we each took hold of it together and pulled it.

Q What was the effect of that explosion as far as you know? A It blow up the depot and killed twelve or fourteen men I believe.

- Q After the explosion what did you and Adams do? A We went around on the Cripple Creek track, pretty near to the old Victor mine together and we separated there, and I went down and got my horse and went down to where we were camped.
- Q That is where you yourself and Neville and his son were camped?
- A Yes sir.
- Q Do you know what time it was when you reached camp? A A few minutes after three o'clock.
- Q What did you do the next day? A I went on down the road towards Colorado Springs.
- Q Who with? A Johnnie Neville and his son Charlie.
- Q Where did you proceed to? A We went to Colorado Springs and bought a few things we needed on the trip, some oats and some other little things that we wanted to eat and went on about four miles toward Denver and camped there that night.
- Q Did you continue on your journey from there? A Yes sir.
- Q Where did you go? A We came the next night about to Palmer Lake somewhere, and the next night were in Denver, or in the suburbs of Denver.
- X Q After you reached Denver did you see Haywood or Pettibone or others of the Federation leaders? A Yes sir.
- Q How soon afterwards? A The same night that we arrived there. We left our horses out about 3 miles and went in on the street car.
- Q Who do you mean by we? A Charlie Neville and his father Mr. Neville, and myself.

- Q Were the two Hayville's-- you may state whether or not the two Hayville's were privy to your actions in blowing up the depot? Were they in your confidence? at the time? A No sir.
- Q When you went into Denver on the street car where did you go?
- A Went to Jack Simpkins room in the Granite block.
- Q Jack was still there? A Yes sir.
- Q Did you meet him? A Yes sir.
- Q Who else was there if any one? A Haywood and Pettibone and Steve Adams.
- Q Was Pettibone and Adams there when you first reached there?
- A No sir.
- Q You may go on and state all that was said and done after you reached Jack Simpkins room in the Granite block on that occasion-- state all that was said by each of the parties and what was done when the different parties came in; go on and state it in narrative form.
- A I met Simpkins on the street in front of the block and we went up in his room and Kirvan was there and we talked a few minutes and Pettibone and Haywood came in and a little later Steve Adams came in, and in the meantime Kirvan had gone out.
- Q What was the conversation with reference to? A With reference to the blowing up of the depot. They said the convention was about over and everything had smoothed over.

MR. RICHARDSON: Who said?

- Q State who made these statements? A I think Pettibone was the man who was doing the talking then; I would not say positively who it was. Pettibone, I think it was, spoke of it first and they all

joined in the conversation and said they were well pleased with the job and did not think they were on to anything. They said they had followed me down the canyon there with dogs a ways, and were afraid they were going right in where we were camped.

Q Were all of these parties present when you had this conversation in regard to being well pleased with the result? A Yes sir.

Q Who was it that used this language about being well pleased with the result? A Oh, I think it was Battibone who was the man who spoke of it first, and Haywood said it was a good thing, for the officers had been elected and there was no split in the organization and everybody had gone home or was going home, and he said they had a lot of men arrested up in the Cripple Creek district, and we would have to lay pretty low for a while until they got them out.

Q Adams was there when you got there, you say? A No sir, he came in after I got there.

Q But how long was it after you got there before Adams came in?

A I think about half an hour.

Q Had he been in town or had he just reached town? A He had just reached town, I think.

Q You had reached town after the explosion of the depot before Adams did? A Yes sir.

Q Reached Denver? A I was up in Simpkins room before he was there; I don't know how long he had been in Denver but I think he had just come in; that was my understanding.

Q How long did you stay in Denver at that time? A I stayed there three or four days.

- Q Where did you room when you stayed there? A I cannot tell just where I did room. I think it was on Stout or California street, but I am not sure.
- Q Who roomed with you, if any one? A Johnnie Neville and little Charlie, his boy.
- Q Where did Steve Adams stay during this time, if you know?
- A I don't know.
- Q Was Charlie or Johnnie Neville, or his boy, were they present when you were present at Federation headquarters or at Stephens room?
- A No sir.
- Q After seeing these parties on the afternoon that you got there, did you see the Federation leaders afterwards? A Yes sir.
- Q How often did you see them afterwards? A Well I seen them probably three or four times; I would not say how many times I did see them.
- Q Where did you visit them? A Over Pettibone's store.
- Q Was you at Federation headquarters on this trip? A I don't think so-- I don't think I was.
- Q What was your reason, if you had any, for not going there?
- A I did not want to be seen around there after I come from Cripple Creek, because there was a lot of detectives there and they did not want me to come around.
- Q Who did not want you to come around? A Haywood did not.
- Q Did Haywood meet you there at Pettibone's? A Yes sir.
- Q What talk, if any, did you have with Haywood outside of this first

Money for Report

talk with reference to this explosion? A Well, we talked of it in a general way. He wanted to know what I was going to do now, that we would have to lay low until we got these fellows out of jail, and I told him I wanted some money, that I was going on a trip up to Wyoming; and he wanted to know how much I wanted, and said not to go too heavy that I could always get some when I needed it, and I told him I wanted \$200., and the next day Pettibone gave me \$200.-- said he got it from Haywood.

Q Did he tell you where he had got it? A Yes sir.

Q Did he say through whom he got you the money? A Haywood told me he would give it to Pettibone for me.

Q Do you know what was paid Steve Adams at that time, if anything?

A He asked him for \$200.

Q Do you know from himself or Pettibone or Haywood whether he got it?

A He told me he did afterwards.

Q Adams told you? A Yes sir.

Q After you got the \$200. what did you do? A Well, the next day or so I bought some things I wanted there in Denver a tent, and blankets and a bed, and Jammie Neville and I started for Cheyenne, Wyoming.

Q Did you go in a wagon? A Yes sir.

Q State whether or not you got there and when? A I think we were about four days driving up there, and possibly five.

Q Was Charlie Neville, the boy, with you? A Yes sir.

Q After you got there what did you do? A Stopped at Cheyenne, and went down to Pat Moran's saloon, and I saw in the papers there

they had given a description of Johnnie Neville and myself and the boy and that we had left Cripple Creek and were suspected of blowing up the depot, and I met W. B. Davis there; he was up there too, and he thought we better get out of there and I partly concluded not to go on, and I asked Pat Moran if he would go to Denver and take a letter to Pettibone and he said he would and I wrote a letter and asked Pettibone to see Hayward and get me \$300.

Q How did you get him? A In the letter.

Q Yes, do ahead, how did you send the letter? A I sent it by Pat Moran, and he took it and said that he gave it to Pettibone and Pettibone gave him \$300. and he fetched it back to me that same night.

Q How far is Cheyenne from Denver? A About 100 miles, I think.

Q After you got this \$300. what did you do, if anything? A Well, I had made up my mind in the meantime that I would go on that trip with Johnnie Neville. He said that if they did arrest us or anything that he could prove an alibi for me, that I never was back there, and I concluded to go on the trip and we started on and drove to Cozy, through Wyoming. We went up the first night and camped on, I think it is little Crow creek or Middle Crow, and the next day Davis and Pat Moran came up there and stopped with us a part of the day, or I don't know but a day and a night.

Q That is, W. B. Davis? A Yes sir.

Q When you formerly knew in the Coeur d'Alene? A Yes sir. Davis wanted to go along with us and we told him we did not have room in the rig to take him so they went back again to Pat Moran's and we

started on the trip through to Cody. I think we were gone about two weeks and we reached Thermopolis and there was some hot springs there and Mr. Neville wanted to stop there as he had had a ring worm or something of the kind on his face and take the hot baths, and I stayed a few days and then I took a horse and saddle we had and drove on through towards Cody as far as Heteetee, and I went on horse back there and sent the horse back to him and went on from there on the stage to Cody; and when I got to Cody I got some mail there, a letter for myself and two or three letters for Mr. Neville, and I forwarded his back on to Thermopolis, and the letter I got there was from Pettibone and he told me that--

MR. RICHARDSON: Never mind that; if it is a letter the letter is the best evidence.

- Q. Have you the letter? A. I haven't got the letter. I destroyed it.
- Q. How did you destroy it and when? A. I destroyed it right off.
- Q. How? A. I tore it up or burned it up, I have forgotten which.
- Q. Go on and state what the letter said. A. The letter said I had better get in the tall timber, that they was hot on my trail looking for me, the authorities in Cripple Creek were charging me with implication in the Independence depot explosion, and I concluded I would go back to Denver again and see Mr. Herrell.
- Q. Well, did you do so? A. I telephoned Mr. Herrell that I was going to -- that things wasn't looking good, that I got a letter and I was going to Montana and I took a train and came back to Denver. I went to Pettibone's house that night. I got in in the morning and waited until night and went over to his residence and met him there and he went over and got Haywood over to his house -- he lives just across the street from his, and I told them why I come back, and they said they thought I had better get out of the country, that they were sure looking for me.
- Q. State all the conversation you had with Mr. Haywood and Pettibone at that time. Go right along with the narrative.
- A. And Haywood told me that there was a man up at Bisbee, Utah, a man by the name of Maybury that had discharged the whole union men at the mine because they had went on some parade, labor parade; wanted to know if I didn't think I could go up there.

MR. RICHARDSON: Who was that?

A. Andy Maybury.

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MR. RICHARDSON: Who was the man you was talking with about it?

A. Mr. Haywood. And Pettibone was present, too, and he said that Art Dexter was in town, that he had him working on Fosbody again to see if he couldn't assassinate him, wanted to know if I wouldn't go up there with him. I told him I would. So Pettibone arranged for us to meet down at his store that night. We went down there and talked it over and I stayed there two or three days. We didn't come to any conclusion about going up there just then. I met Haywood and Pettibone in Pettibone's back yard on Sunday. Haywood wanted to know if I didn't want to go to California and see if I couldn't assassinate Mr. Bradley.

Bradley

Q. What Bradley was that? A. He was Bradley that had been manager of the Bunker Hill & Sullivan mine in the Coconino & Alameda at the time of the trouble in 1899.

Q. Go ahead. A. And wanted to know if I wouldn't -- thought we better not go to Salt Lake, wanted to know if I would go to California alone and try and do this. He said better get out of the country anyway. I had to go somewhere and I told him I would.

MR. BARNES: Have the witness state about what time this was.

Q. About what time did you go to California? A. Latter part of July or the first of August, I think.

Q. Of 1904? A. 1904. Pettibone got me a railroad ticket and they give me \$150 more.

Q. Who gave you that, Pettibone or Haywood? A. Pettibone did, and I started and went to California.

*California
July or August*

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- Q. Where did you go, what part of California? A. I went to San Francisco. I stopped at the Golden Cycle hotel -- Golden West Hotel, rather.
 - Q. What name did you use there? A. I used the name of Hogan or Dempsey, I am not sure which.
 - Q. At the Golden West hotel? A. Yes sir.
 - Q. Had you had any understanding with Pettibone with reference to corresponding with him? A. Yes sir.
 - Q. What was that understanding? A. He said if I wanted any money at any time to wire him and he would send it to me.
 - Q. What, if anything, was stated in regard to the names to be used by yourself or by him? A. Not a thing.
 - Q. Go ahead then, bring it in as a part of the narrative, if there was anything, if there was any such understanding afterwards, and proceed from the Golden West Hotel and give your movements.
 - A. I stopped at the Golden West hotel about a week or ten days and I wrote Pettibone to send me \$100, and he wrote me a letter and sent me the \$100 by registered mail.
 - Q. Under what name? A. Either Dempsey or Hogan, I am not sure which. And I wrote and told him that I had hunted up Mr. Bradley and that he wasn't in San Francisco, that he had gone to Alaska and wouldn't be back for three months, I think I told him; I asked them what I had better do in the letter and he answered me and told me --
- MR. RICHARDSON; Wait a moment. If they have got a letter, let us have it.
- Q. What because of that letter? A. I destroyed the letter right away.
 - Q. You may state what was said in it? A. He said I had better

*Richardson
San Francisco*

stay down there anyway, that it would be too warm for me up in that part of the country.

Q. What, if anything, was said about the name in these letters?

A. He said in one of these letters that I shouldn't change my mind, he said Harry Green was a good enough name for anybody and that he would address me that way after that.

Q. As Harry Green? A. Yes sir.

Q. Did he make any statement as to the name that he would use?

A. I don't know that he did. He signed the name in that letter "Pat Bone".

Q. Do you know anything in regard to having used the name Pat Bone at any other time? A. Yes sir.

Q. What do you know with reference to that, having used that name?

A. He told me once during an election there was in Denver that he went up to Archie Stevenson's headquarters up at the Navarro Hotel, I think, or up over the Navarro saloon --

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent, don't appear to be connected with this matter.

MR. HANLEY: We think it pertains to it, your Honor.

MR. RICHARDSON: I would like to know how.

THE COURT: Do you expect to connect it?

MR. HANLEY: I want him to explain this name, that is what I am after.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A. He said a man by the name of Jack Hallivan come down and said that Stevenson would give him \$500 --

MR. RICHARDSON: We object to that as hearsay, immo-

petent, irrelevant and immaterial.

MR. HANLEY: We will withdraw that part of the question. We are not asking him for it.

THE COURT: The answer is not complete. The part that he has given may be stricken out.

Q. What was said about his using the name of Pat Bone, that is if you knew of his using that name, in connection with Stevenson, either from his statements or otherwise -- just say whether or not you knew. A. He told me Stevenson asked him who he was when he made this proposition to him and he said his name was Pat Bone.

Q. This was Archie Stevenson you say? A. Yes sir.

Q. When was this? A. I think it was the spring of 1904. I wouldn't say for sure. I think it was in the city election of 1904.

Q. Go ahead now. We are at the letter received in San Francisco in this matter signed by Pat Bone. A. When I went after the letter -- the first letter that I got I had -- no, he had sent me a telegram first to look out, before I got this first money at the Golden West hotel.

MR. RICHARDSON: We object to any contents of telegrams. They certainly can be gotten.

MR. HANLEY: How?

MR. RICHARDSON: From the Western Union or whoever he sent it by.

Q. What became of the telegram? A. I destroyed the telegram.

MR. RICHARDSON: The telegram which was delivered to him is not the telegram which was obtained of Pettibone, which was sent by Mr. Pettibone, if there was such a telegram.

The evidence that he destroyed the copy that was given to him by the people at the other end of the line does not make it competent for him to testify in regard to it. There might have been a telegram delivered at that end which was never sent by Mr. Pettibone.

MR. HAWLEY: We admit it. We will have to pass it. I suppose counsel knows as well as we do that the telegrams are only kept for six months unless for some particular occasion.

MR. RICHARDSON: I can't help that.

MR. HAWLEY: We pass it.

MR. RICHARDSON: The objection appears to be sustained by the other side.

MR. HAWLEY: Not sustained. The question is withdrawn.

MR. RICHARDSON: Very well, I am satisfied.

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Q. Did you procure money from him more than once there? A. Yes sir

Q. Besides this money that was sent by registered mail? A. Yes.

Q. What else did you get in the shape of money from Pettibone or Pat Bone or any of the others? A. I got a hundred dollars three or four times by Postal Telegram.

Q. By Postal Telegram? A. Yes sir.

Q. That is, by orders from the Postal Telegraph Company?

A. Yes sir.

Q. You don't remember the times when these were received by you?

A. No sir, it was during the next three or four months.

MR. RICHARDSON: We move to strike out the testimony with reference to receiving the money from the Postal Telegraph Company. I make this objection at this time so that in the event it should not be connected up I will move to

strike it out. I suppose you intend to connect it up somewhere else.

MR. HAWLEY: We will connect it, if we can. We are laying the preliminary.

THE COURT: I understand, Mr. Hawley, you will connect this with the defendant.

MR. HAWLEY: We will try to connect it.

MR. BURAH: We will connect it with Mr. Pettibone afterwards. There is no question about that.

MR. RICHARDSON: We will let our motion stand.

THE COURT: The record shows this is in the form of a motion as not connected in any way with the defendant?

MR. RICHARDSON: Yes sir.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

Q. How long was you there in San Francisco all together?

A. I was there until some time in December, that year.

Q. That is December, 1904? This was all in 1904 I think.

A. Yes sir, 1904. I think it was December. It might have been the latter part of November when I left there. I wouldn't say positive.

Q. You may state if you attempted to carry out the objects and purposes which sent you there -- for which you went there?

A. Yes sir, I did.

Q. What did you do in that regard? A. The first time after Mr. Bradley came back I put some strychnine in his milk that was left at his door and tried to poison him.

Q. Can you tell the date of that? A. No sir, I can't; it was, I think, in November, though.

Q. You think it was in November. Where had Bradley been, if you

Bradley
and was
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know, or where was he reputed to be while you was waiting there? A. In Alaska.

2. How long had he been back before you made this attempt to poison him? A. I think only a week or ten days, possibly two weeks.

3. How did you procure this ~~milk~~ poison and how did you put it in the milk? Tell the whole affair. A. I bought it in a drug store, I don't remember what drug store. I bought some strychnine. The milk was left, delivered just before day light a little, set on the back steps of his residence, and I went up there after the milk man went there, and had a little of this strychnine pulverized up in a paper for each bottle, and put a little in each bottle and stirred it up and put the stoppers back on the bottles.

4. How was it delivered, in bottles? A. Yes sir.

5. How many bottles were delivered? A. I think there were four, but I am not sure.

6. Where were you rooming at this time? A. I was rooming on Washington St., ~~Washington~~ about -- hardly a half a block from Mr. Bradley's residence.

7. In whose place were you rooming, what was the name of the party -- of the house or the party that owned the house?

A. The lady's name where I was rooming that had charge of the house I think was Seward, or some such a name.

8. Seward? A. Something near that; that might not be the exact.

9. Do you know Mrs. Seward's first name? A. No sir, I don't remember it.

10. Where was Bradley living at this time, where was his residence?

A. It was on the corner of Washington and Leavenworth Street in

San Francisco.

- Q. What name did you go under at this time when you was reading at Mrs. Howard's? A. By the name of Berry.
- Q. What name was you receiving your mail under from the postoffice? A. Harry Green.
- Q. After this attempt to poison what, if anything, did you do or try to do with reference to Bradley? A. I went then and got -- I had got some powder before that, ten pounds, giant powder.
- Q. Where did you get it, if you know the place? A. I got it from a powder company on Market Street between -- about four or five blocks from Gerry Street. I don't know where it is -- on Market towards the ferry.
- Q. You don't know the name of the place you say? A. I think the powder was gelatine, I am not sure about that.
- Q. Gelatine, what is gelatine powder? A. It is a kind of dynamite.
- Q. A variety of giant powder, is it? A. Yes sir; there are several kinds.
- Q. Did you have any trouble in getting this? A. No sir.
- Q. State whether or not in purchasing it you gave a name? A. Yes sir, I gave a name.
- Q. State whether or not the seller required that to be done? A. Yes sir, they wanted the name. I don't know whether they asked for a residence, I don't think they did. They wanted the name, though.
- Q. What name did you give? A. I have forgotten what name I gave.
- Q. You don't recollect whether you gave your own name or the name of a name you was going by to see? A. No sir, I gave no name I

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was going by or my own name.

2. State whether or not you gave the name of any resident of San Francisco?

MR. RICHARDSON: If your Honor please, this is very leading and we object to it as such. This is not an unwilling witness.

THE COURT: We do not think it is leading, your Honor. It is a question that can be answered by yes or no, not indicated by the question.

THE COURT: Overruled.

MR. RICHARDSON: Note our exception.

A. I told them I lived outside of San Francisco a ways and wanted to use this powder to blow up some stumps with. I didn't give them my residence any nearer than that.

Q. And you don't know what name? A. No sir, I do not.

Q. What did you do with this powder after you got it? A. I kept it in my grip until I made a bomb out of it in my room where I was rooming in Washington Street, Mrs. Soward's place.

Q. Where did you keep your grip in the Soward's room?

A. I kept it in my room either in a little clothes closet or -- I think it was in there most of the time.

Q. What was your custom prior to getting this powder about keeping your clothes or other articles in the grip?

A. Well, I kept some of my clothes in there and some of them hung up and some of them in the drawers of the dresser.

Q. What did you have besides this powder at the time you tried to make the bomb? A. Well, I had got a chunk of gas pipe, lead pipe, five-inch lead pipe, fourteen inches long.

Q. Where did you procure that? A. I procured it from a plumbing

(Soward's room)

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drop down -- I don't remember the street where I got it.

Q. Do you know the weight of this gas pipe or lead pipe?

A. I don't know how much, I should think it would weigh about ten pounds.

Q. Where did you keep that after you procured it? A. I kept it in my grip.

Q. Did you have anything else besides the powder and the lead pipe in that grip? A. I had a sawed-off pump shot gun and giant caps and some other little things, I don't remember just what.

Q. Did you keep this shotgun in this grip also? A. Yes sir.

Q. How long did you have this powder probably before you commenced to manufacturing bombs? A. I think I had the powder a month or more maybe, and the gas pipe I got just about that time, two or three days before maybe.

Q. You had only had it a few days then before you actually commenced to making the bomb? A. Yes sir.

Q. State what you did in regard to making the bomb: Describe the methods. A. I took some pieces of thin board off a box and put ends -- put one end in this bomb, this gas pipe, and filled it full of this powder, and then put an end in the other end, a wooden end. I cut a hole out of the top of the pipe and bent the lead back and fastened -- bored some holes through that with a knife and fastened a bottle of sulphuric acid into that, and I put some giant caps down into this hold in the powder, put some chloride of potash and sugar onto them, and took a little screw eye and put into the cork of the bottle, took a cord and fastened it onto Mr. Bradley's door in the morning, so that when --

- Q. How long did you have these implements in your possession before you fashioned it into a bomb and put it under Bradley's door? A. Possibly a week, might be more. I don't remember just how long.
- Q. In the meantime where did you keep all of this stuff? A. I kept it in my grip with the exception of the acid. I might have had the acid in the drawers of my dresser.
- Q. Do you know the date on which you fastened this bomb on Bradley's door? A. No sir, I don't remember the exact date. It was somewhere about the middle of November.
- Q. 1904? A. Yes sir.
- Q. How did you do it? Give us the modus operandi, describe in particular what you did and how you did it. Go into it as minutely as possible. A. I took a little screw-eye the night before and fastened it in the door where he entered his residence close to the bottom, and I had this little cord and the screw-eye fastened into the cork of the bottle with the acid in, and took it the next morning and wrapped it up into a parcel and laid it up against this door and put the cork -- I had a loop already fixed in the cord and hooked it over this one I had in the door so that when the door opened it would pull this cork out of this bottle and let the acid on the case and explode them. I laid a mat that was laying in front of the door over this bomb when I put it there and threw a newspaper over the cord like.
- Q. What time in the morning was this? A. It was somewhere about eight o'clock, maybe a little after eight.
- Q. What did you do after this was done? A. I took a street car and went down town.

Bomb of Bradley's door

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- Q. Do you know what the result was? A. Yes sir.
- Q. What was it? A. When Mr. Bradley opened the door it blew the front out of the house or shattered it all to pieces and blew him out in the street some where.
- Q. How long did you stay in San Francisco after this?
- A. I think about two weeks.
- Q. Where did you live after this? A. I went down on Sixth Street, in a hotel; I have forgotten the name of the hotel.
- Q. You may state whether or not you stopped at Mrs. Howard's place any length of time after this explosion? A. I didn't stop there at all. I left there that morning.
- Q. What was done with your grip and your things when you left that morning? A. I took them away the night before and took them down -- left them in a saloon on Taylor Street where I had been acquainted some and left my grip in there.
- Q. And then you went to rooming on what street? A. I think it is 5th Street. I am not positive.
- Q. With whom? A. Alone.
- Q. What? A. I was rooming alone.
- Q. Who was the keeper of the house, what was the name of the house, if it had a name? A. I don't remember.
- Q. You don't remember who it was that owned the house? A. No sir.
- Q. What name did you go by there? A. I don't remember what name I went by there.
- Q. Can you state how long? A. I stayed I think about possibly two or three weeks after that.
- Q. What was you doing? A. I wasn't doing anything. I had sent for some money in the meantime to Pettibone and waited until I got that.

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Received \$450
from [unclear]

Q. How did you get it? A. I got it by Postal telegram.

Q. You only got the money by registered mail once, I believe?

A. That is all.

Q. How much money did you receive all together there?

A. I think I received about \$450.

Q. What did you do after -- or, how did you come to leave

San Francisco? A. I had no -- I didn't want to stay there

any more, I didn't have anything to do and I wanted to come

back to Denver to see about getting some money.

MR. HASKIN : I haven't been very well and it has been difficult for me to proceed at all. I feel as if we would not make haste, your Honor, by going on any longer, and I would appreciate it if we could adjourn at this time.

THE COURT: Gentlemen of the jury, the court will again give you the statutory admonition that it is your duty not to converse among yourselves or with anyone else on any subject connected with this trial, or fore or express any opinion thereon until the cause is finally submitted to you for your consideration.

Swear the bailiffs, Mr. Clerk.

(Bailiffs sworn).

THE COURT: If this jury desire exercise in addition to walking, Mr. Jack Sheriff, you will be authorized to make your arrangements to take them into the country on a trolley ride.

Gentlemen, you may retire with the bailiffs.

The witness will be remanded to the custody of the sheriff to be brought into court tomorrow morning at nine o'clock. The defendant will be remanded.

Adjourn court until nine o'clock tomorrow morning, Mr. Sheriff.

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Boise, Idaho, Thursday, June 6, 1907.

9 o'clock A. M.

Parties met pursuant to adjournment. Minutes of yesterday's session read and signed by the court.

The clerk called the names of the jurors and announced all jurors present.

THE COURT: Call the witness.

DIRECT EXAMINATION of the witness, Harry Orchard continued by Mr. Hawley:

- Q Yesterday evening when we quit we were still upon the matter, I believe, of the San Francisco trip. I desire to refer back to that a few moments, and now state whether you are acquainted with a party by the name of Joe Wolff? A Yes sir.
- Q Who was this party and where did he reside in 1904? A In Denver, Colorado.
- Q Was he associated with any of the defendants, Meyer, Haywood or Pettibone or Simpkins? A He was in the employ of Mr. Pettibone.
- Q In what capacity, if you know, at that time? A As his collector.
- Q State whether you heard, or received any communication of any kind from Wolff at the time you were in San Francisco.

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant and not binding upon this defendant.

MR. BORAH: We propose to show that the letter was sent in the name of Wolff, but in fact from Mr. Pettibone to this witness.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Save an exception.

A Yes sir, I received a registered letter signed by Mr. Wolff.

Q And it came to you in what name? A Either Hogan or Dempsey, I am not sure which.

Q Do you know what particular office, the main post office, or one of the branch post offices, it came? A It was a branch post office I think on Mission Street.

Q Did you become acquainted with any of the inmates of Mr. Bradley's house? A Yes sir.

Q State whether or not you knew a Mrs. Crowe at that place?

A Yes sir, I did.

Q What was her first name if you recollect? A I don't recollect.

Q What was her business at Bradley's? A She was employed as a cook, I believe, at Bradley's residence.

Q Did you know of a lady by the name of Bell living at that place?

A Yes sir.

Q Were there more than one of that name? A Yes sir, there were two.

Q What was their business there? A They were in the employ of Mr. Bradley. I don't know what capacity they were in.

Q State whether or not you became acquainted with one of these Bell girls and Mrs. Crowe? A Yes sir, I became acquainted with the Bell girls and Mrs. Crowe.

- Q From whom was it you derived your information in regard to Bradley's being at Nemo and coming home? A From Mrs. Crowe.
- Q You know a man by the name of Lerena Jubien? A I know a man they called Jubeny.
- Q What was his business and where did he reside at that time?
- A He had a grocery store and saloon on the corner of Washington and Leavenworth streets opposite from Mr. Bradley's residence.
- Q State if you had any business with him or saw him while you was there? A I saw him several times.
- Q Who was it introduced you to Mrs. Crowe? A Mr. Jubeny.
- Q Under what name did he introduce you? A Berry.
- Q How was you known to Jubeny? A I introduced myself to him. I came there to his place.
- Q Under that name? A Yes sir.
- Q What was the name of the landlord where you had your room? A
- A Soward.
- Q You don't know her first name? A No sir, I do not.
- Q You may state to the jury, Mr. Orchard, whether or not at any time in your room while at Mrs. Soward's place you were experimenting in regard to a bomb or making a bomb? A Why--

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant. It don't make any difference what he was doing there in the room.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

THE WITNESS: Yes sir, I was.

Q What did you do in that regard? Please state it.

A After I had made the bomb, I had a little screw eye and I screwed it into the bottom part of the door of the clothes closet and I had a cork in a bottle and a string about six or eight inches long, and another screw eye, and I had the bottle fastened to the bomb and was trying the bomb lying on the floor in the closet with the bottle over it so the cork would pull out and turn the bottle over, and was trying to see how hard a jerk it took to pull the cork out.

Q State whether or not you left that contrivance there while you was experimenting with it? A I left the cork and the string and the little screw eye in the door at one time.

Q How long was you away at that time? A From morning until evening I was gone, and I did not discover I had left it there until I came home in the evening.

Q After the Bradley affair how long did you say that you stayed in San Francisco? I believe you stated last night but I will repeat the question? A You mean after the explosion?

Q After the explosion? A I think I stayed about two weeks.

Q Where did you live during that time-- what particular part of the city? A It was in a hotel on Sixth street-- I think it was Sixth street.

Q Do you recollect the name of the hotel? A No sir, I don't.

Q What name was you known by there? A I don't remember what name I was known by.

Q Did you receive any communication from Denver after the Bradley explosion and until you left? A Yes sir.

- Q From whom? A Mr. Pettibone.
- Q In what way? A I received a money order by wire, or an order to get the money by the Postal telegraph.
- Q Under what name did he send it? A Harry Green.
- Q And what name was signed? A I think it was Pat Bone.
- Q After you went back to Denver, how did you proceed there-- how did you go-- what route? A Over the Southern Pacific to Ogden and Rio Grande to Denver.
- Q And you reached Denver about what time? A Just a little before Christmas.
- Q You don't recollect the time any closer than that? A No sir.
- Q And you went-- when you went to Denver, you may state whether or not you went by your name or in your usual manner-- in your usual way? A I wore a suit of soldier's uniform from San Francisco to Denver.
- Q Yes. A And when I got to Denver I went to a rooming house I think, on California street and engaged a room.
- Q Did you have any other means of conceiving your identity or your usual appearance than the soldier's uniform that you got? A I had a pair of glasses-- eye glasses.
- Q Whereabouts on California street did you get that room? A It was somewhere near Eighteenth street, but I am not quite sure whether it was on California street. I think it was on California street.
- Q What did you do then after getting your room? A I telephoned to Mr. Pettibone.

- Q On the same day? A Yes sir.
- Q Did you see Pettibone or get an answer from him over the phone?
- A Yes sir.
- Q What was said by him, or when did you see him? A He came over there in a little while-- in a few minutes after I telephoned him.
- Q Any one with him? A Yes sir.
- Q Who? A Steve Adams.
- Q Did you have any talk with Adams and Pettibone there? A Yes sir.
- Q Relate that conversation? A They asked me about Mr. Bradley, how he was, whether he was dead or not; I told them he was not dead who I left there, but they reported he would lose his eyesight and be deaf, perhaps, his hearing. Pettibone said that that was pretty good but he would rather we would have killed him outright. I don't remember particularly,-- but that was about the substance of the talk we had. We did not stay there long.
- Q Did you see any-- or where did you go? You say you did not stay there long and who do you mean did not stay there long? A None of us. I went out with Mr. Adams where he was keeping house.
- Q Where was Adams keeping house? A He was keeping house out near Five Points, I think it was, on Emerson or Clarkson Street.
- Q State whether or not Adams was a married man at that time? A Yes sir.
- Q Was his wife with him? A Yes sir.
- Q Under what name was he living there? A Steve Dickson.
- Q What talk, if any, did you have with Pettibone and Adams in regard

to your going out there-- what understanding, if any? A Adams said he was keeping house out there and asked me to come out and stop with him.

Q Did you go out and stop with him? A Yes sir.

Q How long did you stay there with Adams? A I stayed there until-- oh, I lived with Adams from that time until some time in the latter part of March or April.

Q And this was shortly before Christmas, you say? A Yes sir.

Q How long was it after you reached Denver on this trip before you saw Haywood and Moyer? A I saw Haywood in a day or two after-- I think it was that night, that same evening.

Q Where did you see him? A In Pettibone's store.

Q Did you have any conversation with him? A Yes sir.

Q What was that conversation? You may relate it? A He asked me about Mr. Bradley. I told him that when I left there that it was reported that he would lose his eyesight and his hearing. He said he would a great deal rather have it that way than to have him killed outright; he said he would be a living example.

Q A living example of what? A Well, -- a living example to show for the opposition that he had been fighting the Western Federation of Miners.

THE COURT: What did he say?

Q Did he say that, or is that the construction you put upon what he said? A He said that in effect.

Q Go on and relate all the conversation you had with Haywood at that time as you recollect it? A Well, I don't recollect much more of

the conversation, but I told him I wanted some money and he said I could get money any time I wanted it.

- Q Was there any talk about your staying there? A My staying in Denver?
- Q Yes. A I told him I was going to stay in Denver for a while and he said I had better keep quiet, better lay pretty low and not come down town or come around the office.
- Q State whether or not you saw Haywood-- you saw Haywood afterwards in regard to the money? A In regard to the money?
- Q Yes, or did you see him at all afterwards? When did you next see him? A I am not quite sure; I saw him perhaps a week or two after that.
- Q Did you receive any money in the meantime? A Yes sir.
- Q From whom did you obtain it? A Well, Adams got it from Pettibone-- that is where he told me he got it.
- Q How much did he give you? A Well, I don't know how much he got, -- yes, I don't know how much he gave me but he got \$125.00.
- Q Well, from that time-- did you see Meyer about this time?
- A No sir.
- Q Was you around the headquarters at all? Did you go down there at all? A No sir, not then.
- Q Where was-- where did you meet Haywood when you saw him? A I used to go over to his house some times in the evening, and some times I would meet him in Pettibone's store in the evening.
- Q Where was Haywood living at this time? A He was living on Evans

Street between 12th and 13th Avenues.

- Q Did you have any talk with Haywood and Pettibone, either one or the other or both of them about that time in regard to your future movements and what you should do in Denver? A Yes sir.
- Q Tell us about this first conversation, with whom it was, and state the conversation? A Well, I had-- Haywood told me that Adams was working on trying to assassinate Judge Gabbert and he wanted us to work on that and see if we could not shoot him.
- Q Who was Judge Gabbert? A He was a justice of the Supreme Court of Colorado.
- Q What reason, if any, did Haywood give you for desiring his death? What did he say about it? A He said he had been rendering them decisions against Moyer when he was trying to get him out of Telluride on a writ of habeas corpus and they did not think that was according to law.
- Q Did you make any attempts on Gabbert or do anything in reference to the Gabbert matter, and if so what, state fully? A We was around there some in the evening.
- Q Who do you mean by "we"? A Steve Adams. We was around there some with shotguns.
- Q Around where? A Around Judge Gabbert's residence.
- Q Where was he living? A On Emerson street.
- Q In Denver? A Yes sir.
- Q Go on and state? A I think that is Emerson street.
- Q Yes. A We worked around there once in a while, not very much, it was cold weather and we did not go out much, but we were around

there once in a while but never seen him.

Q How much-- or, did you have any talk with Haywood and Pettibone with reference to Peabody? A Yes sir, we did.

Q Governor Peabody, I mean? A Yes sir.

Q State in regard to those conversations, state where they occurred, who was present and engaged in them, and all in regard to them.

A I could not say whether the conversations occurred at Haywood's residence or Pettibone's store; it was one place or the other.

Q About what time was it you commenced these conversations in regard to Peabody? A Sometime in January, 1905.

Q Was there any particular public matter at that time that was calling attention to Peabody again? A Yes sir.

Q What was that? A There was a contest over the Governorship.

Q Where was the contest being inaugurated? A In the legislature.

Q Now, go on and state what was said, as fully as you can, in reference to this matter by Haywood and Pettibone or any of these parties in control of the Federation? A Haywood wanted Adams and I to try hard and get Governor Peabody. He said he was liable to be seated as Governor again, and if we had two more years of him as Governor organized labor would have to leave the State of Colorado.

Q Go on and relate all that he said. A That was the substance of what he said.

Q Was there any talk in regard to the method of getting rid of him?

A He said he did not care how we get rid of him as long as we could get rid of him.

- Q When was this conversation had? A Some time in January, the 1st or
January or possibly the last of December.
- Q Who was present when you had this first conversation? A I think
Pettibone was, but I am not sure.
- Q Where was Adams, if you know? A Well, Adams was present.
- Q Did Pettibone-- or after this, did you have any-- did you make
any attempts upon Peabody? A Yes sir.
- Q You may state what these attempts were and what you did? A We
made a bomb, Adams and I, and Billy Eckman.
- Q Billy who? A Billy Eckman.
- Q Is that the same man you mentioned before, yesterday, as the
Cripple Creek man? A The same man.
- Q Where did you make this bomb? A We made it where we were living,
in Adams place.
- Q Who procured the materials? A Billy Eckman procured the powder;
he went to Idaho Springs and got it.
- Q What other stuff did you use for this bomb? A We made a lead can
made out of sheet lead.
- Q How did you make this bomb? How was it made so far as this other
bomb you have mentioned is concerned? A It was made about eight
inches in diameter and fourteen inches long with a lead bottom in
one end and filled full of powder and a wooden end or bottom put
in the other end; I am not sure whether there was a lead bottom in
one end or not, but I think there was. It may have been wood in
both ends.
- Q What was put in this bomb beside the powder? A Giant caps were

into it and fixed so we could fix a bottle of acid on it and the acid running on the giant caps when we pulled the cork out of it would explode it.

Q What was done with this bomb? A We took it and put it along the sidewalk on 13th Avenue and Grant Street.

Q What was the object of putting it under the sidewalk on 13th Avenue?
A Governor Peabody came up Grant Avenue every morning to the Capitol Building.

Q State whether or not you had investigate his movements? A Yes sir, we had.

Q What did you ascertain in that regard? A Found that he walked up there every morning between nine and ten o'clock to the Capitol Building.

Q When you say-- or about what month and what day of the month, as near as you can recollect, was it that you placed this bomb?

A I think it was the very first of January; somewhere about then. It may have possibly been the last days of December, but I think it was the first of January, 1905.

Q Go on and give us the full particulars; what time of day it was and all that, in regard to this whole matter.

A We placed it in there in the morning, about eight o'clock and stretched a wire to the street back of it, a block away, and when the Governor come along he would walk over that. He usually walked up Grant Avenue, and there was some snow on the ground, about six inches, and we covered it up with snow and covered the wire up. We had stretched this wire along the night before, about nine or

ten o'clock; and in the morning Adams and I drove over with the rig-- and Ackman drove over with the rig, and they had scopped out a trench there by the sidewalk where the water runs between the street and the curbstone, and we drove up close there and I laid the bomb in there and hung the wire on the hook we had there fastened in the cork; we had a bottle of sulphuric acid in it and the giant caps were fixed so that this would turn on the caps, and we intended to jerk this wire out when the Governor walked over this.

Q Well, what was done? A After we placed that there we left the rig back two or three blocks away and left Billy Ackman in the rig and Adams and I watched for him to come out.

Q Watched for Peabody? A Yes sir, and when he came out he walked up Grant Avenue and we walked up the street back of that and got to the other end of the wire, and hurried on, but about the time he came along there was two coal wagons come out of the alley between where the bomb was and where we were and they was going across there so that when the Governor got there we could not pull it until after he had gone over it.

Q Did you try? A No sir,. After he had gone past it Adams and I went over-- I went and got the bomb, or we both went and took it up and carried it over to where the rig was and we got the rig-- Adams and I got the rig and Ackerman, went down town and we come back and got the wire, throwed it in the buggy and drove back home, back where we lived.

- Q. How was this street so far as having a good many people on it was concerned at this time of day? A. Well, there wasn't usually many people.
- Q. What time ~~at~~ the night before had you planted the wire, concealed it in the snow? A. Some time between ten o'clock and twelve.
- Q. You have spoken about a rig, about going up there in a rig: Whose rig was that? A. It was a delivery rig.
- Q. Who had hired that rig, do you know? A. Joe Mahaley.
- Q. At whose request? A. Billy Askerman's.
- Q. What did you do with that bomb afterwards? A. It was left in -- Adams had it the last I seen of it. He told me he throwed it away, destroyed it, throwed it in the river.
- Q. What talk, if any, did you have with Haywood or Pettibone or Moyer in regard to this matter, with all of them, or either or any of them? A. I had a talk with Pettibone about it, told him how it was, that we had failed in it.
- Q. What did he say with reference to it? A. He said it was hard luck, too bad.
- Q. Did you have any talk with Haywood in regard to this particular matter about that time? A. Not right then.
- Q. What else did you do that winter in regard to matters of this kind? A. We was trying to assassinate Mr. Peabody after that, we was trying to shoot him around his residence nights, some around Judge Goddard's trying to shoot him.
- Q. Who was Judge Goddard? A. Judge Gabbert, I mean, excuse me.
- Q. This was the matter you related in regard to a little while ago? A. Yes sir.
- Q. Well, you say you stayed there for how long at Adams's place

in Denver? A. I lived with him that winter from the time I went there just before Christmas until the latter part of March or April.

Q. Until the time you left had you engaged in any of the other of these enterprises except those you have related that you now think of? A. Yes sir, we was around trying to assassinate Frank Hearne.

Q. Who was Frank Hearne? A. He was manager of the Colorado Fuel and Iron Company.

Q. Had you any talk with the defendants or any of them with reference to Hearne? A. Yes sir.

Q. With whom? Tell all about it.

A. With Mr. Haywood.

Q. Where was this conversation had, and when, and who was present, and what was the conversation? Give it all in detail.

A. Well, I don't remember just where it was. It was either at Mr. Haywood's residence or at Pettibone's store. He said that Hearne had come out there from Philadelphia to fix the legislature to get laws passed there that was in favor of the corporations as he had done back in Philadelphia -- Pennsylvania, and that he was a good man to get out of the way if we could get him.

Q. Did he give you any specific directions? A. No sir.

Q. What attempts did you make, if any, upon Hearne? A. We didn't make any attempt. Adams and I was around there a few times. We never seen him around his house.

Q. Did you know a man by the name of Moffat, Dave Moffat?

A. Yes sir.

Q. Did you have any talk with Haywood or these other parties

(H)

about Moffat? A. Yes sir.

Q. What were those talks, state when and where and all about them? A. The first talk was in the spring of 1904. Haywood said he had come to the conclusion that Dave Moffat was behind all of these strikes, was behind these people that were fighting the Western Federation of Miners. He said he had been interested in the Leadville strikes, and he believed he was behind the whole of them, as Governor Peabody came down to his private office quite often, that he had seen him there; he believed that Dave Moffat was behind the whole thing.

Q. Who was Dave Moffat, by the way? A. I think he was president of the First National Bank or was some officer in the bank.

Q. Go on and state further what Haywood said about Moffat?

A. Well, that is about the substance of what he said.

Q. What instructions did they give to you with reference to him?

A. Well, he told us where he lived and wanted us to see if we couldn't assassinate him.

Q. Did you make any effort in that line? A. We watched around his residence some.

Q. How much of the time that you was residing with Adams did you and Adams put in in these different movements watching these different parties and attempting to have an opportunity to carry out these matters? A. We was there from the time I arrived there shortly before Christmas working at these different things until some time the latter part of March or April, 1905.

Q. How did you get around the town, what method did you have of getting around besides walking? A. We hired a rig sometimes, a livery rig once in a while, but we usually went afoot at night.

Q. Do you know whether or not Haywood had any rig there?

A. I don't know that he did at that time.

Q. Don't know that he had at that time? A. No sir.

Q. You had no rig of Haywood's at that time? A. No sir.

Q. Did you have any rig of your own at that time? A. No sir.

Q. Did you afterwards have? A. I didn't have any of my own.

Q. Well, was there one that was purchased for your use?

A. Yes sir.

Q. When? At that time or afterwards? A. No sir, it was afterwards.

Q. About what time? A. Perhaps the latter part of July or August.

MR. BORAH: What year?

A. I beg pardon?

MR. BORAH: What year?

A. 1905.

MR. HAWLEY: We will get at that afterwards.

Q. Do you know when the executive board of the Western Federation of Miners met in 1905? A. I think they met some time in May.

Q. Where was you at the time they met? A. I was in Colorado, I was in Denver or down in the Arkansas valley.

Q. After you left Steve Adams' place where did you go to and what did you do after you and Steven stopped living together?

A. I stayed in Denver a short time, two or three weeks maybe or four weeks.

Q. Where were you living when you stayed there after leaving Adams' Place? A. I had a room out on I think it is on 26th Street and two blocks away from Humboldt, but I don't remember the street it was on.

- Q. What name was you going under? A. The name of Hogan.
- Q. What was the first name? A. ThomasHogan.
- Q. What was you doing when you was out here during these two or three or four weeks? A. I was watching Judge Goddard.
- Q. Who wasJudge Goddard? A. He wasJustice of the Supreme Court of Colorado.
- Q. He was ^{not} the judge you have spoken of as Gabbert? A. No sir.
- Q. Still another judge? A. Yes sir.
- Q. At whose request was you watching Judge Goddard? A. At Mr. Haywood's.
- Q. And what did Haywood say to you with reference to Goddard, and when and where did he say it? A. I couldn't say where he said it. I think it was in Pettibone's store or at his residence. That is where we used to meet then, one place or the other, always.
- Q. You had continued to meet Haywood after leaving Adams' place? A. Yes sir.
- Q. State what he said to you about Goddard? A. He said Judge Goddard had been instrumental in defeating the eight hour bill that had been passed and that he believed it was him wrote up the doings in the Moyer case, that was in the habeas corpus proceedings, during the time while he was in Telluride.
- Q. In speaking of the eight hour law, what eight hour law did he refer to?

MR. RICHARDSON: Tell what he said. If your Honor please, we object to anything else.

MR. HAWLEY: That is right. Tell what he said, if anything, in regard to it.

- Goddard J.P. Case*
- A. He spoke of an eight hour bill that had been passed.
- Q. Passed by whom? A. BY the legislature.
- Q. Of what state? A. Colorado; and that it had been declared unconstitutional, the Supreme Court declared it unconstitutional and Judge Goddard was one of the Supreme Court justices at that time and was instrumental in defeating it.
- Q. What did he say, if anything, about your doings about it?
- A. He said "We would like to get him out of the way."
- Q. Who was present when you had this talk with him, the first talk with him in regard to this? A. Steve Adams was.
- Q. What did you do in pursuance of this instruction?
- A. Adams and I were up around his place a good deal, and I was some after I left, quit living with Adams.
- Q. Well, what was you doing around his place, I mean what was your business and object of being around his place?
- A. Our object was to see if we could see him through the window and shoot him. We carried pump shotguns.
- Q. That is sawed-off shotguns? A. Yes sir.
- Q. Around there at night or day? A. At night.
- Q. How much time did you put in in trying to get this particular--
- A. Perhaps we was at it a month or more off and on.
- Q. After you went to living by yourself, or after you left Adams' place you say you continued this attempt on Goddard?
- A. I did for a short time.
- Q. What time was it that you left Denver and went away from Denver at this time, what month was it? A. I think it was in April.
- Q. In April? A. I think it was in April.
- Q. You don't remember what time in April? A. No sir, I don't.

- I am not positive that it was in April, but I think it was.
- Q. Where did you go? A. I went to Canon City.
- Q. What was your object and purpose in going to Canon City?
- Q. I went there to try and assassinate Governor Peabody.
- Q. You have spoken about his being governor in January of that year? A. Yes sir.
- Q. State whether or no he had been relieved of that office or quit that office in any way? A. He had resigned.
- Q. Who had succeeded him as governor? A. Mr. McDonald.
- Q. By whose advise or under whose instructions did you go to Canon City to try to assassinate Peabody? A. Mr. Moyer's, Mr. Haywood's and Mr. Pettibone's.
- Q. Where had this advice been given? A. I am not sure where it was given, whether it was in Pettibone's store or over at Haywood's residence. It was one or the other of the places.
- Q. Had you talked with either of these parties more than once with reference to it? A. Yes sir, I have talked several times.
- Q. Did you talk with them all together or at different times with different ones? A. I didn't talk with them all together no time about that.
- Q. Now you may go on and state as near as you can the conversation with the different ones of these parties with reference to that matter and the place it occurred and the time as near as you can; give that as near as you can. When did you talk with Moyer about it? A. I think it was some time in April.
- Q. What did he say, if anything, in regard to the matter?
- A. He said he would be glad to get the son of a bitch out of the way.

- Q. Speaking of Peabody? A. Yes sir.
- Q. Did he state where he was at this time or give you any instructions? A. He said he believed they were living at Canon City.
- Q. Did you have any further talk with Moyer in regard to that matter? A. I think I talked with him two or three times about it.
- Q. Did you talk with Haywood especially in regard to it? A. Yes sir.
- Q. Where and when did you talk with Haywood with reference to Peabody? A. I talked with him either at Pettibone's store or at his residence.
- Q. What did Haywood have to say in regard to this matter? A. Haywood said he would like to get him out of the way.
- Q. Did he give you any advice as to how to proceed about it? A. He said he didn't care how.
- Q. Did you talk with Pettibone with reference to it? A. Yes sir.
- Q. What advice did he give you, if any, in regard to it? A. Pettibone said that there was a man had been there working for him that was writing life insurance, that that would be a good scheme for me, to go down and get a contract to write life insurance and go down to Canon city and start in at that and I would have some excuse to stay there.
- Q. When did you have this talk with Pettibone? A. I think it was some time in April.
- Q. And were you personally acquainted with Peabody at this time, that is, did you have a personal acquaintance with him? A. No sir, I had no personal acquaintance with him.

- Q. What, if anything, did you do after this talk with Pettibone in regard to the life insurance, and what was done by you? Go into it fully in regard to anything that you did with reference to it. A. After I had talked with Pettibone about it I went down to the Mutual Life Insurance office and seen Mr. Stearns, who was manager, and asked him --
- A. Who was this you went to see? A. John L. Stearns.
- Q. Who was he? A. He was manager of the Mutual Life Insurance Company in Colorado.
- Q. Did he have his office there in Denver? A. Yes sir.
- Q. Where? A. I think it was in the Cooper Bldg., but I am not sure of it; it is on 17th Street.
- Q. Go ahead. A. And he asked me what reference I could give him. I gave him Mr. Hawkins, J. J. Sullivan, Henry Cohen and J. C. Sullivan and Mr. Pettibone.
- Q. George A. Pettibone? A. Yes sir. He said he would write to them and if I would come back in two or three days he would let me know what he could do about it. ~~After~~ After I left there I went and seen Mr. Hawkins myself and told him I wanted to get a job writing life insurance, that I wasn't going by my own name, I was going by the name of Hogan, and asked him, if Mr. Stearns wrote to him, if he would give me a recommend. He said he would. I seen Mr. Pettibone and got him to speak to J. J. Sullivan and Henry Cohen and he said that would be all right, they would give me a recommend. And I spoke to J. C. Sullivan myself. He said he would give me a recommend, and Mr. Pettibone said he would. And two or three days after I seen Mr. Stearns he sent me a note or a letter to Mr. Pettibone's place -- I gave him that as my address -- and he

told me to come down to his office. I went down and he said he was ready to make a contract with me. He said my reference couldn't be better.

Q. Did you make a contract with Stearns? A. Yes sir.

Q. Who was this J. C. Sullivan? A. He was president of the State Federation of Labor.

Q. Who was Mr. Hawkins? A. Mr. Hawkins is an attorney, of Richardson and Hawkins.

Q. Who were these other gentlemen? A. Henry Cohen and J. J. Sullivan are attorneys.

Q. Henry Cohen and J. J. Sullivan are both attorneys?

A. Yes sir; they were partners.

Q. You made a contract, did you, then? A. Yes sir.

Q. After making the contract what did you do, if anything, with reference to carrying out your scheme against Peabody?

A. I left after I got the contract a day or two, went down to Canon City, found out where Mr. Peabody lived, stayed four or five days and concluded that I could put a bomb under his window as he sat by the window in the evening quite often.

Q. State whether or not you had found that to be the case?

A. I had.

Q. How had you found it to be the case? A. I had been around his residence in the evening and seen him myself sitting there.

Q. Where is Canon City situated with reference to Denver?

A. It is on the Arkansas river I think something over a hundred miles from Denver.

Q. About what sized town? A. Five or six thousand I think.

Q. Railroad connection between the two? A. Yes sir.

Q. Where did you stay when you went to Canon City?

- A. I stayed at a hotel when I first went there one night or -- one night only I think, and then I got a private room either on River Street or Riverside Ave., I am not sure which, about a block away from where Mr. Peabody lived.
- Q. Who kept this rooming house or owned the house where you got the room? A. An old lady by the name of Adams.
- Q. Do you remember Mrs. Adams' first name? A. No sir, I don't.
- Q. An old lady you say? A. Yes sir, she is quite an old lady.
- Q. What did you do after ascertaining or coming to the conclusion that a bomb could be worked there? A. I came back to Denver.
- Q. After you got back to Denver what did you do? A. I told Mr. Haywood and Mr. Moyer and Mr. Pettibone about it.
- Q. Where did you go to see these parties? A. I went to Pettibone's store. I may have went over to Haywood's residence in the evening but I don't remember whether I did or not. I might have went over to Mr. Moyer's residence. I talked with them several times about it and they said they didn't care if I blew up the whole city at Canon.
- Q. What was this talk about? Give it in detail, as near as you can, the talk with these different people.
- A. That was about the substance of the talk. They said to go ahead and get a bomb made, if I wanted to, and use it.

MR. RICHARDSON: Which one said? We object to this method of saying "they said" without knowing which one it is.

THE COURT: You will have an opportunity to cross examine.

MR. RICHARDSON: But it seems there are two different places, if your Honor please,. If they were both together and

the statement was made by one it wouldn't be so very important.

THE COURT: What is your objection?

MR. RICHARDSON: I object unless it is known who said it, and the time and the place is fixed.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q. Now go on and state, Mr. Orchard, everything connected with this bomb, the making of it, all the conversations you had with these different parties, fixing the time as near as you can, and all that was done. State it in a narrative form, commencing at the beginning.

A. When I first came back from Canon City I went to Mr. Pettibone's, told him what I proposed to do, and he said he thought it would be all right, it looked so, and to go ahead and get a bomb made. I told the same to Mr. Haywood and I told Mr. Moyer, but I don't know whether they were all together at one time or not, I don't think they were. I think Haywood and Pettibone was together at his store once when we were talking about that, and I went to a plumbing shop --

Q. Where? A. On Court Place.

Q. Where is Court Place? A. Court place is just off of 17th Street opposite the Brown Palace Hotel.

Q. In Denver? A. Yes sir.

Q. Who owned this place, or occupied the place? A. I don't know what his name was. I asked him if he would make me a lead pot like a bucket and put a bottom in it, about fourteen inches long and about eight or ten inches in diameter. He said he

would. He asked me what I wanted it for. I told him I wanted it to plant a cactus in so I could bore holes in the lead and let the flowers come out through, and I went out to Max Mahlie's and got a box of giant powder, some that we had hid there, had planted there before, fetched it back to Pettibone's store, filled this bomb with it, put it in my grip and went back to Canon City.

MR. HAWLEY: We will ask to have this marked as an exhibit for identification.

(Marked for identification State's Exhibit J.)

- Q. Take this, marked State's Exhibit J, and state whether you identify that piece of lead. A. Yes sir, I do.
- Q. What is it, Mr. Orchard? A. That is that same bomb that I spoke of just now.
- Q. As prepared at this place on Court Street? A. Yes sir, it looks like the same one.
- Q. State in regard to its condition, as to the hole upon one of the sides. A. There was a hole on the side of it like this one.
- Q. Like this one to which I am pointing my finger? A. Yes sir.
- Q. The one with the flap? A. Yes sir.
- Q. Who placed that there, the party that made it, or yourself, or some other person? A. I placed it there.
- Q. When was it you placed it there? Before taking it away from this place on Court Street? A. No sir, I placed it there down in my room at Canon City.
- Q. After you got to Canon City? A. Yes sir.
- Q. What was the object of putting this particular hole in the side in this way? A. To put giant caps down in it and have

it so to fasten a bottle of acid on it by that flop.

Q. What kind of an end did you have in here, if any? A. I had a wooden end.

Q. Was that put there by the party that made the receptacle for the bomb or by yourself? A. I placed it there.

Q. Then what was it that was made by these parties? A. It was just made round with that lead bottom in.

Q. Do you remember what this party charged you for making it?

A. Between two and three dollars, I don't remember what now.

Q. You don't recollect the name of the party? A. No sir, I don't.

Q. State whether or not you had any talk with Pettibone or Haywood in regard to this matter, or the place where you had this made, or what you was doing in regard to making a bomb? A. I had a conversation with Pettibone about it. He told me he thought I could get it made over there or to another shop just above there.

Q. It was through Pettibone then that you went there? A. Yes sir.

Q. After you had it made did you have any talk with Pettibone about it? A. I took it over to his store.

Q. Did you show it to him? A. Yes sir.

Q. Did you have any talk with him in reference to it?

A. I told him how I intended to fix it and he was there and helped me put it in the grip, assisted to put the powder in it.

Q. State where it was you loaded it with the powder? A. Down in the basement of his store.

Q. Who helped you, if anyone? A. Mr. Pettibone.

Q. How much powder did you have to put in it? A. I had a fifty-pound box. I put in a part of it, I don't know how much,

about thirty pounds I think.

Q. Where had you get this powder? A. I got it out to Max Malich's.

Q. Who had brought it to Pettibone's place? A. Brought the powder?

Q. Yes. A. I brought it myself.

Q. Where was Max Malich's place? A. It was out near Globeville.

Q. How far is that from Denver? A. It is in Denver, or a suburb of Denver.

Q. It is one of the villages included in the Denver townsite?

A. Yes sir, I think so.

Q. When did you get this powder? A. When did I get it?

Q. Yes, when did you get it with reference to this trip, did you get it after coming to Denver and getting this bomb made or the leaden case made? A. This was some powder that we had got before that, Adams and I did, or Joe Mahaley.

Q. Where had you had it placed? A. We had it placed in the cellar of the house where ~~Steve~~ Steve Adams and I lived first.

Q. How had it get to Pettibone's cellar? A. It wasn't to Pettibone's only what I took down there, about fifty pounds of it.

Q. Oh, you took the powder down to Pettibone's cellar yourself?

A. Yes sir.

Q. And when had you taken it with reference to the making of this bomb? A. Well, I got it from Max Malich's, it was out there when I got it. We had got this powder in the winter.

Q. What I am asking you, when did you take it to Pettibone's place with reference to your time of getting the bomb?

A. I took it about that time or within a day or so, about the same day I got the bomb probably.

- Q. And you loaded it then there? A. Yes sir.
- Q. What did you do there with reference to putting the wooden end in? A. I didn't put the wooden end in -- I whittled it out and put it in the grip with the bomb and took it along with me to Canon City in the grip loose.
- Q. Did you have giant powder caps? A. Yes sir.
- Q. Where did you procure them? A. I got them from Max Malich's too.
- Q. When did you put these in the bomb? A. After I got to Canon City.
- Q. Did you have any machine to set this bomb off? A. Yes sir.
- Q. What was it? A. A little alarm clock.
- Q. Did you place that at any time in the bomb? A. I fastened it on the bomb, on this one.
- Q. When was that done? A. Down in my room down at Canon City.
- Q. After making this bomb how long was you in Denver before you returned to Canon City? A. Three or four days./
- Q. After making it did you see Meyer or Haywood? A. I don't know as I seen them after I made it. I seen them about the time I was making it, perhaps after.
- Q. State whether or not you had received any money about this time or before your first trip to Canon City? A. Yes sir, I had received some money. I had received \$100.
- Q. When was that, before you went the first time? A. Yes sir.
- Q. Who did you receive it from? A. Pettibone.
- Q. Did you receive any on this second trip? A. No sir.
- Q. After you went back to Canon City what did you do, if anything? State your movements there, go on and state in a narrative form. A. After I went back to Canon City I stayed at, I went

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back to the same room. I had kept the room I was in.

Q. At Mrs. Adams' house? A. Yes sir. But during the time I was in Denver I had seen a man there that I knew before by the name of Vaughn.

Q. Vaughn? A. William Vaughn.

Q. Did he have any middle name? A. I don't know that he did.

Q. Go ahead. A. He asked me what I was doing. I told him I was writing life insurance. He wanted to know how I was getting along. I told him all right. He wanted to know where I was, where I was working. I told him down around Canon City. He said he had written insurance and he believed he would try that, get a contract and write if he could, and perhaps he would go down there. I told him all right, I guessed there was room for both of us, and three or four days after I went back he came down there and I seen him there and he come to my room, and Mr. Peabody had started to fix over his house during this time and he was not sitting where he had been accustomed to in the house and I couldn't locate him, and I didn't make any attempt to put it there, to put the bomb where I intended to, on the window sill. And I worked with Vaughn around there for a week or ten days. We tried to write some life insurance, but we didn't write any, and he wanted me to go down in the "Arkansas" valley -- the "Arkansas" valley it is called. He thought we could do some business down there. So I concluded I would go down there and I put this bomb -- had it in the grip and left it in the grip and left it in Mrs. Adams' place.

Q. Loaded? A. Yes sir, and we left there and went down in the Arkansas valley to Rocky Ford.

Q. You and Vaughn? A. Yes sir, we concluded to canvas for insurance there, for life insurance, and we met a man that was representing a hail insurance company and he wanted us to go to work for him. Vaughn said that he had written hail insurance before and there was good money in it. He offered to pay us in cash as fast as we wrote it.

MR. RICHARDSON: Do you expect to connect Vaughn up with us?

MR. HAWLEY: No sir, we do not.

THE COURT: What is the purpose of this?

MR. HAWLEY: I don't care to go into these details.

I simply want to get his movements. If there is any objections to going into the details with this party we won't do it.

Q. You may state generally how long you stayed there with Vaughn in connection with this hail and life insurance.

A. About two weeks.

Q. Did you and Vaughn stay together all the time you was in this matter? A. We went to Denver together from there.

Q. State whether or not you went back to Canon in the meantime, Canon City? A. No sir.

Q. After you went to Denver what did you do? A. I met Pettibone there when I went back.

Q. Did you have a talk with Pettibone? A. Yes sir.

Q. What was said by Pettibone or between you and Pettibone?

A. He wanted to know how I was getting along down at Canon City, if I was liable to get Governor Peabody. I told him I didn't think so; that Vaughn had discovered that I had something in my grip or had heard the clock running there and asked me what it was and I told him it was a bomb, and he

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John Cannon

asked me what I was going to do with it, and I told him I was going to put it under Peabody if I got a chance. He said we better get out of there, I better not do it. I didn't think at the time I told him it was a bomb that he would think it was, I just told him in a joking way. So when we went back to Denver Pettibone ~~was~~ said that they wanted something pulled off before the convention met so that they would have something to show for the money they had spent.

- Haywood book
Jan 1905*
- Q. Well, did you see Haywood at this time when you first went to Denver this time? A. No sir, I didn't see Haywood.
- Q. What did you do after this talk with Pettibone? A. Pettibone and I got some more powder or took some of the powder that we had left there --
- Q. Well, did you go to Canon City again? A. No sir.
- Q. Go ahead. A. And we made another bomb.
- Q. For what purpose? A. To assassinate Judge Gabbert.
- Q. It is the same judge that you mentioned awhile ago as trying to get at with a shotgun? A. Yes sir.
- Q. What time was it that you and Pettibone made this bomb to try to get Judge Gabbert? A. Well, it was the latter part of May or possibly the first of June.

MR. BORAH: 1905?

- A. Yes sir.
- Q. Where did you make that bomb? A. We made it in the basement of Pettibone's cellar, in the basement of the store.
- Q. Where had you left the balance of this powder that you had, that was in the box that you had taken down to make the Peabody bomb with? A. I left it with Pettibone and he had buried it over in his yard at his residence, he said.

Q. What kind of a bomb did you make for this Gabbert business?

A. We made one out of a tin syrup can, about a half gallon can, packed that full of powder, took it up and carried it in a vacant lot that Judge Gabbert used to cross going down to the Capitol Building from his residence.

Q. Where did Gabbert live at this time? A. He lived on Emerson Street.

Q. Where was his residence on Emerson Street with reference to the Capitol building in Denver? A. The Capitol Building is on Colfax Avenue and Emerson is up three or four blocks from there, and he lived a block, just a little over a block off of Colfax on Emerson, and this vacant lot was on the corner of Colfax and Emerson Street.

Q. Had you ascertained prior to this anything about the movements of Judge Gabbert when he left his place in the morning?

A. Yes sir.

Q. What had you ascertained with reference to his movements in that regard? A. I had found out that he crossed this vacant lot instead of following the sidewalk around when he come off of Emerson to get over on Colfax.

Q. When had you commenced watching to ascertain this state of affairs? A. I watched him the winter before.

Q. State whether or not after making this bomb or at the time of making this bomb you had watched him? A. Yes sir.

Q. Who helped you, if anyone, watch him? A. I had watched him alone and located him.

Q. What time was it that he left his house, was he in the habit of leaving his house in the morning? A. About nine o'clock.

- Q. After making this bomb what did you do -- you say you buried it? A. Pettibone and I went up and buried it in this vacant lot.
- Q. When did you go up and buy it, night or day time? A. In the evening.
- Q. What time? A. Nine or ten o'clock I think.
- Q. How did you go up there from Pettibone's place? A. We walked up.
- Q. And carried the bomb? A. Yes sir.
- Q. How much did this bomb weigh, how much of the powder had you put in this bomb? A. About ten pounds I think.
- Q. What did you take with you, if anything, in order to bury it?
- A. Took a little shovel, a little thing that Pettibone had for setting out plants with or something, about that long (indicates about a foot) a hand shovel.
- Q. State whether or not there were people around that time of night to any great extent in that portion of town? A. Well, there were a few. It was up in the residence district, no crowd, once in a while one went along.
- Q. How was it about this vacant lot being travelled by a good many?
- A. There was quite a few went across it, I think; there was a hard beat path.
- Q. Where did you plant this bomb with reference to this hard beat path that went through the lot? A. Planted it right close to the side of it, as close as we could get it where the ground wasn't too hard.
- Q. How long did it take you to do that? A. Oh, not over five or ten minutes.

- Q. Did anybody come along? A. No sir, I don't think so.
- Q. After planting the bomb what did you do, if anything, about planting a connection with the bomb, to put a connection on the bomb to explode it? A. We left a little wire sticking out so we could hook a little satchel on there in the morning and had that fixed so that when pulled over -- a little windlass -- so that it would upset a little bottle of acid on the giant caps that we had under it.
- Q. The same sort of a contrivance that you have heretofore related in reference to bombs, was it? A. Yes sir, something similar to that.
- Q. And what did you do, if anything, the next morning with reference to this? A. Pettibone and I went up there on Emerson Street, Pettibone was down near Mr. Gabbert's residence, and he was to give me the signal when he seen him coming out.
- Q. What time did you get there in the morning and how?
- A. We went there, we walked up there -- or Mr. Pettibone had his bicycle and I walked, and I was to go along, if there was no one between, coming between Mr. Gabbert and I, and hook this pocketbook onto the little wire that we had left there so that when Mr. Gabbert come along, if he crossed there we thought he would see that and go to pick it up, if he picked it up he would pull this windlass over and set off the bomb.
- Q. Go ahead and state all that was done and what you did do.
- A. After he did start to come that morning there was someone out in ahead of him and he was so close behind him that I

didn't have a chance to put this pocketbook on for fear they might come across there ahead of him and get them instead of him, and we just left it there.

Q. Left the bomb there? A. Yes sir, and went home.

Q. Go ahead. A. I tried it the next morning and it was the same way. There was someone ahead of him. And after that Mr. Pettibone was going to Salt Lake to the convention.

Q. What convention? A. A convention of the Western Federation of Miners.

Q. It was held in Salt Lake that year, was it? A. Yes sir. He wanted me to stay there and see if I couldn't catch him with that thing.

Q. What did he say to you at that time about staying? A. He said that they wanted something pulled off before the convention, that they wouldn't have anything to show to the executive board what they had used all of the money for that we had had during the winter, Mr. Adams and I and Mr. Ackerman.

Q. Well, what did you agree to do, if anything? A. I agreed to stay there and see if I couldn't do it.

Q. Where was Haywood at this time? A. Salt Lake City, or supposed to be there.

Q. Go ahead and state then what you did -- or state, in the first instance, whether Pettibone left or not? A. Yes sir, he did.

Q. What did you do then after he left? A. I was afraid to go and touch that bomb that was there and made another one something similar to that, only I made it out of a little box that would hold about ten pounds of powder and fixed it a little different, fixed it with a spring and a wire, so that when the wire was pulled back up out of there it would let the spring fly back and hit a little bottle of acid and break it, and

the giant caps was under that, and I was going to fasten the pocket book just the same as I have spoken of before, was going to the next morning after I had planted it. I saw Mr. Gabbert coming up the sidewalk and no one between him and I, and I had Mr. Pettibone's bicycle, and I walked along there and shoved the bicycle by the side of me and fastened the pocket book, hooked it over the little wire I had there and rode off and went down town.

- Q. How had you got Pettibone's bicycle? A. I had got it from the store.
- Q. That morning? A. Yes sir.
- Q. When you saw Judge Gabbert coming on the ~~xxx~~ sidewalk state how far he was from this trail or path that went across the vacant lot? A. He was about a half a block.
- Q. Was there anyone that you saw between him and the vacant lot? A. No sir, he was not.
- Q. How was this last bomb planted with reference to the first one? A. It was planted as close to it as I could plant it and not touch the other one.
- Q. You said you was afraid of the other one: What was you afraid of? A. I was afraid the acid would eat the cork out or something, and if I touched that wire it would tip over or something.
- Q. After you fastened the pocketbook to the wire -- A. I --
- Q. Sir? A. I don't mean that it would eat the cork out, I thought the wire might -- someone had touched it and it had pulled the windlass over ~~xxxxxx~~ a little, it was partly over, there was no cork in the bottle.

- Q. After you fastened the pocketbook to the wire connecting with this last bomb what did you do? A. I went down town back to my room where I was rooming.
- Q. How? A. On the bicycle.
- Q. What was the result of that last planting? A. I didn't hear it go off, I didn't think that Mr. Gabbert had got it, or something had happened I didn't know what, and I heard it go in about an hour.
- Q. You heard it go in about an hour? A. I heard an explosion what I thought was that.
- Q. In that direction? A. I couldn't say whether it was in that direction.
- Q. Do you know whether or not an explosion did happen there?
A. Yes sir.
- Q. What was the result of that explosion? A. There was a man killed there.
- Q. Who was it? A. His name was Walley I heard.
- Q. Do you know who Walley was? A. No sir.
- Q. Was he or was he not a man that you was aiming to injure?
A. No sir, he was not.
- Q. Did you go up there -- did you ascertain whether there was one or two reports? A. No sir, I didn't. I only heard one.
- Q. Did you go up there yourself? A. Not then.
- Q. Did you go up there afterwards? A. Yes sir.
- Q. Did you see the effect of this explosion? A. Yes sir.
- Q. What was that effect? A. There was a big hole in the ground there about six or eight feet in diameter.
- Q. Where was this hole with reference to the place you had planted

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- these two bombs? A. It was right where we planted the bombs.
- Q. After this explosion of this bomb what did you do, if anything in regard to giving the information to Haywood, Pettibone, Moyer, or any of these parties? A. I didn't do anything.
- Q. Were they there? A. No sir.
- Q. How long was it before they returned? A. I don't know. I think it was about a month, three weeks or a month.
- Q. In the meantime where did you stay? A. I stayed in Denver a few days.
- Q. And after staying in Denver where did you go? A. I went down in the Arkansas valley -- the San Luis valley.
- Q. What doing? A. Writing this hail insurance.
- Q. Who was you, if anyone? A. William Vaughn.
- Q. Had you met Vaughn again? A. Yes sir.
- Q. How long did you continue at that? A. About two or three weeks.
- Q. And after these two or three weeks in which you were selling the insurance what did you do? Return to Denver or go somewhere else? A. I came back to Denver after I quit writing insurance.
- Q. Where was this Peabody bomb in the meantime? A. Down in Mrs. Adams' house at Canon City.
- Q. You hadn't gone down after it? A. No sir.
- Q. State after you went to Denver whether you saw any of these parties, the defendants? A. Yes sir, I did.
- Q. Which of them did you see first? A. I seen Mr. Pettibone first.
- Q. Where? A. At his store.
- Q. Did you havea talk with him with reference to any of these

matters? A. Yes sir.

Q. What was that conversation? A. I told him about how it happened, that I set the bomb for Judge -- put the pocketbook on therefor Judge Gabbert and he didn't come across there, I guessed, or didn't see it. I don't know just how, but he didn't get it anyhow.

Q. State that full conversation as you recollect it?

A. Well, Pettibone said it was hard luck, something like that, I don't know what.

Q. Did you see Moyer and Haywood? A. I didn't see Moyer.

Q. Do you know where Moyer was? A. I believe that he was at Salt Lake.

Q. Did you see Haywood? A. Yes sir, I seen Haywood a short time after I seen Pettibone.

Q. How long afterwards? A. I think it was about a week after I seen Pettibone before I seen Haywood.

Q. Could you fix the time with any more certainty than that?

A. No sir, I couldn't.

Q. Where did you see Haywood? A. I seen him at his residence or Pettibone's store, I am not sure which.

Q. Did you talk over with him this explosion that killed Walley?

A. Yes sir.

Q. What was that conversation? A. Well, he said he was sorry that it hadn't got Judge Gabbert, sorry it killed an innocent man.

Q. Did you go to headquarters at this time? A. No sir, I don't think I did.

Q. After seeing Pettibone before seeing Haywood did you stay in Denver or go somewhere else? A. No sir, I stayed in Denver.

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Wash
- Q. What was done, if anything, in regard to getting money by you at this time or about this time? A. I got some money from Pettibone, a hundred dollars.
- Q. What was your habit about getting money from Pettibone, at this time, how was it that Pettibone gave you the money? Was there any explanation made why Pettibone was giving you the money?

MR. RICHARDSON: We object to that as leading and suggestive.

THE COURT: It is, a little.

- Q. What explanation was made to you, if any, with regard to Pettibone paying you the money? A. That was the arrangements we had made a good while before, that Haywood would give Pettibone the money for us when we wanted any; when I wanted any money I went to Mr. Pettibone and he would go to Haywood and get it.
- Q. Who had you made this arrangement with? A. Mr. Haywood.
- Q. When you say "we" got money, who do you refer to?
- A. I mean Mr. Adams.
- Q. And yourself? A. Yes sir.
- Q. How long then did you stay in Denver after the Gabbert explosion and before you left? A. I was in Denver until the latter part of August, 1895 -- 1905.
- Q. State whether or not at this time or about this time you purchased or became in possession of a team. A. I didn't come in possession of a team or purchase one either.
- Q. Well, was there a team that was subject to your disposal?
- A. Yes sir.
- Q. What team was this?
- A. It was a team that Mr. Haywood had there, kept them at the

Roper corral.

- Q: Where is Roper's corral? A. It is near 15th and Blake Streets.
- Q. Of what did this team consist of Haywood's? A. It was a team and a double spring wagon.
- Q. Two horses? A. Yes sir.
- Q. State what directions, if any, you had with reference to this team, using it? A. Mr. Pettibone and I wanted a horse and rig and we asked Haywood to get it. He said he had some horses up at Cripple Creek and would send up and get a team of them, and get two of them horses, and he did. That was the team we had down there.
- Q. Do you know anything of your own knowledge about his having the team in Cripple Creek, or simply know by his statement in reference to it? A. Just his statement.
- Q. And what was done with this team after it came there, what use of it was made, if any, by you? A. We tried to drive them single on a buggy, and they were not driving horses, and they were used up so much they wasn't no use to us, we didn't want them.
- Q. When you saw "we" who do you mean? A. Mr. Pettibone and I.
- Q. Did you take this team out often or try to ~~take~~^{use} them at any time? A. We took them out several times, drove them on a buggy that we got from Mr. Roper.
- Q. What particular use was you making of them or trying to make use of them? A. We wanted a rig that we could use; we was going to try to assassinate Sherman Bell.
- Q. Who was Sherman Bell? A. He had been adjutant general of the state of Colorado.
- Q. What had these parties, Haywood or Pettibone or Moyer,

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stated to you with reference to Sherman Bell, if anything, and their desire to get rid of him and their reasons for it?

- A. He was the man at Cripple Creek in charge of the militia during the strike.
- Q. In what year? A. 1903 and 4.
- Q. What did they say with reference to him? A. They said he had been very influential in breaking up their organization up there, they would like to make an example out of him.
- Q. Who was it that had this talk with you? A. Mr. Haywood and Mr. Pettibone.
- Q. Did you have it on more than one occasion? A. We talked about it several times.
- Q. Well, what did you do after you found this rig of Haywood's was in the condition that it was so far as a driving team -- what, if anything, was done in regard to procuring another rig? A. Mr. Pettibone and I told him that that rig was no good, then horses, that he had better sell them and then buy a good horse and buggy.
- Q. Where was Haywood when you told him this? A. He was in his office.
- Q. Federation Headquarters? A. Yes sir.
- Q. Well, go ahead and state all the conversation you had with Haywood on this occasion. A. He said that he would see, and try and sell them, and I asked Roper what he would give for them. He was buying and selling horses. And he made Mr. Haywood an offer for them, I think \$250 for the horses and wagon and harness. But he said he wouldn't take that for them. I am not sure it was \$250, it was something over \$200.

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- Q. Did Haywood tell you this? A. Yes sir.
- Q. Go ahead, state what else was done, if anything, about getting the rig? A. Haywood said he wouldn't take that for them, and he said to look around and see if we couldn't buy a rig -- told Pettibone and I; and we found a rig that a liveryman, where Mr. Pettibone kept his horse, by the name of Vance told us of a colored man that had a horse and buggy to sell, and he came up to Mr. Pettibone's store with this horse and buggy, Mr. Vance and the colored man, and I took the horse and buggy down to Mr. Haywood's place down at the headquarters of the Federation, took him out for a drive with the rig to show it to him.
- Q. Took Haywood out? A. Yes sir. He came back and told the colored man he would give him a hundred dollars for the rig. He said he wouldn't take it. He asked \$125. And we drove on back, the colored man and I drove back to Mr. Pettibone's store and Mr. Vance was there yet talking to Mr. Pettibone, and Vance told Pettibone it was a cheap rig if we wanted a rig and we better take it. Mr. Pettibone telephoned down to Mr. Haywood and told him we better take that rig, that he would take \$115 for it. He answered him that he would, told me to come down and get the money and I went down and got the money and went out and got the rig from this colored man, brought it back up to Mr. Pettibone's store. Mr. Vance wrote up the bill of sale and signed it himself as well as the colored man.
- Q. To whom was the bill of sale made? A. It was made to Mr. Pettibone.

- Q. Do you know this man Vance's given name? A. No sir, I don't.
- Q. Do you know where he resided in Denver or what his business was?
- A. He ran a livery barn on Lawrence Street I think it was.
- Q. Do you know under what firm name or whether it was under a firm name at all? A. I don't know that it was under a firm name at all.
- Q. This colored man that you have mentioned, do you know his name?
- A. No sir, I don't, I don't remember it; I knew it at the time.
- Q. Do you know where he lived? A. He lived between 20th and 21st St., I think, near Lawrence, between Lawrence and Champa. I am not quite sure about the location though -- somewhere near there.
- Q. Don't you know what his business or occupation was?
- A. He had a few horses. He had a little barn where he kept a few horses peddling for other parties, and a feed stable.
- Q. After this bill of sale was made for this team and payment made what was done with the rig? A. Pettibone and I got a barn over near his residence, I think it is between 13th and 14th Ave. close to Evans Street.
- Q. From whom did you procure the barn? A. I don't remember the party's name. The party that had it rented lived on Cleveland Place. They had a buggy stored in there, a rig, two buggies, I think, and they paid part of the rent and Pettibone and I paid the other part, and they left their rigs in there. There was room in that for our horse and buggy and theirs too.
- Q. How long did you keep that rig there, your rig there?
- A. It was as long as I stayed in Denver.
- Q. Under whose orders was it? A. I used to take care of the rig, the horse all of the time. I rented the barn.

- Q. You rented the barn yourself? A. Yes sir.
- Q. What name was you going by at this time? A. Hogan.
- Q. Thomas Hogan? A. Yes sir.
- Q. You have spoken about Sherman Bell and about the efforts about Sherman Bell: State what was done, if anything, in regard to working an injury to Sherman Bell at this time.
- A. Mr. Pettibone and I used to go up there with this rig --
- Q. Go up where? A. Go up to Sherman Bell's residence.
- Q. He lives out in this suburb? A. His residence is on 13th Avenue right near Congress Park.
- Q. Right in Denver proper? A. Yes sir.
- Q. I thought it was in this suburb? A. No sir. I worked on that for two or three weeks. We never got a chance to accomplish our purpose.
- Q. Was Pettibone with you there during these times? A. Yes sir.
- Q. How often did you make trips out there? A. Nearly every night.
- Q. You would go in the nighttime then? A. Yes sir.
- Q. About what time of night would you generally go? A. In the evening as soon as it got dark.
- Q. What did you take with you in order to accomplish your purpose?
- A. We took a pump shotgun loaded with buckshot.
- Q. You may state whether or not you had any talks with Haywood or Moyer during the time this was going on with reference to this matter. A. I had some talk with Haywood; I didn't with Moyer.
- Q. Where were these conversations with Haywood held? A. Sometimes in their office and sometimes in Pettibone's store.
- Q. At this time state what your habit or custom was in going to

the office of the Federation? A. Well, I used to go there occasionally then. Sometimes these conversations was held over at Pettibone's residence.

Q. What instructions, if any, or advice, if any, did you get from Haywood with reference to Sherman Bell or other parties at the time you was making these attempts, what did he say to you about it? A. He said to get him if we could.

Q. Who was supplying you with money, if anybody, at this time? A. Mr. Haywood was.

Q. Getting any directly from him or was it through Pettibone as you had been? A. I got some directly from him and some through Pettibone.

Q. How was it when you took money from him about receipting for it? A. I didn't give him any receipt for it.

Q. Where was Moyer at this time, if you know? A. Moyer was away from Denver most of the time. I think he was in California part of the time and Chicago some of the time.

Q. State whether or not you finally abandoned it -- or state when you quit, if ever you quit, this effort to injure Sherman Bell. A. We quit about the last of August some time, 1905.

Q. What was the occasion of your quitting? A. Mr. Moyer came back from California and I met him on the street. He asked me what I was doing and I told him what we were doing; and he said we would have to quit that, that he didn't want to have anything like that pulled off in Denver while he was there, his health was pretty well gone, and if anything like that was pulled off like that there they would arrest him the first thing, he didn't want to have another siege like he had had in Telluride. He said we would have to quit it, that they

had some outside work away from Denver. He wanted Mr. Pettibone and I to come down there the next day and have a talk over it.

- Q. Come down where? A. Come down at his office, and we did come down the next day, I think the next day we went down.
- Q. Well, this was the latter part of what do you say?
- A. Latter part of August.

MR. BORAH: 1905?

- A. Yes sir.
- Q. Go on and state that conversation that you had, state it fully, down there -- wait one moment: Now before we go on with this talk that you had with Meyer and others down at the headquarters, that you are stating, I will ask you besides this effort to injure Sherman Bell whether you made any attempts upon anyone else about this time? A. Yes sir, we did, some time previous to this.
- Q: In what month? A. It was in June I think.
- Q. In June? A. Yes sir.
- Q. Upon whom was this attempt made? A. On Judge Goddard.
- Q. Is this the same Judge Goddard of the Supreme Court to whom you have heretofore referred? A. Yes sir.
- Q. What was this attempt, what was done, if anything, and by whom was it done, and what was the occasion of doing it? State it fully in narrative form.
- A. Just after I had failed to assassinate Judge Gabbert with that bomb I went and made another one. I took it over to Max Malich's I made it in a box that would hold about ten pounds of powder and Max Malich's man, a man that was working for him, took

Max's rig and we took it over, him and I, and planted it at the gate of Judge Goddard.

Q. Who was it that planted it, you and Max Malich, or you and Max Malich's man? A. Me and Max Malich's man.

Q. Who was Max Malich? A. Max Malich run a grocery store, butcher shop and saloon near Globeville.

Q. Was he the man you mentioned yesterday in your testimony as having been in Cripple Creek? A. No sir, I never mentioned him being in Cripple Creek that I know of.

Q. How long was this after the Gabbert bomb had been placed and exploded? A. Just three or four days.

Q. State whether or not you had any talk with the defendants or any of them with reference to Judge Goddard before this?

A. Yes sir, had the talks with them before that I have spoken of.

Q. Had you any other talks besides those that you have talked about this morning? A. No sir, not at that time.

Q. You had had no talk immediately prior to the placing of the bomb? A. No sir.

Q. Where did Judge Goddard live at this time? A. He lived on Humboldt St. and 26th, Humboldt and 26th I think.

Q. You say that you and Malich took this bomb over there? A. No sir

Q. Who did take it over there? A. Max Malich's man and I.

Q. You and Max Malich's man? A. Yes sir.

Q. Where did you take it to? A. We took it to Judge Goddard's residence and planted it by his gate.

Q. Who planted it? A. I did.

Q. Where was this man of Max Malich's? A. He was in the rig holding the horses.

253 Q. How did this gate open, was it in or out of the yard?

- A. It opened I guess both ways, but they would usually open it inside.
- Q. There was a fence, was there, in front of the yard between the house and the street? A. Yes sir.
- Q. State whether or not there was any grass there, any sod?
- A. Yes sir, there was grass, sod.
- Q. Where did you plant this bomb with reference to the gate itself. Describe the exact location as near as you can.
- A. I planted it just on the outside right against the post that the gate shut against.
- Q. Outside or inside of the lot? A. Outside.
- Q. Outside of the lot? A. Yes sir. I took a sharp shovel and cut a sod off about two inches thick, just a little bit larger than the box, and then dug the dirt down enough so that I could put the box in and cover the sod over; and I fastened a little screw-eye in a picket of the gate, and had a bottle of sulphuric acid fixed with some giant caps under it and a cord to that, a cork in the bottle, so that I could hook this cord over this little screw-eye in the gate so when the gate opened it would pull the cork out.
- Q. After you planted the bomb state what you did with the sod, about putting it in place? A. I covered the sod over, and put a piece of burlap over the cord, smoothed the dirt back as well as I could and went away and left it there then.
- Q. Did you connect it with the gate at that time? A. No sir.
- Q. What time of day or night was it that you planted this bomb at that place? A. It was just before daylight in the morning.
- Q. State whether or not there was sod and grass outside of the gate and yard as well as inside? A. Yes sir, there was.

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- Q. Parking between? A. There was a little streak of sod between the sidewalk and the fence.
- Q. What you would call parking? A. I suppose so. I don't know what you would call it.
- Q. After you had planted this bomb in this shape state whether you ever went back to it. A. I did.
- Q. When? A. About 8:30 that morning.
- Q. What, if anything, had you ascertained in regard to the movements of Judge Goddard? A. I had watched him a good deal and I found that he went out and got a street car about a quarter to nine o'clock.
- Q. What did you do at 8:30 then that next morning? A. I walked along by this gate on the sidewalk reading a newspaper like, pretending I was reading it; when I got opposite I dropped the paper carelessly right by the gate and stooped down and hooked this cord that I had left over this little screw-eye in the gate.
- Q. Now will you describe this little screw-eye or screw, as you call it, that was put in the gate. What was it, was it a screw --

MR. RICHARDSON: Let him describe it.

THE COURT: Just describe it.

- A. It was a little screw eye about an inch long with an eye into it that pretty near closed, left a little opening when it was screwed up, the screw was about a half or three-quarters of an inch long with the eye on it, and the eye when it was screwed in would leave a little opening in the top about a quarter of an inch. I left that part up so that I could hook

the cord over it.

- Q. What part of the gate was this fastened on? Describe that particularly? A. It was on one of the pickets, at the bottom of it, probably an inch or two from the bottom, perhaps a little bit more.
- Q. Which one of the pickets of the gate? A. I don't remember whether it was the first or second or not.
- Q. How far from the bottom of the picket? A. I think it was only about an inch.
- Q. And the picket, how far did the picket reach down toward the ground, how far was it from the ground, from the bottom of the gate itself? A. It was pretty near right on the bottom, set pretty near the bottom, I think touched the bottom.
- Q. I want you, Mr. Orchard, to describe this bomb particularly; describe what it was made out of and all of the contents, as near as you can just how it was made and all particulars in reference to it. A. It was made out of I think about half inch boards and was probably about eight inches square. It was made just so a stick of giant powder would fit on the inside of it. I think the giant powder was about eight inches long. It was made about that wide, about four or five inches high I think, had a bottom in it and it had a top onto it.
- Q. A bottom of board? A. A bottom of boards.
- Q. How was the top? A. The top was made with -- there was a hole left in the boards, on the board, they had been cut out a little bit so that there would a little bottle of acid slant a little bit so that with the end of the cork in it would be

down, and that was wound on there with wire or a cord, I think wire.

Q. How big was this opening where you put the acid? A. It wasn't very big, probably an inch.

Q. What part of the top of the box was it in? A. I think it was about the center; I am not quite sure.

Q. How did you make that opening? A. I cut it out with a knife, jack-knife.

Q. What was placed in this box in the nature of explosives?

A. There was giant powder placed in it.

Q. About how much, if you know? A. About ten pounds I think.

Q. Do you know how many sticks of giant powder that would be, how many cartridges? A. It would be a little over forty sticks I think.

Q. What kind of giant was it, one or two, or what particular brand?

MR. RICHARDSON: When he asks him what kind of giant it was, isn't that enough without describing it to him? We object to it as leading and improper.

MR. HAWLEY: We deny its being leading.

THE COURT: I do not think there is any necessity for describing it.

Q. What kind of powder was that that was contained in that box?

A. It was what we call No. 1 powder, 60 per cent.

Q. 60 per cent. What? A. Sixty per cent. nitroglycerine.

Q. What was placed there besides the powder? A. There was a bottle of sulphuric acid and giant caps with chloride of potash and sugar spread over them.

- Q. How many giant caps were placed there? A. Probably a dozen or so, I couldn't tell just exactly how many.
- Q. Were these giant caps placed loose in the box? A. No sir.
- Q. Or were they in a receptacle, of some kind? A. They were shoved down in the powder right under the mouth of the bottle where the cork would come out.
- Q. Please describe that exactly. A. I pushed them right down in the powder where the cork was in the bottle; the bottle was a little sloping down like that and the caps was put in an inch, about an inch or two square, an inch or so square right under that close together, set so that the open part of them was up.
- Q. What sort of a contrivance did you have there to work the bottle? A. I had a common pin put through the cork with the head on the inside.
- Q. How was that attached? A. It was bent around into a little eye so that there was an eye on the other end, the pin was bent around so that the cord would tie into that.
- Q. And you may state what this contrivance was, or describe this contrivance particularly that you have mentioned that would cause the bottle to tip over and the acid to flow out.
- A. The bottle wouldn't tip over, it was stationary, fastened around down there right.
- Q. What would cause the cork to come out? A. I had a cord fastened into this pin I have described in the cork and looped that on this little screw-eye I had in the gate so that when the gate was opened it would pull this cork out of the bottle.

- Q. That was all there was of that contrivance? A. Yes sir.
- Q. Did you hear any result from that bomb? A. No sir.
- Q. Did you at any time after setting this bomb, connecting the bomb to gate, go back there? A. No sir, I did not -- I went along there some time after that, quite a while after it.
- Q. Went along there? A. Walked along the side walk.
- Q. Did you notice whether or not that connection was still made between the gate and the bomb? A. I couldn't see nothing of it.
- Q. What kind of a string or cord, or was it a wire that you had connecting the two? A. It was a piece of a fish line.
- Q. Did you look to ascertain whether the screw was still in the gate? A. No sir, I didn't notice it.
- Q. Did you look to see if there had been any disturbance of the ground where the bomb had been planted? A. Yes sir, I did. I couldn't see any disturbance any more than the grass was dead around where this bomb was.
- Q. When was it that you last saw this place and went by it?
- A. Some time in August, 1905.
- Q. You don't recollect the exact time? A. No sir.
- Q. What time was it with reference to your departure from Denver?
- A. Just a little while before that.
- Q. You may state, Mr. Orchard, now if besides this attempt on Gebbert and Goddard and these attacks or attempts upon Bell you had made any other attempts outside of those which you have spoken about upon anyone prior to your leaving Denver?
- A. No sir, I don't think of any.
- 259 Q. Did you have any talk with the defendants, or either of them,

Haywood or Moyer or Pettibone, about this Goddard bomb after you planted it? A. Yes sir, I had.

Q. When was this talk had and with whom? A. I had it with Mr. Haywood, Mr. Moyer and Mr. Pettibone.

Q. Where were these talks had, were they together, or with each of them separately? A. I think they were sometimes together. We talked of it all together at one time I know.

Q. Where was that? A. At Mr. Moyer's office.

Q. When was that with reference to this conversation that you had that we have spoken of and that we have not yet gone into? A. It was at that time.

Q. Well, go on with this conversation at the time that you had this meeting with Moyer. This was in August I believe you said that you met Moyer on the street. A. Yes sir.

Q. And when you went to his office the next day in whose company did you go? A. I went alone I think down to his office.

Q. What time of day was it when you went there? A. It was in the forenoon, I think about nine or ten o'clock.

Q. Who was present in his office? A. He was alone at first when I first went there, Mr. Moyer was; Mr. Haywood was in his office.

Q. Where were the two offices so far as being connected together is concerned, how were they situated? A. Mr. Haywood's office was in the corner of the building and there was an office between his and Mr. Moyer's on the same side, down.

Q. When you went there that morning and saw Moyer did you and Moyer have any conversation before the others came?

A. Yes sir, we did.

Q. You may relate that conversation. A. Mr. Moyer said he didn't want nothing pulled off there in Denver, that they had some outside work that he wanted done anyway; he said his health was so bad that he didn't want nothing pulled off in Denver and take any chances of getting arrested, as he believed that would be the first thing they would do if we done any dynamiting there or shot any of these men that we were trying to get; and he said he wanted to get Johnny Nevell out of the way and wanted me to go to Goldfield, Nevada.

Q. Who was Johnny Nevell? A. Johnny Nevell was the man that had run a saloon at Independence, Colorado.

Q. And who was he so far as his connection with you or with the affairs you have detailed were concerned? A. He was the man that I went to Wyoming with.

Q. That is the same man? A. Yes sir.

Q. Well, go on and give the whole conversation now.

A. Mr. Moyer said that Johnny Nevell knew too much about that Independence explosion and that he had been there and made some threats and tried to get some money from him, said that he would expose it if he didn't give him \$1200, and he said that he believed we ought to put him out of the way, and he thought we would be pretty safe with the things that had been done in Colorado during the strike and after that if we had him out of the way. While we were talking about this Mr. Pettibone came down and came in the office where Mr. Moyer and I were, and then he called Mr. Haywood in.

Q. Who called him in? A. Mr. Moyer did.

Q. Go on now and relate all that was said and done after you

parties were all together. A. He told him that he didn't want nothing done in Denver while he was there and he told him we ought to do some of that outside work that they had been wanting to do, and he said he wanted to get rid of Johnny Nevell, and Mr. Haywood said he wanted to get rid of Governor Steunenberg, he wanted that done too, and they wanted to know if I couldn't make the round trip and go to Nevada ~~ix~~ and come around by Caldwell.

Q. Who asked you this? A. Mr. Haywood asked me about that, and Mr. Moyer; it was a general conversation.

Q. Go on and relate that conversation as fully as you recollect it. A. We talked about that and I told them that I thought I could go all right. Mr. Haywood said he had sent three or four different men down to Caldwell to get Mr. Steunenberg.

Q. Go on and say what he said in regard to that, make a full statement of what he said there. A. He said if we would get Mr. Steunenberg after letting him go seven or eight years and then go back to Paterson, New Jersey, and write some letters from there to Mr. Peabody, Mr. Bell, and Judge Godda and Judge Gabbert and some of the mine owners that had been fighting the Federation and tell them that they would get what Mr. Steunenberg got, that we hadn't forget them, and that he thought if we wrote the letters from there to these men, if we got Mr. Steunenberg, and tell them they would get the same as he got it would be worse than death itself, it would be a living death to think somebody was after them to kill them and didn't know who it was. Mr. Moyer said that he believed that would have a good effect, it would scare the rest of

men that were opposing the Western Federation, that he believed it would be laid to the Federation on account of Mr. Steunenberg's opposition to them in the Coeur d'Alenes. Mr. Haywood described Mr. Steunenberg to me, told me what kind of a looking man he was, how he usually dressed, said that he was engaged in the sheep business and he understood that he took a buckboard and drove out into the mountains, he thought it wouldn't be hard to get him in some way. Mr. Pettibone thought it would be a very hard job down in a little country town like Caldwell was. We talked a good deal on that. This is about the substance of the conversation we had.

Q. How long were you there engaged in this conversation?

A. About two hours I think.

Q. State whether or not you came to any conclusion with these parties as to your movements in this regard? A. Yes sir, I did.

Q. What was agreed there between yourself and Haywood and these other parties? A. It was agreed that I would go down and undertake to carry out the job.

Q. What, if anything, was said in regard to the manner in which you would goer the course that you would pursue? A. He said I could use my own judgment how I carried out the job.

Q. You have stated, Mr. Orchard, if I understood you right, that Haywood's part of the conversation referred to several others who were sent to Idaho? A. Yes sir.

Q. Did he go into any particulars at that time and in that conversation with reference to the others who had been sent out?

A. He mentioned several names, said he had sent Art Baston down here.

Q. When did he say he had sent Art Baston, give that matter fully. A. I don't know that he told me when he sent him.

Q What did he say?-- what was said at that time in regard to Art Easton? Give the entire conversation as near as you recollect it.

A He said he had sent Art Easton down here to try and get away with ex Governor Steunenberg and he had failed in it; said he had also sent Ed. Minster.

Q When did he say he had sent Minster? Tell us all that he said.

A I don't remember when; some time before that, and he said he had sent a man by the name of Mc Carthy and they had all failed. He said they had also sent Steve Adams.

Q Did he go into particulars with any of these parties? A No sir.

Q At that time? A No sir.

Q Did you know Art Easton? A Yes sir.

Q Who was Art Easton? A He was a man that belonged to the Western Federation of Miners. He had been in Altman and Telluride, so he told me, but I knew him in Denver, when I knew him.

MR. RICHARDSON: We move to strike that out, that telling part, if your Honor please.

THE COURT: Who told him?

Q Who told you? A He said Art Easton told me.

MR. RICHARDSON: We move to strike it out.

Q Where was he when he told you this? A Mr. Easton?

Q Yes. A In Denver.

Q In what part of Denver-- was it in headquarters? A No sir, I think we were on the street or at Pettibone's store, I am not sure which it was.

Q Did you ever meet him in Western Federation headquarters?

A No sir.

Q Was any one present when he told you of these particular parties, Pettibone, Moyer or Haywood, when he told you in regard to who he was? A No sir, we were alone.

Q You were alone? A Yes sir.

MR. HAWLEY: We don't deny the motion to strike.

THE COURT: What was the motion?

MR. RICHARDSON: To strike what Baston told him himself.

THE COURT: That may be stricken out.

Q Who was this man-- did you know who he referred to when he spoke about Minster? A Yes sir.

Q Who was this man Minster? A He was a man that I knew at Cripple Creek.

Q What was his business? A He was a miner.

Q Union or non-union? A He was a union man.

Q What union did he belong to? A Free Coinage Union.

Q The same/you belonged to? A Yes sir.

Q Did you know who he referred to when he spoke of McCarthy?

A No sir, I did not.

Q State whether or not prior to this time you had had any talk with Haywood, Adams, Moyer or Pettibone with reference to any of these parties going to Idaho? A Yes sir, I had; I had talked with Mr. Pettibone and Mr. Haywood.

Q When was this conversation had? A It was had about July, 1904-- July or August.

Q And where? A In Pettibone's back yard of his residence.

Q You may relate that conversation? A They said--

Q Who said? A Pettibone and Haywood told me in the conversation--

I asked them where Adams was.

Q Steve Adams? A Steve Adams, and they told me that-- Pettibone and Haywood told me he had gone to Idaho to help Jack Simpkins get rid of some claim jumpers that he had on some claims that he had, and after he got through with that he was coming down to Caldwell to assassinate ex Governor Steunenberg, or try to, and they asked me if I knew where Gordon postoffice was in Idaho, and I told them no, I did not; and they said they wanted to send some money up there for Steve Adams to go to Caldwell with, and I told them I did not know where Gordon postoffice was, and they said they would send it to Ed Boyce and have him give it to Simpkins for Adams.

Q What Simpkins? A Jack Simpkins.

Q Go ahead with what else was said at that time, if anything?

A That was about all that was said in reference to that.

Q Did you have any further talk with either of these parties after that time in regard to the matter? A Yes sir, I did.

Q When was it? A It was after I came back from California.

Q And about what month? A I could not say what month; it was in January or February, 1905.

Q Where was the conversation had and who was present? A I could not state exactly where it was; it was either at Pettibone's store or Haywood's residence I think.

Q Who was present and who did you have the talk with? A Mr. Adams,

Mr. Pettibone and Mr. Haywood.

Q What was that conversation? Relate it in its entirety as nearly as you can? A Mr. Adams told me that the money they sent up there--

Q That who sent? A That Mr. Haywood and Mr. Pettibone sent had miscarried and did not reach him and he did not get it.

MR. RICHARDSON: Wait a minute. Was Haywood and Pettibone present, did he say?

MR. HAWLEY: Yes sir.

Q Go ahead. Did he say how?

MR. RICHARDSON: One moment, if your Honor please. Let him state the conversation.

Q Go ahead and state the conversation.

THE COURT: Let him state the conversation, Mr. Hawley.

Q State it in its entirety. A Mr. Adams told me what he had done with the claim jumpers.

Q Just relate all that he said. A He said that Jack Simpkins and him had gone up--

MR. RICHARDSON: We want to know if Haywood and Pettibone were present at all of this, and anything beyond the fact that they were present, and what was said while they were present, the witness ought to be instructed not to speak in reference to anything that was said by Adams or when they were not present.

Q THE COURT: That depends on what it relates to.

MR. RICHARDSON: If it is any subject of conversation--

THE COURT: If it has nothing to do with this case it ought not to be answered, but if it has to do with this case it ought to

be answered.

Q Go ahead, Mr. Orchard. A I would not state that this conversation was all held when they were all present; I am not sure whether they were or not.

MR. RICHARDSON: Then we object to it, if your Honor please

Q Now, Mr. Orchard, this first conversation that you had with regard to this matter after you went from California was had either in Pettibone's place, I believe you say, or where was it you think it happened? A I think it was in Pettibone's store, the first conversation, but this conversation about these claim jumpers was not gone into any more than spoken of before Mr. Haywood and Mr. Pettibone.

Q I am asking now what was said at that time in the presence of Pettibone and Haywood in reference to that trip. Give that conversation at that time and tell about all it was; don't confuse it with any other conversation that was had if you can help it. A I don't remember anything more being said except the miscarriage of this money and the reason Steve Adams did not go to Caldwell.

Q What did they say in regard to the miscarriage of that money at that time? A Mr. Pettibone said they had sent it to Ed. Boyce and he had not given it to Jack Simpkins for Mr. Adams.

Q Did he ~~said~~ say anything further in regard to that at that time?

A I don't remember that he did.

Q When did you next have any conversation with reference to this matter with any of these parties? A I had a conversation with

Steve Adams.

Q When and where was that? A It would be at his residence, where we were living.

Q Were either of these parties present? A No sir.

Q Did you have any conversation with Moyer or Haywood or Pettibone with relation to Steve Adams and his attempts? Did you talk or discuss Steve Adams with them? A Yes sir, I have.

Q When were these conversations had? A I could not say exactly when that was; that was some time during that winter,-- perhaps several times.

Q Did you talk at any time with Haywood with reference to him?

A We spoke of it, I think, in a general way.

Q Talked with Pettibone with reference to it? A I talked with Pettibone more than I did with Haywood about it.

Q You may relate any of these conversations, giving the words as near as you can, with either Pettibone, Moyer or Haywood, if you had any with Moyer in the matter.

MR. RICHARDSON: So far as that is concerned, we object to it as incompetent, immaterial and irrelevant. It could not bind Haywood, any conversation he had with Adams.

MR. HAWLEY: It is not conversations with Adams.

THE COURT: This is a conversation with Moyer, Haywood and Pettibone.

MR. HAWLEY: We will ask him generally in reference to his conversations in relation to these matters.

THE COURT: The court will overrule the objection.

MR. RICHARDSON: Note our exception.

Q Go ahead. A The conversation I had with Pettibone would be what Adams had told me with reference to his trip.

Q Then give that conversation with Pettibone in its entirety between you and him, that part relating to what Adams said, if you referred to it. A In that conversation--

MR. RICHARDSON: We object to it as incompetent, immaterial and irrelevant; a statement made by this man to Pettibone as to what Adams had told him could not be binding upon Mr. Haywood in a case of this kind.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q Go ahead and state all that was said. A You mean for me to state what Adams had told me?

Q State what Pettibone said to you and what you said to him, if it includes anything that Adams said; give us that as part of the conversation; give us all the conversation including what you was repeating or what he was repeating as to what Adams had said.

MR. RICHARDSON: To which we object for the reasons last stated.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A Mr. Adams had told me about killing--

MR. DAWROW: Wait a minute.

THE COURT: You need not state what Adams told you unless

you stated it to Pettibone, and if you did, you may go on and state that as part of your conversation with Pettibone.

THE WITNESS: Yes sir. Well, when Pettibone and I had this conversation we were talking about Adams' trip up on the St. Joe river and up on Marble creek.

Q Tell the language as near as you can that was used by both of you in regard to it. A We were talking about a man by the name of Tyler that was killed up there, that Adams told us he had killed.

Q No, state what you told him, or what was said between you in the conversation; I think you are getting it all right.

MR. RICHARDSON: We object to that.

THE COURT: You are not to relate anything here except what you said to Pettibone.

MR. HAWLEY: Or what Pettibone said to you.

THE COURT: You may relate any conversation you had with Adams that you stated to Pettibone or that Pettibone stated to you; you may relate that.

THE WITNESS. We were talking about Tyler being killed up there in the Marble creek district and we talked over how he had been-- I don't know how to tell it without telling what Adams told me.

THE COURT: If you told him what Adams told you you may tell it, but the court would like to know what that feature of the case has to do with this.

MR. HAWLEY: There is a number of things connected with the whole matter, and I want the whole matter connected with these

parties, and we expect to connect this by other evidence.

THE COURT: With your statement that you will connect it up, you may go on.

MR. RICHARDSON: Note our exception.

Q If you told Adams-- told Pettibone what Adams had told you, that is all right. A I did.

Q Go ahead. A He told about Tyler being killed up on Marble Creek, and about him being held up there in a cabin at night and held over night, and the next morning taken out with Adams and two other men; they took him out a mile or two from this cabin and shot him and left him there; about coming back down from there-- but I will have to tell what Adams told me.

THE COURT: If you told it to Pettibone, go on and tell it.

THE WITNESS: Yes sir, I did.

THE COURT: Go on and tell it just as you told it to Pettibone.

THE WITNESS: He told me that he come out and met Jack Simpkins and told him what he had done, and that he did not have no claim jumpers on his claim now, that they had been done away with; and they waited about a week and did not hear anything about it at all, and that Simpkins and him made up their minds that ^{that} they would not do any good as the rest of the claim jumpers had not gone out of there, and that Simpkins and him-- Simpkins and Adams and two others went up to Jack Simpkins cabin on his claim on Marble Creek, and in the morning, a little after-- sometime after daylight

in the forenoon, a man by the name of Walley and another man came along, came down the trail near this cabin-- Jack Simpkins cabin-- and that they shot Walley, shot his horse and his dog and shot at the other men and then they came back over to Newt. Glover's cabin, and over on the branch of the St. Joe river.

MR. NUGENT: Now, was all this the conversation you had with Pettibone?

THE WITNESS: Yes sir, I talked that over with Pettibone.

Q Proceed. A I don't know as it was in as much detail as that; it was in general like that.

MR. RICHARDSON: We move to strike it out then.

THE COURT: The motion is denied.

MR. RICHARDSON: Note an exception.

Q Proceed Mr. Orchard. A He stayed-- he told me he stayed there about a week or ten days.

MR. RICHARDSON: Now, he is back again telling what Adams told him.

THE COURT: I understand he told this to Pettibone.

THE WITNESS: Yes sir, I did.

THE COURT: Go on.

THE WITNESS: He got a letter from his wife and came back to Denver; he got a hundred dollars from Simpkins and came back to Denver on that, -- I am not sure whether he told me he got the money from Simpkins or a man by the name of Mason.

Q What did Pettibone say in answer to this? What part did he take in the conversation? A Pettibone said that they cleaned up the

claim jumpers for Jack and they did not have any more up there.

Q Did you have any further talk in that conversation in regard to Adams and his connection with different matters pertaining to the Federation? A I don't know that I did at that time.

Q Sir? A I don't think I did at that time.

Q Did you at any other, or if you recollect,--

MR. RICHARDSON: Then I move to strike out all this testimony with reference to the conversation between the witness and Pettibone in regard to what Adams had told him, as incompetent, immaterial and irrelevant and not connected with this defendant, and not responsive to any issue made by this indictment.

MR. HAWLEY: We expect to go farther into this matter and connect it with other matters, but we do not want the matter discussed so far as that is concerned until we get into these other conversations and then we will take up the legal questions involved.

THE COURT: The court can hardly conceive at this time how this testimony can be material or proper in this case, so far as the claim jumpers on Marble creek are concerned, unless you can show that that is a part of the general conspiracy which you are attempting to prove.

MR. HAWLEY: What I say is this: We expect to prove by other conversations with Pettibone and Haywood and with Meyer that it does so pertain. We will claim-- if we fail in that proof as a legal proposition we will claim that we have established it sufficiently, but I desire to impress upon the court now that it will be premature to argue that now.

MR. RICHARDSON: Yes, I understand, but we are not without experience in cases of this character where the proof is introduced with the promise to connect it up, and day after day proof goes in over objection with the promise to connect it up, and when the time comes to rule upon it the statement is made that the conspiracy is to be inferred, and it is a question for the jury, and I say that it is the duty for the court to perform in advance, and we are not to be bound by it.

MR. HAWLEY: We do not know what peculiar methods and practices have prevailed in Colorado with which our friend is familiar, but our claim in this matter is that we will urge upon what has been said that this is proper evidence, and it is the wrong time to urge it or bring on an argument on it, because we expect to prove from this witness himself other conversations with others of these defendants that will explain the matter, and we will go farther into it and show the connection, so it would be premature, we urge, to take up this objection at present or until we conclude this portion of the examination of this witness; that it should be held in abeyance until that time and then we will argue it.

THE COURT: Do you expect to show that the matters relating to the claim jumpers on Merbel creek was a part of the general conspiracy that you are outlining here to prove this case?

MR. HAWLEY: I am expecting to prove by these conversations that they themselves had sent this man up there for that purpose,

and that they did send these men up there for a purpose, it being a part of their objects. While disconnected with the main objects of the conspiracy, it would still be connected to make them all responsible and would be a proper matter to go into.

THE COURT: The court will ^{with-}hold action on this matter at this time.

MR. RICHARDSON: Note our exception.

THE COURT: The exception may be noted. We will take a recess at this time.

The court thereupon gave the jury the statutory admonition and a recess was taken until 1:30 o'clock P.M.

R E C E S S.

AFTERNOON SESSION

1:30 o'clock P. M.

The clerk called the names of the jurors and announced to the court that they were all present.

DIRECT EXAMINATION of the witness Harry Orchard continued by Mr. Hawley.

THE COURT: Gentlemen, referring to the motion that was made just before the noon recess to strike out certain portions of the testimony of this witness, the court will overrule that motion.

MR. RICHARDSON: Note our exception.

THE COURT: You may take your exception.

MR. HAWLEY: In that matter, we will take it up later by another witness, and as I understand it is overruled at present.

THE COURT: Yes sir, you may proceed.

Q At the forenoon session, Mr. Orchard, and shortly before adjournment, we had been questioning you in regard to the conversation that you had with the defendant Moyer and others with reference to the proposed trip to Idaho. I will now ask you how long it was after that conversation before you started upon the trip, if you did start? A I started about two days after,-- I think the next day, or possibly two days.

Q Prior to your starting, did you have any further conversation with the defendant Haywood or any of the defendants? A I had some conversation with Mr. Pettibone.

Q With reference to your course out here, your course of action?

A Yes sir.

Q You may state that conversation. A Mr. Pettibone helped me get my trunk ready and went to the depot with me-- helped me check it; I don't know as we had any more conversation only in a general way.

Q What, if anything, had you done in regard to your valise in Canon City? A I had got that some time before that.

Q How long before that had you got it? A Possibly two or three weeks-- possibly.

Q Two or three weeks? A I think so.

Q What-- did you ever have-- what did you do, if anything, with the bomb that you had had at Canon City, or the Feebody bomb, as you call it? A I brought it with me, after I got it, in my trunk when I left Colorado for Idaho.

Q You may state whether or not you had any conversation with Haywood, Pettibone or Moyer with reference to this bomb or taking it with you? A I had a conversation with Pettibone and Mr. Haywood about going down after it.

Q What was said in that conversation? A I told them I was a little afraid to go after it after leaving it there so long. I had written a letter or Pettibone wrote it for me, to Leadville, to

Marion Moore; he was in Leadville, and I wrote the letter asking him to come back that way--

MR. RICHARDSON: If there is a letter let us have it, and the contents will speak for themselves.

Q Have you the letter? A No sir, I wrote the letter to Mr. Moore.

MR. RICHARDSON: Then we object to it.

Q Mr. Moore was one of the members of the executive committee, was he?

A Yes sir.

MR. RICHARDSON: We object to it.

THE COURT: Have you made any attempt, Mr. Hawley, to get the letter?

MR. HAWLEY: No sir, the letter was sent to Mr. Moore and I know that Mr. Moore is one of the members of the executive committee.

MR. RICHARDSON: The letter itself is the best evidence of its contents.

MR. HAWLEY: That may be true, but any communication to any of these parties would be proper in this case.

MR. RICHARDSON: Not such a communication as that.

THE COURT: The court will sustain this objection.

Q Did you have any conversation with Haywood or Pettibone in regard to the matter? A Yes sir, I did.

Q Did you have any conversation with them? A Yes sir.

Q And what was it? A I discussed with them about going down after it.

Q State whether or not you went after it yourself? A I did.

Q Did you have any discussion with either of them or any of them?

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in regard to taking it to Idaho, or what disposition was to be made of it after you got it? A After I got it and brought it back I took it over to Pettibone's house; I kept it there a day or two in his cellar and took it out and buried it by the stable where we kept the horse and buggy, and when I came to Idaho we took it up-- I took it up alone and brought it down to Pettibone's store where my trunk was and packed it in my blankets and clothes that I had in the trunk and brought it with me.

Q State whether or not Pettibone knew that you took it and assisted you in this? A Yes sir, he did.

Q Now, you may commence, Mr. Orchard, or before you commence, what if anything was given you in the shape of funds and by whom, if any was given you before starting? A Mr. Haywood gave me \$240.

to Mrs. J. H. ...

Q What was that in cash? He had given me \$60. before in three different times, 20. each, and he wanted me to say to Mr. Moyer that he had given me \$300. counting that in with the \$240.

Q Did you have any understanding with him in regard to drawing more funds, and if so what was it? A I was to send to Mr. Pettibone for it if I needed any more.

Q Who was that understanding with? A Haywood and Pettibone.

Q Did you talk with Moyer in regard to this matter? A Yes sir.

Q State whether or not he was present at these conversations with the other parties? A Yes sir, the three of them were present and Mr. Moyer told me to get what funds I wanted from Mr. Haywood.

Q You may go on now and state in a narrative form what you did after leaving Denver on this trip to Idaho-- where you went and all

about it? A I came to Salt Lake from there-- Salt Lake City, Utah.

Q Go right ahead without questioning and tell all that you did?

A I came to Salt Lake City. I bought first in Denver a round trip ticket good to go to Portland, Seattle and back by way of Spokane, and Helena I think, and I came-- it was good to stop off anywhere on the road for three months-- to return any time for three months. I stopped at Salt Lake on my way, three or four days, I don't know which, and I came on and stopped off at Caldwell-- I stopped off at Nampa first.

Q When was it you reached Nampa? What day if you remember? A I don't remember the day; it would be about the 1st of September some time.

Q To what hotel did you go if any? A I stopped at the Commercial hotel.

Q Who was the proprietor of that hotel? A I think his name was Hinkey, I am not sure.

Q State how you registered, if at all. A I think I registered as Thomas Hogan.

Q How long did you stay there? A Three days, I think.

Q Where did you go then? A I went to Caldwell.

Q Where did you go when you got to Caldwell? A I stopped at the Pacific hotel.

Q Who kept that hotel? A Mr. Dempsey.

Q Did you register at the Pacific hotel when you went there?

A Yes sir.

Q Do you remember the date? A No sir, I do not.

Q Under what name did you register there? A Thomas Hogan, I think.

Q What did you do while you was in Nampa during this trip, or during those days, before you went to Caldwell? A I met a man by the name of Wilcox when I got off at Nampa. I was-- he told me--

MR. RICHARDSON: One moment, we object to anything in respect to Wilcox.

MR. HAWLEY: We don't want the conversation; that is not the question.

THE COURT: The question is withdrawn then?

THE WITNESS: I did not do anything.

Q Was you making any inquiries? A Yes sir, I made some inquiries

Q Upon what subject?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A I was making some inquiries to see if Mr. Wilcox knew anything about Mr. Steunenberg. He told me--

MR. RICHARDSON: No, wait; never mind what he told you.

Q I don't want what Wilcox told you, but I want to know during these three days what you were doing generally, the general nature of your business at Nampa. A I was trying to find out what I could about Mr. Steunenberg and his habits.

Q You don't remember this date do you? A I think it was about the

5th or 6th of September.

Q How long did you stay in Caldwell after you went there? A Two or three days.

Q State what you did while in Caldwell. A I found out where Mr. Steunenberg lived and that he was not at home.

Q Did you stop all the time at the Pacific hotel? A Yes sir.

Q After ascertaining in regard to Steunenberg, what did you do?

A I went from there to Boise.

Q Where did you stop here at Boise? A I stopped the first night at the Capitol hotel.

Q Did you register? A Yes sir.

Q Under what name? A Thomas Hogan, I think.

Q How long did you stop in Boise that trip? A I stayed there that night and until the next afternoon.

Q And what was your business in Boise? A I was looking after Mr. Steunenberg. I had learned in Caldwell that he was in Boise.

Q You say you left the next afternoon? A Yes sir.

Q Where did you go? A I went to Portland.

Q Had you ascertained the whereabouts of Steunenberg while you were in Boise? A Yes sir.

Q What did you ascertain in reference to his whereabouts? A I found he was in the Idanha hotel.

Q Did you make more than one trip to Boise? A At that time?

Q Came back afterwards? A Yes sir.

Q Where did you have your trunk during this trip to Caldwell and

- Boise? A I had it at Nampa.
- Q Where? A I left it at Nampa in the depot.
- Q After leaving Boise where did you go? A I went to Portland, Oregon.
- Q And from Portland where? A Went to Seattle.
- Q And from Seattle where? A To Spokane.
- Q How long did you spend in Portland and Seattle? A I was in Portland about a week-- in Seattle about a week.
- Q You was in Portland and Seattle about a week? A I was in Portland two or three days and Seattle about a week.
- Q What was your object in going there? A I went to Portland to the Exposition there in Portland, and in Seattle I was trying to locate a ranch that would suit me.
- Q At whose request were you trying to locate a ranch? A Mr. Pettibone's.
- Q For what purpose? A A ranch that we had been talking of buying for some time-- for a long time, for the purpose of having it for if we wanted to send any one to hide out for anything he had done we would have a ranch to send them, or some place.
- Q When did you have this talk with Pettibone? A There had been an understanding between Pettibone and Haywood and Moyer for a good while that when I got done with this business they would give me money enough to buy a ranch.
- Q When did you have a talk about this particular place? A Before left Denver.

Q How long did you stay in Spokane? A Just one night.

Q And where did you go from Spokane? A To Wardner.

Q What was your object or purpose in going to Wardner? A I went to see Jack Simpkins.

Q State whether or not you had had any conversation or understanding with the defendants or any of them in regard to seeing Jack Simpkins before you left? A No sir, I didnot.

Q Did you know Jack Simpkins at the time? A Yes sir.

Q You knew his position? A Yes sir.

Q State whether or not he still held the same position in the Federation? A Yes sir, he did.

Q Where was Simpkins when you got there? A He was at Wardner.

Q Did you see him? A Yes sir.

Q Go on and relate in a narrative form what you did after getting to Wardner and seeing Simpkins? Well, I will ask you first, did you have any talk with Simpkins in regard to the object and purpose of your trip? A Yes sir, I told him where I was going.

Q What did you say? State the conversation between Simpkins and yourself. A I told him I had been down to Caldwell trying to assassinate ex Governor Steunenberg.

Q Go on and give the entire conversation. A Then I told him that Dave Coates had said to me when he was in Denver, it would be an easy matter to kidnap one or both of August Paulsen's children and get fifty or sixty thousand dollars, and asked him what he thought about it and what he thought about Coates, and he said he thought it would be all right-- would be easy to get.

Q What did he say about the Steunenberg matter? A He said we could go down and do that afterwards, and if we got the money out of Paulson for this job we could hire some one else to do it.

Q How long did you stay in that vicinity? A We went that same evening I got to Wardner about noon and that same evening went to Wallace.

Q How long did you stay in Wallace? A About a month, I think; possibly a little more.

Q Stayed there a month? A I was in Wallace and Burke, the same thing.

Q Was Simpkins with you? A Yes sir, most of the time.

Q State whether you had conversations at different times in regard to the assassination of Steunenberg with Simpkins, while you was there? A Yes sir, we had some conversations, only in a general way though then.

Q State whether you had any understanding or agreement with him outside of what you stated with reference to his coming down to Caldwell?

A After I was there about a month he said he would come down to Caldwell with me; he could make an excuse to go over to Silver City and visit the union and get his expenses paid anyway.

Q Where was you when you had this conversation with Simpkins?

A In Wallace.

Q What was-- what conclusion did you come to between you in regard to that trip then to Caldwell? A We concluded we would come to Caldwell.

Q Was there any particular time fixed for it? A No sir, not until

we started, a day or two before we started.

Q What did you do after this understanding was made in regard to him and you coming to Caldwell, what did you do and where did you go?

A We came to Spokane where I stopped at his house where he was living.

Q How long did you stop there at Spokane? A Two or three or four days; I have forgotten.

Q Where did you go from there? A We came to Caldwell.

Q State whether or not during the time while you was in the Coeur d'Alenes you went into the St. Joe country? A Yes sir, I did.

Q What time was it that you went into the St. Joe country with reference to your coming to Caldwell, or with reference to your going to Wallace? A I think it was some time in October we went up in the St. Joe country.

Q Where did you go and who did you go with? A I went with Jack Simpkins. We went about 25 miles from the head of navigation on St. Joe river on Marble creek where Jack Simpkins had a timber claim.

Q How long did you stay there? A We was gone about a week I think.

Q Where is the head of navigation, on what river? A The St. Joe river.

Q State whether that is the name of a town or settlement there-- the name it has generally gone by? A That is the only name I ever heard for it.

Q State whether there is any hotel there or not? A Yes sir.

Q Did you stop there at the hotel? A Yes sir.

Q Who owned the hotel? A I don't remember the name.

- Q Do you remember the name of the hotel? A No sir, I don't.
- Q What name was you going by there? A Orchard, I think.
- Q Was Simpkins with you at this hotel? A Yes sir.
- Q Did you room together? A Yes sir.
- Q State whether or not you stopped at the same hotel coming back?
- A Yes sir, I did.
- Q Roomed together at that time? A Yes sir.
- Q Do you remember the name of the hotel? A No sir, I do not.
- Q What name was you going by there? A Harry Orchard, I think.
- Q Was Simpkins with you at this hotel? A Yes sir.
- Q Did you room together? A Yes sir.
- Q Do you remember who it was that signed the hotel register-- that registered your names? A I don't remember his name-- it was somebody acting in the capacity of a clerk there.
- Q Did you sign the register? A No sir.
- Q Who did sign? A It was somebody-- I don't know whether he was a clerk or who he is but somebody connected with the hotel.
- Q I understand you now. After you came back from St. Joe, where did you go? A Went to Spokane.
- Q Was this trip to the St. Joe country immediately before you went to Spokane on your way to Caldwell? A Yes sir.
- Q Where did this-- what had you done with the trunk-- with your trunk during this trip around? A I had my trunk to Wallace with me and when Simpkins and I left Wallace, when we went to Spokane-- before we went to Spokane we went to St. Joe up on a hunting trip.

Q State whether or not this bomb that we have called the Peabody bomb was in your trunk? A When?

Q When you went to Wallace? A Yes sir, it was.

Q State whether or not you disposed of that up there at Wallace?

A Yes sir.

MR. RICHARDSON: I would rather have him state what he did with the thing than for you to lead him along in this way. The witness is saying nothing except yes or no to the questions and the testifying is being done by the counsel.

THE COURT: I don't think that question was put that way.

MR. RICHARDSON: Save our exception.

MR. HAWLEY: Well, I will put it another way.

Q Well, what disposition did you make of that bomb? A I took the bomb out of my trunk while I was at Wallace and started to throw away and there was a man with me by the name of Cunningham and he asked me what I had there.

Q You need not go into the conversation. A I gave him the bomb.

Q You gave him the bomb? A Yes sir.

Q Did you know what he did with it? A No sir, I did not, not at the time.

Q This was in Wallace? A Yes sir.

Q What hotel were you stopping at in Wallace? A I was stopping at a rooming house.

Q Who kept the rooming house? A I don't remember the lady's name. It was close to the C. R. & N. depot.

Q State whether or not Simpkins knew about your having this bomb?

Copy to Wallace

A Yes sir, he did.

Q When had you informed Simpkins in reference to it? A I told him I had it in my trunk when I first went up there.

Q Did you ever show him the bomb? A I don't know that I did.

Q Did you state whether or not you described the bomb to him?

A Yes sir, I did.

Q What did he say with reference to it, if anything? A Well, he said it was a pretty dangerous thing to have there, it was so old.

Q What conclusion did you and Simpkins come to, if any, in reference to the bomb? A That I better throw it away.

Q How long was this conclusion reached between you and Simpkins before you gave the bomb away to Cunningham? A Just that day, or the day before, I think it was.

Q How long was this before you went to the St. Joe country with Simpkins? A I don't know; possibly a couple of weeks or maybe less than that; I would not say just how long.

Q On that trip to Spokane, after going to the St. Joe country how long did you stay? A We stayed three or four days at Spokane.

Q Where was you stopping while there? / at Spokane? A I stopped part of the time at the Spokane hotel and part of the time at Simpkins house where he was living.

Q Was Mr. Simpkins living at Spokane? A Yes sir.

Q State whether or not he had a residence in Wardner also? A He told me that he did.

Q And when you first went to Wardner or to Wallace, where was he

when you met him first, or where did you understand he was?

A I had understood he lived at Wardner, and I went there to look for him and found him there.

Q What if anything did you do while in Spokane with reference to a bomb? A We bought 10 pounds of powder to make a bomb out of.

Q Who bought this powder? A Simpkins.

Q Do you know where he bought it? A I don't remember the name of the hardware store and I don't remember the name of the street; I think it was Hawley and something,-- there was more than one name the firm.

Q Where was you stopping at the time you bought this powder for the bomb? A Stopping at his house.

Q What else did either yourself or Simpkins buy for the bomb?

A We bought a pair of field glasses.

Q Who bought them and where, if you know? A Bought them at a second hand store-- Simpkins bought them, I don't know where.

Q How about any other explosives besides powder for use in the bomb? Did you purchase any other explosives? A No sir, I don't think so.

Q State whether or not-- or state what you did with the powder and what you did, if anything, towards making the bomb? A I did not do anything towards making it there. We fetched it with us to Caldwell.

Q Who took charge of it? A I think it was in my grip at the time came to Caldwell.

292 Q After you went to Caldwell-- or when you was in Spokane, how did

you register-- by what name was you known? A I was known by the name of Orchard. I was not registered no place.

Q Did you have any business while there with any law firm?

A Yes sir.

Q What was that business, or, who was it with? A It was with Robinson, Miller and Rosenfelt.

Q Who is this Miller that is one of that firm? A He was an attorney with that firm, Mr. Miller.

Q Mr. Fred Miller? A Yes sir.

Q What was your business? State it in a general way.

A When I had come down from Wallace the first time I had checked my trunk to Harrison; when I got down to Spokane-- I mean from Walla I had checked my trunk to Harrison and had rechecked it on the boat and gave them my railroad check to get my trunk and they gave me their own check for it to fetch it to Spokane on the electric road, and when I got to Spokane I could not get the trunk and I tried to hunt it up and was two or three days looking for it and could not find it, and they said it was not at Harrison, and the railroad officials said they had wired to Wallace and Harrison and they could not find it.

Q By reason of this loss did you go to this law firm? A Yes sir.

Q How did you come to go to this firm? Had you been acquainted with them before?

MR. RICHARDSON: Well, if your Honor please, "how did he come to go to the firm," is not that enough?

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A Mr. Simpkins took me there and introduced me.

Q Had you had any prior acquaintance with them? A No sir.

Q Do you know the relation of this firm toward the Western Federation of Miners? A No sir, nothing more than Simpkins told me.

Q What did he tell you in regard to that? A He said that they had had them employed before and that they were good attorneys.

Q What, if anything, did he say about their being in the employment at that time of the Federation? A He did not say anything, that they were or not.

Q After you had made this arrangement, -- or, did you go to Caldwell?

A Yes sir, soon after.

Q And where did you stop when you came to this section of the country, what particular town first? A Caldwell.

Q Caldwell? A Yes sir.

Q Where did you go? A We went to the Pacific hotel.

Q That is the same hotel you have spoken of heretofore? A Yes sir.

Q State whether or not Simpkins was still with you when you went there? A Yes sir, he was.

Q Did you register? A Yes sir.

Q Under what name did you register? A I think I registered as Thomas Hogan.

Q Did Simpkins register? A No sir.

Q Who registered him, if anybody? A I did.

Q Under what name did you register him? A Simmons.

Q Was he present when you did this? A Yes sir.

Q Did you have any conversation with him in reference to it or any statement from him in reference to it? A He said he would use an assumed name; he would not use his own name. We had not come to any understanding and when I wrote it I just wrote "Simmons."

Q I will show you this name on exhibit "B" for identification, look at that name on Exhibit "B", "Thomas Hogan, Denver?" A Yes, that is my name.

MR. BORAH: Speak a little louder.

THE WITNESS: That is my name.

Q Take that signature immediately below it? A That is mine too.

Q That is your signature? A Yes sir.

Q This is the register, is it? A I don't know whether that is the register.

Q Well, that is the way you registered? A Yes sir.

Q Look at the-- did you register more than once at that time?

A At that time I don't think I did.

Q State what room you occupied if you know? A I don't remember the number of the room.

Q State whether or not-- or state how it was about rooms; did you ~~sk~~ have separate rooms, you and Simpkins, or did you occupy the same room? A We occupied the same room.

Q How long did you stay there? A We stayed there three or four or five days I think.

Q What was you doing there, yourself and Simpkins? A We were trying to find out if we could locate Mr. Steunenberg.

Q Go on and say what you did in regard to locating Steunenberg?

A We was there three or four or five days I think, and we did not locate him. We went up around his residence and we did not find him, and we went to Nampa and when we got to Nampa we called his residence up on the telephone and asked them if Mr. Steunenberg was at home and they answered that he was at home but he was down town. I told them I would call him up again. We left there and went back to Caldwell on the evening train that same evening.

Q That is, you and Simpkins? A Yes sir.

Q Did you and Simpkins stop at a hotel in Nampa? A We were in the hotel but we did not stop there while we were up there for an hour or so.

Q Did not register then? A I think we did.

Q After you went back from Nampa to Caldwell what did you and Simpkins do? A We went up around Mr. Steunenberg's residence to see if we could see him.

Q Yes? A We-- I don't know just how long it was,-- how long it was before we found him, but we located him on Sunday evening in the Saratoga hotel and we had this bomb made in the meantime that we had fetched down there, and we took it up and planted it along the sidewalk near his house and fixed it so that there was a wire across the track or across the walk so that when he went over it it would pull over a little windlass and upset some sulphuric acid on some giant caps and set it off.

Q Where did you set this bomb, you say? A We set it on the side street that is leading to his residence, about a block from his residence.

- Q When you say "we" who do you mean? A Jack Simpkins and I.
- Q What time of day was it when you set this bomb? A It was at night about an hour or so after dark.
- Q What reason did you have to believe that Steunenberg would go in that direction? A His was the only residence there was up there and we believed he would go home that way.
- Q State whether or not you had located him downtown? A Yes sir, we had located him in the Saratoga hotel.
- Q When did you plant the bomb with reference to fixing this string? at the same time-- fixing the wire, or ~~later~~ before? A We located him a little before dark, sitting in the lobby of the hotel reading and we watched him to see if he stayed there until dark and we found out that he did and we went up and set this bomb just a little after dark.
- Q After you set the bomb what was the result? What was done? State all about it? A We set the bomb and went back to the Pacific Hotel as quick as we could. We waited there for two or three hours and did not hear anything of it and then went back where the bomb was and we found that some one had walked along and broke the wire and I went and took the bomb up and took the sulphuric out of it and took it over and hid it in some weeds near the railroad track by the Pacific hotel.
- Q What did you use to hide it? A Covered it up with some ~~sticks~~ coal and some weeds alongside the railroad track.
- Q Who was with you when you went and took the bomb up and hid it?

- Q When had you made this bomb? A We fixed it in our room in the Pacific hotel after we located Mr. Steunenberg.
- Q When you say "we" who do you mean? A I mean Mr. Simpkins and I.
- Q What did you use besides the powder? A We used some giant caps, some chloride of potash, sugar and sulphuric acid.
- Q What powder was this that you used for this bomb? A The powder Simpkins bought in Spokane.
- Q Where did you get the giant caps that you used as part of the bomb? A They were some I had in my trunk when I left Denver.
- Q Where did you get-- go ahead. A I got that from Max Malich when I got the powder in the first place.
- Q Where did you get the chloride of potash and sugar?
- A I think I bought it in Spokane; I am not sure whether I got it in Spokane or in Denver,-- some I had left.
- Q Where did you get the sulphuric acid? A In Spokane.
- Q What other covering did you have for this bomb? What did you use to make it? A It was made in a box. It was a box that would hold ten pounds of powder, eight inches square perhaps, and four or five inches high.
- Q Of what was the box made out of? A Think boards, about a half inch thick.
- Q After you had taken this bomb up after it failed to explode and you had taken it up and hid it, what was done by Simpkins and yourself, or either of you with reference to the bomb? A We went the next morning and took it up ~~xxx~~ farther on the railroad track and went over in a field where there was some straw thrown

out there and we covered it up in that straw and left it there.

Q How far was that from the town? A I think it is about a half a mile from the main part of the town.

Q What was afterwards done by Simpkins and yourself? A Simpkins concluded then that he better not stay there.

Q What did he say with reference to it? A He said that he had seen two or three men there that knew him; he did not know whether they recognized him but he knew them and it would be worse for us-- for me and him if he was caught there with me, it would be worse for me if he was caught there with me and I better stay and try and finish it alone.

Q Did he say where he would go? A He said he would go over to Silver City and Delamar.

Q What conclusion did you come to in that regard? A He concluded to go and he went, I think the next day.

Q Did you have any further talk with Simpkins as to what you should do while he was gone? A I was to try and carry out this plot,-- set this bomb again for Steunenberg.

Q Do you know what time it was that he, Simpkins, went, left Caldwell-- do you know the month? A I think it was in November.

Q Do you know the day of the month? A No sir, I don't.

Q After Simpkins left Caldwell what did you do with reference to this matter? Commence and state what you did right through. A I left the Pacific Hotel and went over and got a room in a private house over on the street they call the boulevard in Caldwell.

Q Where is that street in reference to the Steunenberg residence?

A It runs up past the Steunenberg within one block, up on the boulevard to Steunenberg's residence.

Q Whose place was it you stopped at there? A Schenck's.

Q Did Simpkins return to Caldwell? A Yes sir.

Q How long did you stop at Schenck's before he returned?

A Oh, it was about a week, possibly ten days.

Q Did you stop at the Pacific hotel after he left at all?

A No, sir, I left the same day that he left.

Q You say-- how was you occupying your time in Caldwell after Simpkins

left and up to the time of his return? A I was watching to see if I could locate Mr. Steunenberg and catch him down town at night.

Q What was you doing with that end in view? A I was watching to see when he would be home. He was away a good deal of the time.

Q After Simpkins return, what, if anything was done by you or by himself and you, or by you and him? A I had gone to Nampa in the

meantime from where I was rooming and I stayed in Nampa over night

and I had got two or three letters from Mr. Simpkins while he was gone and he stated he would be back there soon.

MR. RICHARDSON: Have you got the letters? We object to

Q Have you got the letters? A No sir, I destroyed them.

Q Go ahead, and state what they contained. A I came back on the evening train between four and six o'clock to Caldwell and I met him in Caldwell at the depot as I returned. He was about to take the train for Spokane and I told him he better wait and take the

midnight train and he said, very well, he would, and he and I went over to the room at Mr. Schemk's where I was rooming and he stayed there with me until the midnight train and I went over pretty near to the depot with him and he took the train and went on to Spokane, or went home.

Q State where this bomb was at the time of the second visit?

A It was still buried up in the straw where we buried it off of the railroad in the field a ways.

Q Did you and Simpkins have any talk in reference to your matters and your course connected with it? A Yes sir.

Q You may state that conversation as you recollect it? A In a general way he wanted me to stay there and try and get Steunenberg. He said he had to go back to Spokane as he had to leave there soon and go to Denver to attend a meeting of the executive board of mine and he said he would while in Denver, he would make arrangements to have the money ready to buy the ranch with as soon as I pulled the off. I stayed there until a few days after Mr. Simpkins went away and I saw in the paper-- I did not see Mr. Steunenberg home much, but I saw in the paper where the Governor-- Governor Gooding had appointed him on some commission, I have forgotten what it was, to meet here in Boise-- a committee-- and I left Caldwell and I came to Boise and could not see anything of Mr. Steunenberg. He was not here. If he was I could not locate him. I stayed here two or three days in Boise, I think, and I concluded I would go to Salt Lake City and get a man I knew there not to come back and help me finish the and I went to Salt Lake City from Boise. I could not locate the

man there-- could not find him and I came back to Caldwell again.

Q About what time was it you reached Caldwell on your return?

A I reached Caldwell about-- I think about the 13th of December.

Q Where did you go to stop in Caldwell there? A I went to the Saratoga hotel.

Q And how did you register in the Saratoga hotel-- under what name?

A As Thomas Hogan.

Q Where was this bomb you have mentioned in the meantime? A I had in my grip.

Q With you? A Yes sir.

Q After you reached Caldwell on this trip and went to the Saratoga hotel what, if anything, did you do in regard to Steunenberg and the mission you was on? A I was trying to locate Mr. Steunenberg when he was home. I did not succeed in locating him until Christmas day. I saw him going up through the street on Christmas day with his family and I watched him to see if he come back,-- come back before evening; but I had not seen him and after it got dark I went up to his residence and took a pump shotgun with me and thought I would try and shoot him when he was going home.

Q Where had you get this shotgun? A I had it. I brought it from Dayer with me.

Q State where you had get it there? A I got it from Mr. Pettibone.

Q How long was you there at his house in this attempt on Christmas night? A I was there an hour or so before I heard him coming home, and he come soon after I got up there but he got in the hou

before I got my gun together. I did not have it together.

Q Where did you stay-- what part of the premises did you stay while you was watching there on Christmas night? A I was out on the street alongside of his house.

Q What did you do after this-- after this incident? A I did not see him and I went back to the hotel. I was still working on it but I did not see him again until on Saturday evening, I think it was, the 3rd of December.

Q Had you done anything towards locating him? A Yes sir, I saw him that afternoon around the town.

Q Had you made any inquiries of any one with reference to him while you were there? A Yes sir, I had.

Q Of whom? A Of his son.

Q Do you know his son's name? A I suppose his name is Julian Steunenberg.

Q Go ahead. We are up to December 30th; what time was it that you located him on December 30th? A I located him just before evening I was in the saloon part of the hotel playing cards and I came into the lobby and I seen Mr. Steunenberg sitting in the hotel talking to another man.

Q Do you know who it was he was talking to? A A man I think called Mike Devers.

Q Go on and state all that you did from that time on, Mr. Orphan.

A I came out of the saloon and I went over to the postoffice and asked if there was any mail for me, and when I came back he

still sitting there. I went out and went up to his residence as fast as I could walk-- as fast as I could go and I placed it at his gate in such a way that when the gate was opened it was fastened to there with a string and it would explode the bomb. When I was going back about two blocks and a half farther returning towards the hotel I met Mr. Steunenberg and I ran as fast I could to get back to the hotel and I was about a block and a half from the Saratoga hotel on the foot bridge when I heard it go off, and I hurried on to the hotel as fast as I could and went into the saloon part of the hotel first and met the bartender there and helped him tie up a little parcel he was trying to tie up, and then went up to my room after I did that, and I was going to clean out some stuff in my room, some sulphuric acid, chloride of potash and sugar and plaster of paris and some other things, and when I emptied this acid out of the bottle into the wash bowl I put the bottle in my pocket, and a minute or so afterwards there was a flash like a gas and I felt like it tore my coat all to pieces and I was afraid that it would attract the attention of the people in the hotel and I remembered then that I had left a giant cap in there a few days before, an ~~ant~~ old one and I was going to try it and see if it was good and I forgot it and when I put the bottle in there was a little acid there that fell out on the cap and it went off. I took off my coat and put on another coat that I had there and hurried downstairs and went into the dining room to dinner.

Q State whether or not you stayed there after this and how long?

A Yes sir, I stayed there until the next day, and Monday after:

I was arrested and charged with the murder of Governor Steunenberg.

Q Monday afternoon, that was what day of the year? A The first day of the year.

Q The first day? A Yes sir.

THE WITNESS: I would like to correct that I made a little mistake in that.

Q. Go ahead. A. I said I was arrested on Monday. I was arrested on Sunday, but was placed on parole at the hotel.

Q. After you was arrested did you send a communication to anyone?

A. No sir, I did not.

Q. State whether or not you received a communication from anyone after your arrest in the nature of a telegram? A. Yes sir, I did.

Q. Do you know what became of that telegram? A. I destroyed the copy that I got of it.

Q. Destroyed it? A. Yes sir.

Q. Where was that telegram from?

MR. RICHARDSON: Well, if your Honor please, he isn't competent to tell where the telegram is from. If they have got the telegram, the original telegram, that speaks for itself.

MR. HAWLEY: We will produce the original telegram. We have got to identify it before we can produce it.

MR. RICHARDSON: You can't prove that it came from some place by the man who received it.

THE COURT: You may answer the question.

MR. RICHARDSON: Note our exception.

A. The telegram read from Spokane, Washington.

MR. RICHARDSON: I move to strike out, if your Honor please, all that he said with reference to what it read in the telegram, as immaterial, irrelevant and incompetent, not the best evidence.

THE COURT: Motion denied.

MR. RICHARDSON: Note our exception.

Q. What name, if any, was signed to it?

MR. RICHARDSON: We object to that, if your Honor please. The telegram itself must speak upon that subject, and it is the only evidence that can be introduced upon it.

MR. HAWLEY: We want to identify the telegram, your Honor, and we only want to go that far. We are not attempting to introduce the contents at this time.

THE COURT: Objection overruled.

MR. RICHARDSON: Note an exception.

A. I beg your pardon -- do you mean what name was signed to the telegram?

Q. Yes. A. I don't think the telegram was signed. It said --

Q. No, you needn't tell what it said. A. No, it wasn't signed, I don't think, at all.

MR. HAWLEY: After we produce the original telegram we may desire to recall this witness to identify it as being a copy of the one received.

Q. After that telegram was received by you did you send any answer to it? A. Not at that time.

Q. How long was it until you did answer it, if you answered it at all? A. I think it was three or four days.

Q. Who was present at the time that you sent this answer?

A. J. J. Sullivan from Denver and Mr. Stone.

Q. What Mr. Stone? A. This Mr. Stone here. (Indicating).

Q. Mr. Stone here? A. Yes sir.

MR. HAWLEY: I believe, your Honor, this is a matter I shall desire to go into, but I do not desire to so arrange matters as either to meet the objection which might be inter-

(H)

posed or to simply waive any rights. We will by another witness afterwards produce the original of this telegram or at least attempt to, and at that time we will desire to enter into some other matters in connection with it which will necessitate the recalling of this witness. We merely desire to explain this matter now so as to show we will have to recall him, at this time, and not waive any right we might have.

MR. RICHARDSON: I do not see any reason, if your Honor please, why they can't go on with the examination of the witness, and if they want to identify the contents of the telegram there will be no objection to their identifying the contents of the telegram and then when they make the proper proof introduce the telegram if it is competent upon any matter.

MR. HAWLEY: I can't make an intelligent showing without really an attempt to show the contents of the telegram at the present time --

MR. RICHARDSON: Perhaps if you will show us that telegram --

MR. BORAH: If we had it in our pockets we would show it to you.

MR. RICHARDSON: Haven't you got a copy of it?

MR. BORAH: No, we haven't got a copy of it.

MR. DARBOW: You know what it says, don't you?

MR. BORAH: Yes, we know what it says, but we want the original telegram here produced by the Western Union Telegraph Company in the proper way.

MR. DARBOW: That is not the question. The question whether you can go on with this witness.

MR. BORAH: Yes, we are going on on another subject.

Q. Did you receive any other communications while you was there?

A. Yes sir, I did.

Q. Of what nature? A. Well, it was a letter that was unsigned.

Q. A letter unsigned? A. Yes sir.

Q. Who delivered you that letter? A. I think the sheriff did.

Q. Who was the sheriff? A. Jasper Nichols.

Q. What did you do with that letter? A. I destroyed it after I read it.

Q. Had that letter been opened, do you know, before it was delivered to you? A. Yes sir, it had been.

Q. Delivered to you opened, was it? A. Yes sir.

Q. Did you make any copy of that letter? A. No sir, I did not.

Q. Do you remember the contents of that letter? A. Very nearly.

Q. Do you know whether a copy of that letter was made by the sheriff? A. No sir, I do not.

Q. Don't know anything about that?

A. No sir.

Q. In whose writing was this letter?

MR. RICHARDSON: If your Honor please, we object to that as immaterial, irrelevant, incompetent. There is no earthly way that we can ~~handle~~ handle such testimony as that if that lays the ground for secondary evidence, as to the handwriting of a letter, which letter is destroyed; it would simply destroy any possibility of overcoming such evidence that.

MR. HAWLEY: We will ask a few more questions in regard to this, your Honor, and in ~~many~~ connection with of the parties who stands charged.

Q. Do you know the handwriting of George A. Pettibone?

A. Yes sir.

Q. Have you seen George A. Pettibone write? A. Yes sir.

Q. On more than one occasion? A. Yes sir.

Q. How long have you been familiar with Pettibone's handwriting?

A. I had been familiar with it for a year or so previous to that time.

Q. Now you may state -- waiting until an objection is made, if they desire to make it, before you make an answer, and ruled upon -- you may state in whose handwriting this letter was that was received by you in jail and which was destroyed by you.

MR. RICHARDSON: We object to that, if your Honor please, as calling for a self-serving declaration, as immaterial, irrelevant and incompetent, not the proper way of establishing proof of handwriting, and as giving us absolutely no opportunity to controvert it.

THE COURT: Do you care to cross examine the witness in reference to the matter?

MR. RICHARDSON: No sir, not now.

THE COURT: The court will overrule the objection.

MR. RICHARDSON: Of course I will cross examine, under your Honor's ruling, when the time comes.

THE COURT: I mean on this subject before the court rules.

MR. RICHARDSON: No sir. We desire to save our exception.

Q. You may answer. A. I believe it was in the handwriting of George A. Pettibone.

MR. RICHARDSON: I move to strike out the answer

because he expresses only a belief upon it; it would at least require knowledge in order to make it competent.

Q. In whose handwriting was that letter?

MR. RICHARDSON: I submit, if your Honor please, that he cannot cross-examine his own witness nor aid or assist him in that manner.

MR. HAWLEY: It is not cross examination of him in any way, nor assisting him in any way.

MR. RICHARDSON: I would like a ruling on the last objection.

THE COURT: Do you know whose handwriting this letter was in?

THE WITNESS: To the best of my knowledge and belief was in George A. Pettibone's handwriting.

MR. RICHARDSON: I move to strike out all testimony in regard to his belief.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

Q. Was there more than one letter delivered to you at that time by the sheriff? A. No sir, I don't think there was.

Q. This letter that you have referred to as being written by Pettibone in your opinion was the only one delivered to you by the sheriff? A. That is all I remember of.

Q. Now, Mr. Orchard, we will leave this matter and your action in Idaho and go back to an incident connected with your experiences in Colorado. Did you ever in his lifetime know one Arthur Collins? A. Did I know Arthur Collins?

Q. Yes sir. A. No sir.

Q. Did you at any time have any conversation with Messrs. May

Haywood and Pettibone with reference to the death of Arthur Collins? A. Yes sir, I heard them speak of it.

Q. When and where? A. I couldn't state where -- in Denver some place, but I wouldn't state positively where.

Q. Do you recollect what either of these gentlemen said in regard to the death of Collins?

MR. RICHARDSON: That questions calls for a "yes" or "no".

MR. HAWLEY: Yes sir.

A. I didn't understand the question.

Q. I will modify the question. State, if you recollect, what was said by this defendant Haywood or any of the other defendants with reference to the death of Arthur Collins? A. Haywood had said --

MR. RICHARDSON: Yes or no. If your Honor please, I want to object when the proper question is asked.

THE COURT: The question is not susceptible of a yes or no answer.

MR. RICHARDSON: Please read the question.

(Question read).

MR. RICHARDSON: Now, if your Honor please, I object to that if it is sought to be asked upon the ground that it is the statement of a co-conspirator with regard to the conspiracy then such evidence is inadmissible as the narration of a past event. The statements of a co-conspirator are only admissible when they are made during the progress of a conspiracy and in furtherance of its object.

MR. HAWLEY: Under the objection we will withdraw the

question and ask another.

Q. I will ask you if anything was said by the defendant Haywood at any time in regard to this matter, and if so, state the conversation.

MR. RICHARDSON: We object to that, if your Honor please, upon the ground that the defendant Haywood is not on trial with respect to the death of Arthur Collins and no representation which is made with reference to that matter would be admissible on a charge of the murder of Governor Steunenberg.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A. I don't know that I could state anything, that I ever had any conversation with Mr. Haywood positively about the death of Arthur Collins.

Q. Did you ever at any time have any conversation with Mr. Haywood with reference to a trip of ~~Stanton~~ Steve Adams and "Kid" Minster, I believe, to California? A. Yes sir, I have.

Q. You had such a conversation? A. Yes sir.

Q. In that conversation was the object of that trip stated and a statement made with reference to it?

MR. RICHARDSON: That is leading, and furthermore, if your Honor please, we object to it anyway as immaterial, irrelevant and incompetent, calling for a conversation which would be a mere recitation in regard to an independent event that had taken place and could not be introduced into this case where the charge is the murder of Governor Steunenberg.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

Q. Go ahead. A. Mr. Haywood told me in a conversation that he sent --

MR. RICHARDSON: We want the time and place, if your Honor please.

MR. BORAH: You can get that in the cross examination.

MR. RICHARDSON: We think on direct examination they are not entitled to it without giving the time and place.

THE COURT: What is your objection?

MR. RICHARDSON: We object because the time and the place is not stated.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

Q. Go ahead, Mr. Orchard. A. Mr. Haywood told me in a conversation that he had sent Steve Adams and Ed. Winstler to California to assassinate Mr. Bradley, Fred Bradley, and the superintendent, I don't remember his name; that they had gone down there and spent about \$400 that he had given them and started about their way back and got arrested in Ogden when they came back and got in jail and that he had sent them \$75 to get them out of jail and have them come back home.

MR. RICHARDSON: In order to save the record, if your Honor please, I move to strike that out as immaterial, irrelevant, incompetent, not germane to any issue in this case.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note an exception.

Q. When was it you had this conversation with Haywood?

A. I couldn't state when it was. I think it was the winter

1904 some time.

Q. When was this trip made, did he say, by Minster and by Adams?

A. No sir, he didn't say.

Q. Did he say how much money was sent? A. No sir, he did not.

Q. Did he say to what place it was sent? A. He said he sent it to Ogden, Utah. I would like to make a little change in that last answer I made.

MR. HAWLEY: Go ahead, sir, go ahead and correct that

or any other answer if you find you have made a mistake.

A. I said when he sent the money to Ogden it was to get them back home. I don't know whether it was to get them back home, he sent the money to get them out of jail.

Q. You know he sent the money? A. That is what he said, he sent it.

Q. Did you ever have a talk with this defendant at any time or a talk with anyone else in this defendant's presence with reference to a trip of Steve Adams' to Pocatello? A. Yes sir, I have.

Q. When did you have this conversation with Haywood?

A. Either in the latter part of 1903 or the early part of 1904.

Q. That you had the talk with him? A. Yes sir.

Q. What did he say with reference to a trip of Steve Adams to Idaho, to Pocatello?

MR. RICHARDSON: Objected to as immaterial, irrelevant and incompetent, as a narration simply of an event which has nothing to do with the transaction here in question, with regard to a thing that has been entirely completed, in no way binding upon the defendant in this case, is not germane to an issue in it.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

- A. Mr. Haywood told me that he sent Steve Adams to Pocatello with some Grecian fire or "Pettibone dope", as he called it, to throw it through the cars of a train that they expected there with non-union men going to Cripple Creek. He said that he didn't know whether he ever went there or not, that he believed that he took the money that he give him and went to Telluride, he got married there soon after.
- Q. Did he state what time it was that he had sent Adams on this trip to Pocatello? A. I don't think he did.
- Q. Did he state how this Pettibone dope or Grecian fire was taken by Adams? A. I don't think he did.
- Q. Did you have any further or other conversation than this one with Haywood in regard to this Greek fire or Pettibone dope? A. Had spoken of it I think afterwards.
- Q. Do you recollect any other conversation you had with him in regard to it? If you do, you may state it.
- A. I don't remember of any particularly. I think it has been spoken of, but I can't recall anything in particular that was said any more than that.

MR. HAWLEY: You may cross examine.

CROSS EXAMINATION OF HARRY ORCHARD

BY MR. RICHARDSON:

Q. Mr. Orchard, you say you were born in Ontario: Is that the name of the town or the name of the province? A. That is the name of the province.

Q. Northumberland county? A. Yes sir.

Q. That is in upper Canada? A. It is in Central Canada I think.

Q. What was the name of the town you were born in? A. I was born in the country.

Q. What is the name of the county seat of that county?

A. Hozerg.

Q. What is the name of the nearest town to the place where you were born? A. Trenton, I think.

Q. How far is that from Hazoni? A. About fifty miles, it I think.

Q. Fifty miles from Hazoni? A. Something near that.

Q. How long did you live on this farm where you were born?

A. I don't know.

Q. Where is the first place that you remember after being born?

A. You mean the first place that I lived that I remember?

Q. Yes, that is what I mean. A. It was in the township of Brighton.

Q. Township of what? A. Township of Brighton.

Q. Where is that with reference to the place where you were born?

A. It is about six or eight miles from there.

Q. How old were you at the time when you first commenced to

notice of the place that you were living in? A. I don't think five or six years old.

Q. How long did you live in that town? A. It wasn't a town

- Q. Well, that place then, it was a postoffice, I suppose, was it?
- A. There was a postoffice near there.
- Q. How long did you live there? A. I think I lived there until I was seven or eight years old.
- Q. And then where did you move to? A. I moved about -- or we moved about four or five miles from there.
- Q. What were your people, what was their occupation? A. Farming.
- Q. Lived on a farm? A. Yes sir.
- Q. Were they cheese makers? A. No sir.
- Q. Were not? A. No sir.
- Q. Are your father and mother living now? A. No sir.
- Q. When did they die? A. My mother died about 1895.
- Q. At about the time that you came out to this country? A. Yes sir, a few months before.
- Q. When did your father die? A. He died about six years after.
- Q. Where did you go to school? A. I went to school in that neighborhood.
- Q. A town school or a country school? A. A country school.
- Q. What was the nearest town to that school that you went to?
- A. There was a little town there called Wooler where there was a postoffice, and two or three stores; that was the nearest town we lived to.
- Q. What was the nearest big town? A. Trenton or Brighton; Trenton was a little nearer I think.
- Q. And which direction is that in from St. Thomas? A. It is further east.
- Q. You know where St. Thomas is, don't you? A. I know very near
- Q. It is further east, and is it north or south of St. Thomas?

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- A. I think it is nearly direct east.
- Q. In what direction is it from Toronto and how far? A. About a hundred miles east of Toronto.
- Q. East of Toronto? A. Yes sir.
- Q. Is there a railroad in the town? A. There is a railroad at Trenton.
- Q. How long did you live in or near that town? A. I lived there until I was about twenty years old.
- Q. So you never was away from the vicinity of the country that you were born in until you were about twenty years of age?
- A. I had been away from the same distance at times, not to stay away.
- Q. Well, that is what I mean, you had not been away to stay away or to live away from there? A. I had worked away from there, away back in the northern part of the province in the lumber woods.
- Q. Where had you worked other than in the northern part of the province in the lumber woods? A. I worked around near home on a farm until I was about twenty years old.
- Q. Where did you go when you were twenty years of age?
- A. I went to Michigan.
- Q. What part of Michigan did you go to? A. I went to Saginaw.
- Q. How long did you live in Saginaw? A. I only stayed in Saginaw about a week.
- Q. Did you go under your ~~name~~ real name at Saginaw? A. Yes sir.
- Q. Albert B. Hersley? A. Yes sir.
- Q. Have you got any brothers and sisters? A. Yes sir.
- Q. How many? A. I have got one brother and six sisters.

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- Q. Where do they live and what are their names? A. I couldn't tell you where they live now.
- Q. Give us as much information as you have got on that subject, please. A. I believe some of them lives around in that part of the country and some of them lives in New York state.
- Q. Do you know what their names are? A. I know my sisters' names, yes sir, what they were.
- Q. Well, give us the names of them and what their married names are if they are married. A. My oldest sister's name was Clara Hershey.
- Q. Is she married? A. She wasn't married when I left there.
- Q. Do you know whether she is married or not now? A. I believe she is. I have heard that she was.
- Q. Who was she married to? A. I can't remember. I don't remember the man's name.
- Q. Where does she live? A. She lives near Bloomville, I believe.
- Q. In ~~Canada~~ Canada? A. Yes sir.
- Q. What is your next sister's name, or brother -- the next child? A. My next sister's name was Florence.
- Q. Where does she live? A. I believe she lives in New York somewhere, I don't know where.
- Q. Is she married? A. I believe she is.
- Q. What is her married name? A. I don't know -- married since I left there.
- Q. Go on with the rest of the family right down through them.
- A. My ~~next~~ next sister was Maggie Hershey.
- Q. Is she married? A. Yes sir.
- Q. Where does she live? A. I believe she lives near Port Hope, Ontario.

- Q. What is her name now? A. Her name is Frasier.
- Q. Maggie Frasier? A. Yes sir.
- Q. A married woman, is she? A. Yes sir.
- Q. What is the next member of your family's name? A. Mable
Horsley.
- Q. Where does she live? A. She lives, I believe, at Brighton,
Ontario.
- Q. Is she married? A. I think she is.
- Q. What is her name? A. I don't remember. She was married
since I left.
- Q. How about the next one? A. The next was a brother, named
Joseph Horsley.
- Q. Where does he live? A. I believe he lives at Wooler.
- Q. At Wooler, Ontario? A. Yes sir.
- Q. That is near the place where you were born? A. Yes sir.
- Q. Is he a married man? A. Yes sir.
- Q. What is the next one's name? A. Edith Horsley.
- Q. Who is she married to, if anybody? A. I don't think she is
married.
- Q. Where does she live? A. I believe she lives in Toronto.
- Q. Does that take up the six of them or is there another one?
A. I think this is the sixth.
- Q. Now you say you stayed about a week in Saginaw? A. I stayed
about a week in Saginaw.
- Q. Where did you go then? A. I went up in a lumber camp north
of Saginaw.
- Q. Were you married at that time? A. No sir.
- Q. When did you get married? A. I got married in June of 1888.

- Q. June of 1888, and where were you living at that time?
A. I was living in Ontario, Canada.
- Q. That was when you were twenty-two years of age? A. Yes sir.
- Q. How long did you stay up in the woods north of Saginaw?
A. About six months.
- Q. And then went back home or near your home? A. Yes sir.
- Q. What place did you go to? A. Well, it was in the country, it was about ten miles from Brighton, about two miles from where I was born.
- Q. And did you remain there until the time that you were married?
A. Yes sir.
- Q. So you remained there until you were twenty-two years of age?
A. Yes sir.
- Q. At which time you got married? A. Yes sir.
- Q. What year was it you got married in? A. Married in 1888.
- Q. How long did you continue to reside near Brighton?
A. I stayed where I was at that time in Brighton, Brighton township where I was married, until -- I got married in June, I stayed there until the next March or about that time.
- Q. Where did you go then? A. I moved to the township of Cranhe.
- Q. Where is that? A. That is about ten or twelve miles from this place I speak of.
- Q. In the same general neighborhood? A. Yes sir.
- Q. Take your wife with you? A. Yes sir.
- Q. Any children born to you in the meantime? A. No sir.
- Q. You have got a child, haven't you? A. Yes sir.
- Q. When was that child born? A. She was born in 1895.
- Q. Just before you left there? A. Yes sir.
- Q. You lived with your wife about seven years then, from 1888

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- to 1895? A. Yes sir.
- Q. Did you continue to stay there in that same vicinity until 1895?
A. Yes sir, not in the same place but in the same vicinity.
- Q. What were you doing during that time? A. I was making cheese.
- Q. At what places were you making cheese? A. I made cheese at
~~Wooler~~ Cramer where I had moved; I made cheese back at Wooler after
that; I made cheese at Hilton and near Brighton.
- Q. Four different cheese factories.
Q. Yes sir.
- Q. But all in the same general vicinity? A. Yes sir.
- Q. You finally became a manager of a cheese factory, did you?
A. Yes sir.
- Q. Which one was that? A. The Cramer cheese factory.
- Q. Something happened to that cheese factory when you were manager
of it? A. No sir.
- Q. Nothing happened to it? A. No sir.
- Q. You left there, didn't you, along in 1895? A. Yes sir.
- Q. What did you leave for? A. Well, because I wanted to go away
I guess.
- Q. Got into trouble, did you, before you left? A. No sir.
- Q. Didn't have any trouble about leaving? A. No sir.
- Q. Left your wife there, didn't you? A. Yes sir.
- Q. She is living there yet, isn't she? A. She is living, yes sir.
- Q. She is in that vicinity yet, isn't she? A. I don't think she
is, not that I know of.
- Q. You know where she is all right, don't you? A. No sir, I
don't.
- Q. You have heard from her since you have been here, haven't you?
A. Yes sir.

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- Q. And written her a letter? A. Yes sir.
- Q. And she has written you one? A. Yes sir.
- Q. And this child of yours is living too, isn't she? A. Yes sir.
- Q. Where did you go to when you left there? A. I went to Detroit, Michigan.
- Q. Was you ever in Weston, New York? A. No sir.
- Q. Ever in the vicinity of Utica, New York? A. No sir.
- Q. Know nothing about that part of the country at all? A. No sir.
- Q. What did you do in Detroit? A. I didn't do anything.
- Q. How long did you stay in Detroit? A. About three weeks.
- Q. This woman that you left at that time was your wife and still is your wife, isn't she? A. Yes sir.
- Q. Although you have got another wife in Cripple Creek, haven't you? A. I have.
- Q. You are a bigamist, then, are you? A. I don't know what you would call it.
- Q. You married two of these wives? A. Yes sir.
- Q. Both of these are living? A. Yes sir.
- Q. You know that is a bigamist, don't you? There never was any divorce from your first wife? A. No sir.
- Q. How long did you say you stayed in Detroit? A. About three weeks.
- Q. What were you doing while you were there? A. I wasn't doing anything.
- Q. Nothing at all? A. No sir.
- Q. How did you live while you was there? A. I stopped at a hotel or a private rooming house.
- Q. Did you have money? A. Yes sir.
- Q. How much money did you have? A. Three or four hundred dollars.

- Q. Had you learned to gamble at that time? A. Not very much.
- Q. But you did gamble some even at that time, did you?
- A. Well, not very much.
- Q. Well, where did you go when you left Detroit? A. I went to Nelson, British Columbia.
- Q. And you went into some business there, didn't you? A. Yes sir.
- Q. What business was it? A. Ran a little restaurant.
- Q. A saloon in connection with it? A. No sir.
- Q. A gambling house in connection with it? A. No sir.
- Q. There was not? A. No sir.
- Q. How long did you remain in British Columbia? A. Between two and three months I think.
- Q. What is that? A. Between two and three months I think.
- Q. Between two and three months? A. Yes sir.
- Q. What did you leave there for? A. Well, I left there because I wanted to get away.
- Q. Why did you go there in the first place, Mr. Orchard?
- A. Well, I went there because I wanted to leave where I was, in Detroit.
- Q. That was the only reason you had? A. Well, that was the reason, yes sir.
- Q. You went there directly from Detroit, did you? A. Yes sir.
- Q. Were you looking for a location? A. Well, I don't know that I was particularly.
- Q. Did you go to Detroit from this place in Ontario between two days or did you go in the day time? A. I went to Detroit from where?
- Q. The place where you lived before you went to Detroit in the country in Canada? A. Part in the day time and part in the

night.

- Q. About a half a day's ride from there over to Detroit, isn't it? A. No sir, about a day and a half.
- Q. A day and a half? A. From where I lived to Detroit.
- Q. From where you lived to Detroit? A. I think it is about a day and a half.
- Q. What road did you go on to get there? A. I went part of the way over the Canada Pacific and part over the Grand Trunk I think.
- Q. Didn't find any business in Detroit that suited you? A. No sir.
- Q. So you came to the conclusion you would go on to British Columbia? A. Yes sir.
- Q. Was that because you wanted to get far away from this place where you had lived in Canada? A. Yes sir, that was one reason.
- Q. Your wife hadn't done anything, had she, you didn't want to get away from her, did you? A. I had left her.
- Q. But it was not because you had any fault to find with her? A. No sir, I did not.
- Q. Haven't any fault to find with her now? A. No sir.
- Q. Who was your partner in British Columbia? A. Her name was Mrs. Simpson.
- Q. Mrs. Simpson? A. Yes sir.
- Q. Was your partner in British Columbia? A. Yes sir.
- Q. What was your name when you left Canada? A. Albert E. Hensley.
- Q. What was your name in Detroit? A. Little.
- Q. What was your front name? A. It was Albert.
- Q. Albert Little. Why had you changed your name in the day and a half that you were going from your home to Detroit?

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- A. Because I had another man's wife meet me there from where I had lived.
- Q. Another man's wife: As a matter of fact you ran away with another man's wife, didn't you? A. Yes sir, I did.
- Q. You had had some trouble with this man about his wife before you left, too, hadn't you? A. No sir, I had not.
- Q. None whatever? A. No sir.
- Q. Then you went to living with this other man's wife? A. Yes sir.
- Q. What was her name? A. Her name was Hattie Simpson.
- Q. And she became Mrs. Little for the purposes of travel, didn't she? A. She went by that name.
- Q. And then you and she went to British Columbia together?
A. We did.
- Q. And there you opened this restaurant? A. Yes sir.
- Q. From that time on you went to drinking, didn't you?
A. Not very much.
- Q. Not very much? A. No sir.
- Q. Went to gambling, too, didn't you? A. No sir, not much.
- Q. And finally you and Mrs. Simpson, your partner, had a falling out, didn't you? A. No sir, we didn't.
- Q. Do you know where Simpson is now? A. No sir, I do not.
- Q. Do you know whether he is living or not? A. I believe that he is living; I am not sure.
- Q. Well, you left Mrs. Simpson at Nelson, British Columbia, didn't you? A. No sir, I did not.
- Q. What did you do, take her along with you? A. No sir.
- Q. Was she the person you referred to as your partner there?
A. She was the only partner I had.

- Q. In British Columbia? A. Yes sir.
- Q. Did you leave her at Nelson? A. No sir.
- Q. You ran away from her, didn't you? A. No sir.
- Q. What did you do with her? A. We went from there to Pilot Bay.
- Q. Then you took your partner along with you? A. Yes sir.
- Q. Did you sell out this restaurant? A. Yes sir.
- Q. How long did you live at Pilot Bay? A. I don't remember, about three or four weeks I think.
- Q. Where is Pilot Bay? A. Pilot Bay is up about twenty-four miles from Nelson, up the Bay I think.
- Q. But still in British Columbia? A. Yes sir.
- Q. You stayed there about three weeks? A. Yes sir.
- Q. What business were you engaged in there? A. We were running a boarding house.
- Q. What name did you go under there? A. Under the name of Little.
- Q. You still kept the name of Little which you adopted when you went to Detroit? A. Yes sir.
- Q. And that was the name you went by at Nelson? A. Yes sir.
- Q. Well, now, where did you go to after you left Pilot Bay?
- A. I came to Spokane, Washington.
- Q. Who came with you? A. I came alone.
- Q. Did you desert Mrs. Little up there? A. No sir.
- Q. Where did she go to? A. She went back home.
- Q. Went back to her husband, did she? A. I don't know whether she went back to her husband or not.
- Q. But at any rate you and she got tired of one another?
- A. No sir, we didn't.
- Q. Well, you quit one another? A. Yes sir.

- Q. Did you quit her or she quit you? A. She went back home.
- Q. That don't answer my question. I want to know which one of you got sick of the other. A. Well, we didn't neither one get sick.
- Q. Just simply quit? A. She went back home.
- Q. That is so far as you know? A. That is where she started for.
- Q. Never have heard from her from that day to this? A. Not direct.
- Q. You went to Spokane: What did you do -- A. I beg your pardon. You asked me if I heard from her. I did hear from her after she got back home.
- Q. She wrote you some letters, did she? A. She did.
- Q. How long did that correspondence continue? A. Not very long, just two or three letters.
- Q. How long did you continue in Spokane? A. About two weeks, I think.
- Q. What were you engaged in doing while you were there? A. I wasn't doing anything.
- Q. Just living around looking at the city: That was the first time you had ever been to Spokane, was it? A. Yes sir.
- Q. That took you up to what time in 1895? A. It was in 1896.
- Q. Got you up to 1896? A. Yes sir.
- Q. You must have left Canada then in the latter part of 1895, did you? A. Yes sir, I did.
- Q. What time did you get to Spokane? A. I think it was in March or April.
- Q. Were you still Mr. Little when you got to Spokane? A. No sir.
- Q. What had you become by that time? A. Harry Orchard.
- Q. Become Harry Orchard at that time? A. Yes sir.

- Q. Now you found a job in Spokane, you got work in Spokane but the work was to be at another place? A. I got a job in Spokane but it wasn't in Spokane.
- Q. The work you were to do was not to be performed in Spokane? A. No sir.
- Q. That was a job in Markwell's dairy in Wallace, wasn't it? A. Yes sir.
- Q. Did you get any other job that you couldn't hold down while you were working in Markwell's dairy? A. No sir.
- Q. Did you at any time while you were working in Markwell's dairy get any other job? A. No sir, not while I was working for the dairy.
- Q. So you went up to Wallace to take this job which you had gotten in Spokane? A. I did.
- Q. What time did you go to Wallace? A. It was in March or April of 1896.
- Q. What name did you go by there? A. Harry Orchard.
- Q. That was in 1896, was it? A. Yes sir.
- Q. How long did you continue to work for Markwell's dairy? A. Until Christmas of that year, 1896.
- Q. Until Christmas of 1896? A. Yes sir.
- Q. In the meantime you had acquired an interest in the Hercules mine while you was working there in the dairy? A. Yes sir.
- Q. Markwell also had an interest in it, did he not? A. Yes sir.
- Q. And a man named Paulson who was working with you on that ranch? A. Yes sir.
- Q. Milking cows and driving milk wagons? A. Yes sir.
- Q. And Paulson also acquired an interest in that Hercules mine? A. He had an interest in it.

- Q. You, Markwell and Paulson all had an equal interest in the mine?
A. No sir, we didn't.
- Q. How were the interests divided up? A. I had a sixteenth
and I think Paulson had a quarter interest; I am not sure
what Markwell had, I think it was a sixteenth.
- Q. Markwell's interest afterwards increased some and Paulson's
increased some but yours did not, isn't that right? A. I
believe they did.
- Q. How long did you continue to hold your interest in that mine?
A. Until 1897 some time, in between January and March; I think
I sold it in 1897.
- Q. You went into the wood business shortly after Christmas time,
did you, 1896? A. Yes sir.
- Q. With a man named McAlpine? A. It was 1897.
- Q. What did you do from the Christmas of 1896 until you went into
this wood business? A. I was learning the man that took the
wagon for Markwell Brothers, learning the route.
- Q. What was that? A. I was learning him the milk route; it was
about the first of January when I took the wood business.
- Q. You was teaching your successor in the milk, dairy business?
A. Yes sir.
- Q. Until about the first of the year? A. Yes sir.
- Q. Then what did you do until you bought into this wood yard?
A. I had bought the wood yard about this time.
- Q. You had bought it? A. Yes sir.
- Q. But hadn't taken possession? A. I think I took possession
about the first of the year.
- Q. Did McAlpine ~~enter~~^{own} the wood yard when you bought into it?
A. No sir.

- Q. Who did omit? A. A man named Bexonia.
- Q. Where was the wood yard? A. At Burke.
- Q. When did you take possession of the wood yard? A. I took possession the last few days of 1896 or possibly the first of 1897.
- Q. When did McAlpine become your partner? A. In 1898.
- Q. You owned it alone then for a period of about one year, did you? A. Yes, a little over one year.
- Q. Where was this wood yard located? A. At Burke, Idaho.
- Q. Had you peddled milk in Burke, Idaho? A. Yes sir.
- Q. Who was McAlpine? A. McAlpine was from Minnesota, I think.
- Q. In the meantime you had sold your interest in the Hercules mine, had you? A. Yes sir.
- Q. Or had you just simply parted with the conveyance to that mine with the expectation of taking it back whenever you got ready? A. No sir, I sold it outright.
- Q. You didn't sell your interest in the mine for cash, did you?
A. Yes sir, I did.
- Q. The man was Mr. Cordonia, wasn't he, ~~the name~~ Dan Cordonia?
A. Yes sir.
- Q. He was a saloon keeper, wasn't he? A. No sir.
- Q. What business was he engaged in? A. Engaged in the mercantile business.
- Q. What kind of a mercantile business? A. General merchandise, groceries, dry goods and --
- Q. Well, --

MR. HAWLEY: I object, if your Honor please. Let the witness finish his answer.

THE WITNESS: Groceries, dry goods and body made

clothing and miners' supplies, and gum clothes, gum boots and so forth.

Q. Any wet goods, did he have any wet ~~things~~^{goods} department at all?

A. No sir, I don't think so.

Q. All dry goods. Did you owe him a bill when you sold him the mine? A. I think I did, a small bill.

Q. And you sold the mine in part payment of that bill, didn't you? A. Well, whatever bill I owed him I paid him at that time out of that.

Q. And got some cash, didn't you? A. Yes sir.

Q. And got a stand off for the balance of it, didn't you?

A. No sir, I got cash.

Q. Had you put up your stock in this mine before the time that you had finally closed the deal with Cordonia? A. I had borrowed some money on the interest that I had.

Q. How long did you remain in this wood yard business?

A. I remained in it until the spring of 1899.

Q. Was that the only business that you had there during that time?

A. ~~While~~^{While} ~~that~~ I had had that wood business I used to do some packing with horses out in the hills and some express business, whatever I got to do around the town.

Q. Was there any trouble up there in that mountain country at that time between the employers of labor and the employees?

A. No sir, I didn't know of any.

Q. Any agitation?

MR. HAWLEY: Hold on. We object to this cutting off of the witness.

MR. RICHARDSON: Take all the time you want. I don't

want to cut you off.

THE WITNESS: There had been no trouble to speak of. There had been some little trouble between them, between employers and employes.

Q. Were there any detectives in there at that time? A. I don't know of any.

Q. Or any people called spotters, do you know anything about that?

A. I didn't know of any.

Q. Were you engaged by anybody to make any report upon the facts there or the people there? A. No sir.

Q. At no time at all? A. No sir.

Q. How did you remain there continuously up until 1899? A. I remained in the vicinity. I had been away to Spokane, not to stay any length of time.

Q. Didn't go away anywhere on the ocean at all? A. No sir.

Q. Didn't go to the Philippines nor to Honolulu or anywhere else?

A. No sir.

Q. Told Pettibone, though, you did at one time? A. I might have.

Q. Gave Pettibone a story about working on the Government transport, didn't you, between Manila and San Francisco by way of Honolulu? A. I might have.

Q. Well, did you? A. I wouldn't say I did.

MR. HAWLEY: We object to it and ask that it be stricken out. If they have got any impeaching question he must ask it in the usual way.

THE COURT: I do not understand the question is being asked to lay the foundation for impeachment.

MR. RICHARDSON: No sir, just to find out about the witness.

- Q. You say that you did not? A. I don't remember of ever telling him anything like that.
- Q. Don't know what you did and don't know as you did? A. I don't think I did.
- Q. Now you stayed then in that vicinity all of the time until the spring of 1899? A. Yes sir.
- Q. A trip out to Spokane once in a while? A. I think I was to Spokane once. I am not positive whether I was or not.
- Q. Don't remember you even went as far as Spokane? A. I am not positive whether I did or not.
- Q. Did you go to any other place outside of the Coeur d'Alene country? A. No sir, I don't think I did.
- Q. So you remained right there until 1899, spring of that year?
A. Yes sir.
- Q. When did you sell out your interest to McAlpine in this wood ranch? A. 1898.
- Q. What time of the year? A. It was about August.
- Q. What did you do after you sold the interest out to McAlpine?
A. I still continued on with him in the business.
- Q. As an employe? A. No sir, as part owner.
- Q. As part owner? I thought you had sold out to him? A. I sold a half interest.
- Q. How long did you remain in the ownership of that wood yard in connection with McAlpine? A. About four or five months, until some time in March of that same year.
- Q. Some time in March of 1899? A. Yes sir.
- Q. In connection with it? A. Yes sir.
- Q. And then you ceased to have any interest in the wood ranch, did you? A. Yes sir.

- Q. What did you do? A. I went to work in the Tiger-Poorman mine.
- Q. Was that the first work you had ever done in the shape of mining? A. Yes sir.
- Q. You were still going under the name of Harry Orchard, were you at that time? A. Yes sir.
- Q. What time was it you joined the Burke Miners' Union?
- A. It was just after I began to work in the Tiger-Poorman mine. It might have been the last of March or first of April of 1899.
- Q. And you joined the union at that time, did you? A. Yes sir; it might have been the last of March or the first of April, I am not sure.
- Q. Almost immediately? A. Yes sir; I transferred from the Knights of Labor I had belonged to to the Miners' Union.
- Q. When had you joined the Knights of Labor? A. After I went up and bought this wood yard.
- Q. While you were still a member of the wood yard? A. Yes sir.
- Q. Who had charge of the Tiger-Poorman at that time? A. Frank Pulverson.
- Q. Who was president of the union at the time you joined it?
- A. I think Billy Miller was -- no, Mike Deasy.
- Q. Then Billy Miller was not president of the Miners' Union while you were there so far as you know? A. He wasn't president so long as I belonged to it.
- Q. Did he occupy any position in the Union so far as you know?
- A. He had been president of the union.
- Q. Do you know for how long a time? A. No sir, I do not.
- Q. Did he have any voice in the lodge or in the union when you went into it? A. I don't remember that he had any more than--

that he held any position while I belonged to the union.

- Q. Was he still a member of the lodge? A. I think he was. I am not sure about that.
- Q. Was the only trouble that you had ever had in your life up to that time this trouble in connection with this woman you had run away with? A. The only trouble I was ever charged with.
- Q. That was the only trouble you had been charged with?
- A. I hadn't been charged with that.
- Q. That was the only trouble you had ever had? A. Yes sir -- well, yes sir.
- Q. Did you ever tell Pettibone any story about burning a cheese factory? A. Yes sir.
- Q. You told him that, did you? A. Yes sir.
- Q. And told him you collected the insurance on it, didn't you?
- A. Yes sir.
- Q. And that before you burned the factory you stole the cheese and sold it and got the money? A. Yes sir.
- Q. And you told him also that you had gotten into an altercation with your brother back there and had pitchforked him, didn't you? A. I might have told him that.
- Q. You did tell it to him, didn't you? A. I don't remember whether I did or not.
- Q. And told him you lived in Utica, New York? A. Yes sir.
- Q. And that that was the place where you had got into trouble with your brother? A. I might have told him that.
- Q. And that you struck him in the head with a pitchfork?
- A. I might have told him.
- Q. And that you skipped from that country and went to Canada?

A. I don't remember whether I did tell him that or not. I may have.

MR. BORAH: ~~I want to ask~~ ^{I want to ask} ~~him something~~ about the date -- about this date: Do you remember about when you told him about the cheese factory business?

THE WITNESS: It was sometime in the early part of 1904.

Q. You told him some time in 1904, did you? A. Yes sir.

Q. You had not been to Utica, New York, at all? A. No sir.

Q. But you knew that Pettibone had come from some where in that neighborhood when he was a boy? A. He told me he had been there.

Q. And talking over your boyish adventures, each one of you?

A. Yes sir.

Q. And when you spoke about burning up this cheese factory and collecting the insurance and running off with another man's wife, you told him also that man was hot after you with a gun, didn't you? A. I don't remember that I did.

Q. Did you say anything about that man whose wife you had run off with? A. I don't remember that I told him that I run off with a man's wife.

Q. Do not? A. I don't remember that I did.

THE COURT: ~~Mr. Richardson~~ Mr. Richardson, I think we will suspend here.

MR. RICHARDSON: Very well.

THE COURT: The witness will be remanded.

Gentlemen of the jury, it is your duty not to converse among yourselves or with anyone else on any subject connected with this trial, or form or express any opinion thereon until

the cause is finally submitted to you for your consideration.

Swear the bailiffs, Mr. Clerk.

(Bailiffs sworn.)

THE COURT: I have been informed that there is a gentleman here who wishes to speak to one of the jurors in relation to a matter of business connected with the ranch. You may let him consult with the juror in the presence of two of the bailiffs.

MR. RICHARDSON: Very well.

THE COURT: The defendant will be remanded. The jury may retire with the bailiffs, who will return them tomorrow morning at nine o'clock.

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Boise, Idaho, Friday, June 7, 1907.

Nine o'clock A. M.

Parties met pursuant to adjournment.

Minutes of yesterday's session read and signed by the court.

Names of the jurors called and the clerk announced all were present.

WITNESS HARRY ORCHARD ON THE STAND.

CROSS EXAMINATION CONTINUED

BY MR. RICHARDSON:

- Q. Had you been working constantly for the month prior to the time you went down to Wardner? A. Excuse me, Mr. Richardson; I would like to correct a couple of statements I made yesterday if I can.
- Q. All right, sir, go ahead and correct them.
- A. You asked me how many sisters I had and I told you six sisters; I think I gave you only the names of five.
- Q. What was the name of the sixth? A. Her name is Minnie.
- Q. She is a married sister? A. Yes sir.
- Q. Where does she live? A. I couldn't tell.
- Q. What is her name? A. Rogers.
- Q. Does she live somewhere near Utica? A. I don't know where she lives.
- Q. You have had no communication with any of your family since you came west in 1895 until since the time you have been incarcerated in the penitentiary, have you? A. No sir.

(H)

- Q. And never made any remittance ~~xx~~ to your wife or to your little daughter during that time? A. Yes sir, I have.
- Q. When did you do that? A. Since I have been in the penitentiary.
- Q. I say up to the time until since you have been in the penitentiary? A. No sir.
- Q. And didn't know whether your wife or your daughter were living until since you have been in the penitentiary?
- A. No sir, I did not. There was another question I wanted to correct, too.
- Q. Very well, sir, correct that. A. I think you asked me if I had any other partners when I was in Burke in the wood business in the summer of 1898. I was getting a lot of wood to cut up above Burke and I had some men that I didn't have money to pay and I promised them a verbal interest, two men, in the business, but I paid one of them off, -- if I couldn't pay them their wages I promised them --
- Q. What capital did you have invested in the wood business?

MR. HAWLEY: We object to the counsel cutting the witness off. The witness is going on with the explanation and we object to counsel cutting off the witness.

MR. RICHARDSON: I beg pardon. I didn't know I was. I thought he was through. How any time I cut you off, if you think I am cutting you off, call my attention to it, go ahead with your answer and don't pay any attention to the new question.

THE WITNESS: You cut me off with pretty near every question.

341 Q. Go ahead.

A. I wanted to tell about the two men that I had promised a verbal interest in the wood business.

THE COURT: What did you say about him cutting you off.

A. He cuts me off pretty near every question.

MR. RICHARDSON: Pay no attention to the new question but go ahead with your answer.

THE WITNESS: I can't talk very well when you are talking. You talk louder than I do.

MR. HAWLEY: We submit that he ought not to interrupt the witness but let the witness finish his answer.

MR. RICHARDSON: If this is for the purpose of getting into a row between me and this witness and counsel on the other side we might as well stop and have it disposed of now.

MR. HAWLEY: If that is the case we object to that method of questioning, whether it raises a row or not.

THE COURT: If the witness has any further explanation to make he can make it now.

THE WITNESS: I would like to have the privilege of finishing an answer to a question when he asks me before he asks me another one.

THE COURT: You may do so. If you haven't finished your answer to any question you can go on and answer it independently of the next question.

THE WITNESS: These two men that I speak of that I promised a verbal interest in the wood yard, I paid one of them off before I sold the interest to McAlpine what wages there was coming to him, and paid the other one off at the time McAlpine bought the interest in the wood yard.

342 Q. Now are you entirely through? A. I am through with that

explanation.

- Q. Did you have any capital to run that wood yard with?
A. No sir.
- Q. You became involved while you were running the wood yard, did you not? A. At times.
- Q. And that was the reason that you took in a partner, was it not?
A. Yes sir.
- Q. And the reason you became involved was because you were in the habit of playing poker? A. That was the reason -- that was one reason.
- Q. You had gotten to be considerable of a gambler by 1899, hadn't you? A. I might be called a gambler. I didn't make a business of gambling.
- Q. Didn't make a business of it but you followed it pretty steadily, didn't you? A. I gambled at times when I had money, yes sir.
- Q. That was the reason you lost your job on the Markwell milk ranch, wasn't it? A. No sir, it was not.
- Q. Now on this morning of 1899 who was it that told you that you were to go to the lodge or to the local? A. I don't remember.
- Q. You don't remember that? A. No sir.
- Q. But you do remember when you got there there were a large number of people present? A. Yes sir.
- Q. Did you vote to go down to Wardner yourself? A. I don't know which way I did vote.
- Q. Don't remember? A. No sir.
- Q. But you do know you went down to Wardner? A. I do.

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- Q. What time in the morning did the train leave there? A. Left Burke?
- Q. What time in the morning? A. I think it was somewhere about ten o'clock, as near as I can remember.
- Q. How many people were there in the room that you knew?
- A. I don't know how many I knew. I knew a good many of them.
- Q. Well, name all that you knew that were there at the room.
- A. I knew Paul Cochran; I knew Mike Devey; I knew Harry Gordon; I knew a man named Smith; I knew Pat Kennedy.
- Q. Was this man Smith's name John or William? A. I don't remember his first name.

MR. BORAH: Was he the man that got killed?

A. Yes sir. I knew Jerry Cronin.

MR. RICHARDSON: I would like to call counsel's attention to the fact that yesterday when I wished to fix time and place I was invited to remember that I had a right to a cross examination, and I would like to call counsel's attention to the fact that they have a re-direct examination.

Proceed, Mr. Orchard.

THE WITNESS: That is all the men that I call to mind that I was personally acquainted with. I knew lots of men by sight that I didn't know their names.

Q. So of all of the people that were in that hall you only remember the names of four or five of them.

MR. HAWLEY: We object to that as not correct.

THE WITNESS: I might remember the names of a good many more but I don't call them to mind now.

Q. When you started down on that train that morning how many

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were there on the train whom you knew before you got to Wardner? Give us the names of those? A. A man by the name of Doctor Collins, his two brothers, Harry Gordon, a man by the name of White; that is as many as I call to mind that I remember of personally.

Q. You say there were about a thousand men on the train you should think: Where do you mean, when they left Burke, when you got to Wardner? A. That was what it was estimated to be.

Q. Did you make that estimate yourself? A. I don't know that I did. I heard it talked that is about what it was.

Q. Are you testifying to what you heard it talked about or are you testifying to your own knowledge? A. I am testifying to what I heard it talked about.~~xxx~~

Q. You really don't know then how many men there were on the train? A. I don't know how many men were on the train.

Q. How many cars were there on the train? A. I couldn't tell you that.

Q. What kind of cars were they? A. They were flat cars and box cars and some passenger coaches.

Q. How many passenger coaches? A. I think there were two -- I think; I wouldn't be positive.

Q. How long a train was it? A. I should think there were fifteen cars on.

Q. Freight and passenger all together? A. Yes sir.

Q. How many engines were there? A. There was only one engine when it went down.

Q. What portion of the train did you ride on? A. I rode in a passenger coach.

Q. Which end of the train was it on, what part of the train?

- A. On the front end.
- Q. Who rode with you, who was your companion? A. Well, I was close by Harry Gordon and Doctor Collins.
- Q. Where had they gotten on to the train? A. Got on at Burke.
- Q. When did you first see W. F. Davis that day? A. I seen him after we got to Wardner.
- Q. Where had he come from, if you know? A. I think he came from Gen.
- Q. You are sure you were not at Burke playing poker at the time that this explosion occurred at Wardner? A. I am, sir.
- Q. Very confident of that? A. Yes sir.
- Q. Do you know where Millins is? A. I do.
- Q. Were you ever at Millins that day playing poker? A. No sir, I was not.
- Q. Quite certain you were not? A. Yes sir.
- Q. Well, when you got to Wardner whom did you take orders from if you did take any orders? A.-W. F. Davis.
- Q. Where was he when you first saw him? A. He was at the depot at Wardner or Kellog.
- Q. Wasn't waiting for you when you got there so far as you knew? A. No sir, I think he was on the train.
- Q. What did you do the first thing? A. I stayed at the depot where the powder was taken off the cars.
- Q. Did you help take the powder off the car? A. I think I did.
- Q. Were you present when the powder was gotten? A. I was on the train.
- Q. Where was it gotten from? A. Gotten from the Frisco magazine.
- Q. Gotten from the Frisco manager, too, wasn't it, or superintendent? A. Gotten out of the magazine, I don't know who was there

- Q. Do you know a man named McDonald? A. Yes sir.
- Q. Was he superintendent of the Frisco? A. Yes sir.
- Q. Did you see him that morning? A. No sir.
- Q. Didn't he go to the powder house and take out the powder and deliver it to the people who were on that train?
- A. I didn't see him do it.
- Q. And didn't see him at Gem that morning? A. No sir.
- Q. That Frisco mine is near Gem, is it not? Just a little above the town of Gem? A. Yes sir, it is.
- Q. You said the train backed up there and got the powder, then it went on down to Gem? A. I said that it got part of the powder when it went down and backed up and got some more.
- Q. You said something about the miners being armed in the miners' union hall yesterday, didn't you, or day before? A. I said there was some arms delivered to them in the miners' union hall.
- Q. Then you went up to the hall, did you? A. What hall?
- Q. The Miners' Union hall at Gem. A. I didn't go in the hall.
- Q. You said there was some guns or some arms delivered to them at the Miners' Union hall: How do you know that? A. I saw them coming out of the hall with them.
- Q. Whether they got them in the hall or not you don't know except you saw them coming out? A. They come out with them.
- Q. Did you people have any arms where you came from? A. Yes sir, we had some.
- Q. Where did you get your arms? A. They were the ones that private individuals had. Mr. Cochran, when he was making his speech, wanted everybody to get all the arms they had and ammunition.

- Q. And did you do that? A. I got my six-shooter, was all I had.
- Q. Where did you go to get your six-shooter? A. To my room.
- Q. That was all the guns that you wanted, wasn't it, on that occasion there, the six-shooter? A. That was all I had.
- Q. Now when you got off at Wardner you went to the Bunker Hill and Sullivan Mill, did you? A. No sir, I didn't.
- Q. You did not? A. Not immediately.
- Q. Did you see the men who did go to the Bunker Hill & Sullivan mill? A. I seen a lot of them, yes sir.
- Q. Who were they? A. The men that came down on the train.
- Q. What were their names? A. I couldn't tell you their names.
- Q. Didn't know the names of any of them? A. I knew a few of them, yes.
- Q. Give us the names of those whom you know who went to the Bunker Hill & Sullivan mill. A. Well, I couldn't give you the names of them. I don't know their names.
- Q. Can't you give the names of a single one of them?
- A. The men were mixed up and most of them were masked. There was some of them that I speak of that probably went, I don't know that they did. There was some stayed there that I knew where I was with the powder, and the others mentioned went to the mill. There was a lot all together, I don't know how many.
- Q. I don't care anything about those who might have gone, I want to know the names of those who went that you did know.
- A. I couldn't give you the names.
- Q. Couldn't give me the name of a single one of them?
- A. I don't know that I could.
- Q. Can you give me the name of a single one that remained with you?
- A. Yes sir.

- Q. Who? A. Harry Gordon, a man by the name of Gus Peterson.
- Q. How long did you remain with them? A. I think we were there about half an hour.
- Q. Where did you go then? A. I went down to the mill.
- Q. You spoke yesterday about some men that went around on the upper side of the mill, as I understood it? A. Yes sir.
- Q. A sort of a scouting party? A. Yes sir.
- Q. Who were those men, what were their names? A. One of their names was Smith, one of their names was Collins.
- Q. Dr. Collins? A. No sir, his brother.
- Q. One of Dr. Collins' brothers? A. Yes sir.
- Q. Those are the only two you knew who went in that party, are they? A. Yes sir, they were.
- Q. Did you know Smith at the time or did you learn his name afterwards because he was killed? A. I knew him at the time.
- Q. Do you know where Gordon is now? A. He was up at Burke the last time I knew of him.
- Q. When did you hear of him last? A. In October, about, 1905.
- Q. Do you know where Peterson is now? A. Yes sir.
- Q. Where? A. He was up there at Burke.
- Q. At that same time? A. Yes sir.
- Q. You think both of those men have remained right there so far as you know in Burke from 1899 at least until October of 1905?
- A. They were there then in October of 1905.
- Q. When you moved away from the Wardner depot did you go to the mill? A. Yes sir.
- Q. How many men had preceded you to the mill? A. I don't know; there might have been a dozen or two, maybe more.

- Q. Did you help carry the powder? A. Yes sir.
- Q. How many were in the bunch with you that carried the powder there? A. I think there was about eighty or ninety.
- Q. Can you name any of those? A. I can name Gus Peterson as one of them.
- Q. Anybody else? A. I don't remember of anyone else.
- Q. Only one out of the eighty or ninety that helped carry that powder? A. That is all I remember. We were walking together, Mr. Peterson and I, with each a box of powder; I remember him quite well.
- Q. Did the other ninety each have a box of powder? A. I think they did, somewhere near ninety; I said eighty or ninety I think there was, I am not positive about the number.
- Q. And all that you know out of the bunch is the one man named Peterson who helped you carry a box of powder? A. That is all I remember. I knew more of them but I don't remember their names.
- Q. How many boxes of powder in all was there carried over there?
A. I think there was between eighty and ninety.
- Q. You didn't know at that time Haywood, did you? A. No sir, I did not.
- Q. Nor Moyer? A. No sir.
- Q. Nor Pettibone? A. No sir.
- Q. And none of them were there at that time so far as you know?
A. So far as I know they were not.
- Q. Never heard of their being there, did you? A. No sir.
- Q. When you got over there to the Bunker Hill & Sullivan mill what

- did you do with that powder? A. I took it down in the compressor room.
- Q. Was the whole amount of powder that was carried over there put in one place? A. No sir, it was not.
- Q. How many different places was it put in if you know?
- A. It was put in three different places.
- Q. And you lit the fuse that exploded one bunch of that powder, did you? A. I did.
- Q. Was that the bunch that you had helped to create there?
- A. Yes sir.
- Q. Did anybody give you orders to light that fuse? A. Yes sir.
- Q. Who was it? A. -- W. F. Davis.
- Q. When did he give you the order? A. Just before we lit it.
- Q. He was in the Bunker Hill & Sullivan mill, was he? A. Yes sir.
- Q. How far away were the other two bunches of powder from the bunch which you lit? A. They were on the floor above us and a little to the right.
- Q. Who gave the orders to light those bunches, if you know.
- A. I don't know.
- Q. What did you do after you lit the fuse for this bunch of powder? A. Climbed out and went back to the depot, climbed out of the compressor room on some box cars.
- Q. How far back toward the depot had you gotten before anything happened? A. Gotten pretty near to the depot.
- Q. Where was Davis at that time? A. I couldn't tell you.
- Q. Where was Gordan at that time? A. I don't know.
- Q. Where was Peterson at that time? A. I don't know that.
- Q. Where was Collins at that time? A. I couldn't tell you where

they were. They were close by there, I suppose.

Q. Now you had been driving a milk wagon and peddling wood in that territory all together for a period of about a little over three years? A. No, a little less than three years. It was less than three years.

Q. You knew pretty generally the people up there, didn't you?

A. Yes sir, I knew quite a few of them.

Q. The nature of your business required you to become acquainted with the people, did it not? A. Yes sir, I got pretty well acquainted with people.

Q. And, besides, you were spending a good deal of your time in saloons and in playing poker, and so forth, weren't you, so that you got acquainted in that way? A. I was in the saloon nights a good deal, yes sir.

Q. And yet out of all of the thousand people, more or less, who went down there, you could only give us the names of these you have given? A. That is all I can give you the names of I personally remember of.

Q. I don't remember -- I didn't keep track of the names, about seven or eight, was it, that you gave us? I didn't keep track of the number. A. I don't know just how many I gave you.

Q. Now after this explosion occurred you went back to Burke, did you? A. Yes sir, I went back to Burke.

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Q And you went to work on the same mine that you were working on before? A Yes sir.

Q Before you went to Wardner? A Yes sir.

Q And continued working on that more than five or six days?

A Some five or six days.

Q Had you worked on the Hercules up to that time? A I had packed stuff up there.

Q Had packed stuff up there that spring, had you? A No sir.

Q You had not done any work on the Hercules after you sold out your interest on, or in the Cordonia? A I packed stuff up there.

Q What did you say the name of this mine was you worked on?

A The Tiger and Peerman ~~mine~~ *mine*

Q Where was that? A In the town of Burke.

Q Right in the town, or on the side of the hill? A Yes sir, a little up on the side of the hill.

Q How far was the place where you came on shift, a shaft house, I suppose, wasn't it? A Yes sir.

Q And how far was that from the town of Burke? A Probably a hundred feet.

Q How far was it Dr. Collins residence? A Probably three or four hundred yards.

Q You made an arrangement with Dr. Collins before you went on shift that night that if the soldiers came up there he was to display a flag? A No sir, we did not make any arrangement before we went on shift for him to do that.

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- Q When was that arrangement made? A On the morning I left there-- I went down to work in the morning and quit about an hour or so after I started to work, and come up and then we made arrangements with Dr. Collins.
- Q Who were "we"? A Harry Gordon was one of them that was with me.
- Q Was Harry Gordon your shift partner? A No sir, not exactly.
- Q Who was? A I don't know that I had any shift partner. I was mucking and up in the shafts with several men.
- Q How did you come to make this arrangement with Harry Gordon?
- A I did not make it with Harry Gordon. I said he was with me when we made the arrangement with Dr. Collins.
- Q How far did you say Dr. Collins place was from the shaft house?
- A Two or three hundred yards.
- Q And the town itself was a hundred feet away, was it? A The main part of it was-- somewhere about a hundred feet.
- Q Was there anything to prevent the soldiers from coming up that hundred feet? A Nothing that I know of.
- Q So, you made an arrangement with Dr. Collins for this signal to be made two or three hundred yards away, did you? A It might have been more than two or three hundred yards. I could see his house up on the side of the mountain and if it was safe for us to come down he was to put a flag out for us to see.
- Q What was that arrangement? A If the soldiers came in there he said he would put up a white flag.
- Q What caused him to do it? A We asked him to do it.

Q Why? A Because, if it was safe or not to come down.

Q You heard that the federal soldiers was scaring the country?

A I don't know that I heard that they were scaring the country then.

Q You expected them to do that, did you? A I don't know hardly what we expected them to do.

Q And yet you made the arrangement with Dr. Collins? A We expected they would probably arrest us and we was going to be out of range of them.

Q Who is "we"? A There was Harry Gordon and myself, and Jack Callan, Carl Emerson, Paddy Denison and some others; I don't remember just the rest of them names.

Q They were working with you on that shift, were they? A Collins was with us too; I remember his name.

Q Dr. Collins? A No sir, his brother.

Q One of his brothers? A Yes sir.

Q Now, you say when you came out of the shift you were to go on up the hill; was that so you could see Dr. Collins house? A When I come out of the shift?

Q Yes. A I went to my cabin and packed up my clothes and sent my trunk up to a mill man's house named Baumgartner.

Q Where was your cabin?

MR. HAWLEY: Wait a minute. Let him answer the question.

A I was going to tell what we went up on the hill for.

Q Go ahead. A I packed my clothes in my trunk so I would not have to come down, and we made this arrangement with Dr. Collins for that purpose.

- Q Are you through now? A Yes sir.
- Q Where was your cabin? A Just below the main town.
- Q So you went to your cabin, did you, instead of looking for this signal? A I had made no arrangements for the signal.
- Q Then where did you go? Did you go back to work? A No sir.
- Q You went up on the hill? A Yes sir.
- Q Why did you do that? A So the soldiers would not get me.
- Q What did you do up on the hill? A We stayed up on the side of the hill where we could see what was going on.
- Q How long did you remain there? A I think until about four o'clock in the afternoon.
- Q What time had you gone up there? A About noon.
- Q And at four o'clock in the afternoon it was that you concluded to take this trip over across the mountain? A No sir, it was not.
- Q When did you conclude to do that? A That evening.
- Q What time? A Probably about 11 or 12 o'clock.
- Q Did you go back to town that evening? A No sir.
- Q Where did you stay? A Up at the Hummingbird mine in a cabin.
- Q Was that the place you had been staying through the day? A No sir, some little distance from there.
- Q Had you gotten your stuff that you had packed up in the cabin?
- A No sir, I had not.
- Q What caused you then to leave there, if you did leave? A Because the soldiers had come in there and arrested all the men in the place and taken them away.

- Q How did you know that? A We sent two men down and they found it out from some of the women.
- Q All you know is that on the morning of the day that you went down there and blew up the Bunker Hill and Sullivan mill you were called on to attend a meeting of your lodge or union, which you attended, and as the result of that meeting you went down there? A Yes sir.
- Q There was no strike on where you were interested, was there?
- A No sir.
- Q Everything was going along peaceably and all right? A Yes sir, as far as I know.
- Q And as far as you know every where else? A No sir, it was not.
- Q You knew from hearsay that there was some trouble down at Wardner?
- A Yes sir.
- Q When you were down there at Wardner did you see Jack Simpkins?
- A No, not that I know of.
- Q You did not know about his being there at that time? A No sir.
- Q You did know afterwards that as the result of that trouble there he was put in a place called a military bull pen and kept there some ten months? A I have heard he was.
- Q And subjected to all kinds of indignities? A I heard so.
- Q And you know that from him himself don't you? A Yes sir, I have heard him say so.
- Q And you have heard him talk about it? A I have.
- Q And the indignities he suffered there? A Yes sir, I have.
- Q And you have talked with him about it? A I have, several times.

- Q Now, you went over to Missoula, Montana? A Yes sir, I went to Missoula.
- Q And finally moved down to Utah and some other places? A I did finally go to Utah, yes sir.
- Q You stayed in Utah for a period of something like two or three years-- that is, Utah and vicinity? A It was not three years, I don't think.
- Q How long was it? A It was from May or June of 1899 until some time in July of 1902.
- Q Yes. A But I had been in California and Arizona and Nevada in the meantime.
- Q What had you been doing in those places during the time from May of 1899 until June of 1902? A It was July or August of 1902 that I left there.
- Q What had you been doing? A I worked in the mines.
- Q How long?
- MR. HAWLEY: Wait. Let him answer the question.
- THE COURT: He was going on to answer your question.
- Q Very well, go ahead. A I drove a milk wagon in Salt Lake City and worked in the mines, and got out in the mines in Utah and Arizona and Nevada, and I got out some wood one winter in California.
- Q Is that all? A That is about all that I worked at that I remember of.
- Q How much of that three years did you work at actual hand labor for pay? A Well, I think I worked on the average of ten or eleven months out of the year.

- Q Each year? A Yes sir.
- Q Where was the first work you did? A It was at Bingham, Utah.
- Q When did you commence that work? A I commenced it some time in June of 1899.
- Q What had you done in the shape of work from the time you left Burke until you commenced that work? A I had worked a week or ten days up in the Bitter Root Valley for a man named Biggs.
- Q What doing? A On a farm-- a ranch.
- Q What pay did you get? A Nothing.
- Q And you got no pay for those ten days work? A No sir.
- Q You were broke? A Practically.
- Q You remained broke until you went to work in Utah? A No sir.
- Q Where did you get any funds from? A From the Tiger and Peerman's Mining Company, wages that were coming to me.
- Q How much? A About \$35.00.
- Q Was \$35.00 all you had from May 1899 until June of the same year?
- A It was all I had after I paid some debts I owed there.
- Q Where did you get the balance of your money? A From the wages I earned for working in the mine.
- Q Then you got more than the \$35.00? A Yes sir.
- Q How much did you get? A I got I think \$103. or \$105.
- Q How did you get from Montana to Utah? A I went on the railroad.
- Q Did you pay your fare? A No sir.
- Q How did you go? A I beat my way.
- 359 Q Was that because you were broke? A I did not have much money left;

I had a little.

Q When you got this \$35.00 did you proceed to gamble with it?

A I gambled a little in Butte.

Q When you commenced gambling you lost in that game? A I did not lose much in Butte.

Q You finally got so that the other people lost when you played in that game?

MR. HAWLEY: We object to that as not proper examination.

THE COURT: Let him answer the question.

A Some times they may have lost and some times they did not.

Q And some times they may have? A Oh, some times they did lose.

Q How did you average up on your experiences at that time?

A I usually lost.

Q So that you were busted most of the time? A I was when I was gambling.

Q You continued to gamble during most of that period of time didn't you? A Some times I did, yes sir.

Q How long did you work on this mine in Utah? A I worked in two different places in Utah, until the 4th of July, 1899.

Q Until the 4th of July? A Yes sir.

Q That is, from the middle of June? A Well, some time in June.

Q Well, say about 15 or 20 days, you think would be about right, do you? A Oh, I worked more than that. I worked probably 25 days-- something like that.

Q What wages did you receive per day? A I received \$3.00 in one place and \$3.50 in another.

- Q Was this work continuous or was there a lapse between the two places? A There was a couple of days between the two places.
- Q Were you gambling at that time, while you were working, still?
- A I think I gambled a little.
- Q You think you did? A Yes sir.
- Q When you got through and got your pay collected were you in debt or out of debt then? A I was out of debt there.
- Q Did you have any surplus left? A Yes sir.
- Q Where did you go then? A Went to Salt Lake City.
- Q What did you do there? A I did not do anything.
- Q How long did you stay there without doing anything? A Three or four days, something like that-- probably a week.
- Q And then where did you go? A Out to the mouth of Cottonwood Canon.
- Q Did you gamble any in Salt Lake? A No sir.
- Q How long did you stay at Cottonwood canon? A Until the Christmas of that year.
- Q Did you get work there? A Yes sir.
- Q And did you work continuously until Christmas time? A With the exception that I may have gone to Salt Lake three or four times and stayed a day or two.
- Q And didn't you stay more than a day or so? A I might have.
- Q How far is Cottonwood Canon from Salt Lake? A I think about 20 miles.
- Q And you think you went in three or four times during that fall, to Salt Lake? A I think I did.

- Q And at Christmas time where did you go? A I went to Salt Lake.
- Q How much money did you have at that time? A I think about \$200.
- Q What became of that money? A I had it in a bank for a time, part of it.
- Q How long a time? A Well I had part of it in there until some time the next spring.
- Q How long did you stay at Salt Lake? A I did not stay very long, possibly three or four days.
- Q Where did you go then? A I went out to Bingham, Utah.
- Q The same place as before? A Yes sir.
- Q What did you do there? A Went to work in the mine.
- Q The same mine? A No sir, another one.
- Q How continuously did you work there? A I worked there until the spring of 1897.
- Q Oh no. A No, the spring of 1900.
- Q The spring of 1900? A Yes sir.
- Q And how continuously did you work? A I worked steady there all the time.
- Q And how much did you get a day? A \$2.00 a day in cash and got some \$2.00 in stock, I think.
- Q Did you have any recreation that winter in the shape of gambling?
- A No sir.
- Q Did not gamble there at all? A I was not down from the mine at all.
- Q Did the miners play cards among themselves and gamble?
- 362 A Not there.

Q So that you had more money in the spring than you had when you went in in the fall from Salt Lake City? A Yes sir.

Q How much did you have when you came out in the spring of 1900?

A I think I had about \$150. that I had made up there.

Q And how much of your \$200. did you have left in Salt Lake?

A I couldnot say how much; possibly a hundred dollars or so; I could not tell you just how much.

Q So you had about \$250. capital when you came out of Bingham in the spring? A Yes sir, I think so.

Q Where did you go then? A I went back to Bingham.

Q How long did you stay in Salt Lake? A I think I stayed there a week or so, I am not sure how long.

Q Was your money all gone at the end of the week or so?

A No sir.

Q Did you gamble during that week? A Yes sir.

Q You was practically busted at the end of that week? A No sir, I was not busted.

MR. HAWLEY: We object to that as argumentative.

Q How near were you to being broke? A I had money enough to buy a ticket out and go to work again and a few dollars left.

Q And when you got back to work you were practically broke?

A Practically so.

Q When you have only a few dollars you regard yourself as practically broke? A I do, yes sir.

Q Did you go to work in the same mine? A No sir.

- Q Where did you go to work at that time? A Over in Butterfield Canon.
- Q And how long did you work there? A About a month.
- Q What wages did you get there? A \$3.50 a day.
- Q Did you save that while you were working there? A I did.
- Q One month? A About a month.
- Q How much were you able to save out of that month's work?
A Something over a hundred dollars.
- Q Then did you go back to Salt Lake? A Yes sir.
- Q And how long did you stay there at that time? A Three or four days.
- Q Was that the end of the hundred dollars which you had? A I did not have much when I went out.
- Q Went right back to the gambling table with it? A I used to gamble some.
- Q You gambled some? A Yes sir.
- Q After that was gone wheredid you go? A I went to Tucker, Utah.
- Q How far is that? A About 160 miles.
- Q How did you get out there? A On the railroad.
- Q You was broke? A No sir, I was not broke.
- Q You purchased a ticket and went out as a passenger? A Yes sir.
- Q Did you go to work when you got there? A Yes sir.
- Q What mine did you work in? A The Assyria mine.
- Q Who owned that? A I don't remember.
- Q How long did you work there? A In the neighborhood of two months--
about two months.

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- Q Did you save your money there? A Yes sir, part of it.
- Q And then back to Salt Lake again? A I came to Salt Lake, yes sir.
- Q How long did you stay at Salt Lake at that time? A I couldnot
tell you just how long, a few days.
- Q A few days? A I was thinking of how long I stayed.
- Q Give it the best you can. A It was a few days.
- Q Did the tiger get that? A Got some of it, I guess.
- Q All gone at the end of a few days was it, or practically so?
A Not all of it.
- Q Where did you go then? A I think I went to Arizona.
- Q And to what part of Arizona? A I went in from St. George, Utah,
from the southern part of Utah.
- Q How did you go to St. George, Utah? A I went on the railroad down
to a station called Medina and went from there in on the stage.
- Q Were you broke then? A No sir.
- Q Practically so? A I had some money to pay my fare.
- Q Some left over after you paid your fare? A Yes sir, I had a few
dollars left.
- Q You arrived there practically broke, in Arizona? A I had a few
dollars; I don't remember just how much.
- Q You say you call a few dollars practically broke? A Yes sir.
- Q Did you go to work there? A I did not go to work at St. George,
no sir.
- Q Where did you go to work? A In a mine about 80 miles from St.
George, in Arizona.

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- Q How did you get to that mine? A On a freight wagon.
- Q Whose mine was it? A A man named Beck.
- Q What was the name of the mine? A I don't remember the name of the mine.
- Q How long did you work there? A Until about March.
- Q Until about March of what year— 1901, would that be? A No sir, I think it would be March of 1900.
- Q You got passed March of 1900, didn't you? A Well, it was March of 1900 that I worked down there I think.
- Q You think you have get changed around on your location, do you?
- A No sir, I don't think I have.
- Q Well, how long did you work down there? A About three months, I think.
- Q Continuously? A Yes sir, while I was there.
- Q Did you save your money? A Yes sir, while I was there I did.
- Q How much did you get a day? A \$3.50.
- Q What amount of money did you have when you left there? A I had about \$250. I think, when I left there, in cash.
- Q Then back to Salt Lake again? A I came to Salt Lake, yes sir.
- Q How long did you stay there? A I don't remember. I did not stay there very long-- a few days.
- Q A few days? A Yes sir.
- Q You cannot give us a more correct estimate on it than that?
- A No sir.
- Q Was that while the money lasted? A No sir.

- Q You did not gamble that time? A I had some money left.
- Q Took back part that you had left there before, did you? A What I took with me and what I earned.
- Q Did you come out ahead on your gambling experiences that time?
- A I did not gamble much that time.
- Q How much did you have left when you left Salt Lake? A I had about \$150.
- Q Where did you go to? A I went out to Bingham.
- Q This same old Bingham that you had been to twice before?
- A Yes sir.
- Q How long did you stay there? A About a month.
- Q Do any gambling while you was there? A No sir.
- Q Did you work? A Yes, I did do some gambling.
- Q Gambled with the other miners? A Yes sir.
- Q Did you do any work while you was there? A Yes sir.
- Q What? A Worked in a mine.
- Q How continuously? A About a month.
- Q And was that as long as you stayed out there? A Yes sir, about as long as I stayed there.
- Q So that all the time you were there you worked regularly, did you?
- A Yes sir, except a few days that I was down town.
- Q And did you gamble regularly all the time you worked? A No sir, I did not.
- Q How did you come out that time-- at the end of that time so far as finances were concerned? A I had some money left.

- Q You had some left, -- how much? A I think a hundred dollars or so.
- Q And then where did you go, back to Salt Lake? A I came to Salt Lake, yes sir.
- Q And how long did you stay there at that time? A Well, I did not stay there very long.
- Q A few days? A Yes sir.
- Q Was that as long as it lasted you? A It did not last very long; I went broke that time.
- Q That time they got it quickly? A I believe so.
- Q And you spent it gambling, didn't you? A Part of it.
- Q And the balance of it I suppose in ways that were of as little use to you?

MR. HAWLEY: I object to that as argumentative and not proper examination.

THE COURT: The objection is sustained.

MR. RICHARDSON: Can I be heard on it?

THE COURT: I don't think it is necessary to be heard on that question.

MR. RICHARDSON: I will take an exception.

THE COURT: The exception will be noted.

- Q Did you leave Salt Lake then? A Yes sir, I left Salt Lake then.
- Q Wheredid you go? A I went to Nevada.
- Q What part of Nevada did you go to? A At State Line.
- Q That was on the line between Utah and Nevada? A Yes sir.
- Q And how long did you remain there? A About a month I think, or a little less.

- Q What did you do there? A Worked in a mine.
- Q What kind of a mine? A A quartz mine.
- Q What was the name of the mine? A The Ophir mine.
- Q Do you remember the name of the owners? A I do not.
- Q What wages did you get? A Four dollars a day.
- Q Do any gambling while there? A A little.
- Q Worked continuously, or gambled continuously? A I did not gamble while I was working.
- Q Did you work a shift every day? A Yes sir.
- Q All the time you was there? A There may have been two or three days while I was there I did not work.
- Q That would make about 30 shifts then? A I don't think I was there that long.
- Q How long do you think you were there? A I think I was there about twenty shifts.
- Q So you got about \$80. in all? A I think I did.
- Q How much did you have left? A I had about \$50. I think.
- Q What did you do with that? A I fetched it with me when I come away?
- Q Back to Salt Lake? A Yes sir.
- Q How long did you stay in Salt Lake that time? A Only a little while.
- Q How long did it last you? A Well, I did not spend that. I kept some of it.
- Q How much of it did you keep? A I kept-- I don't just know how

much I had.

- Q It cost you something to get back to Salt Lake? A Yes sir.
- Q Did you have enough to go to the next place with? A Yes sir.
- Q Where did you go? A Up into Southern Idaho.
- Q That was a prospecting trip? A Yes sir.
- Q And did you do any work while you was here? A No sir.
- Q Was that a ~~hunting~~ camping trip or a railroad trip? A I think it was a railroad trip.
- Q Go at your own expense? A No sir.
- Q Went at the expense of the man you was with? A Yes sir.
- Q Who was he? A Mr. Dulin.
- Q Did you gamble any on the trip? A No sir.
- Q When you got back, what did you do? A I went back to Colorado. I was in California in November of 1900. I have got mixed up some in the dates where I was working.
- Q That is not very material. A I can fix it afterwards.
- Q I am making no point of that. A I know I went to California in November of 1900 and was there that winter.
- Q You was there all of one winter? A Yes sir, from that time, from November until in May or June, I think, I was in California.
- Q Of 1902? A of 1900.
- Q Of 1900 and 1901? A Yes sir.
- Q That would mean that you came from Montana to Salt Lake in June or July of 1899 and you stayed there and in that vicinity until in the fall of 1900? A Yes sir.

- Q And then you went to California and stayed there in the winter of 1900 and 1901? A Yes sir.
- Q And came back to Salt Lake? A Yes sir.
- Q And you have related your Salt Lake experiences then and omitted your California trip? A Yes sir.
- Q What part of California did you go to? A I went to San Francisco.
- Q How long did you stay there? A About two weeks, I think.
- Q Was that the first time you had ever been there? A Yes sir.
- Q How much money did you take with you? A About \$100.
- Q That you had when you got there? A I think I had about \$75. when I got there.
- Q What did you do with that \$75.? A I paid my expenses while I was in San Francisco.
- Q Stayed there ~~at~~ two weeks? A I think about two weeks.
- Q Were you busted at the end of that two weeks? A No sir.
- Q How much did you have left? A I had about \$60. left.
- Q Then where did you go? A To Bartlett Springs.
- Q How long were you there? A I think in May or possibly June.
- Q Stayed there all winter, did you? A Yes sir.
- Q What did you do? A I had a contract for getting out some wood.
- Q For some mining or railroad company? A No sir, for the Bartlett Springs Company.
- Q Is that a local company there? A Yes sir, and I was getting out some fire wood for them.
- Q How much money did you make that winter? A About \$350.

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- Q You had that left at the end of the winter? A I had that much when I quit.
- Q And you went back to Salt Lake? A I went to Los Angeles from there.
- Q Gamble any there? A No sir.
- Q How long did you stay there? A Two or three weeks.
- Q What were you doing there during that two or three weeks?
- A Looking around the city.
- Q Did you go there to see anybody specifically? A Yes sir, to see a man by the name of Grant.
- Q Some one whom you had known? A Yes sir, I had known him before.
- Q Was this the first experience you had ever had in California?
- A Yes sir.
- Q How did you know that Grant was in Los Angeles? A I had written him several times during the winter.
- Q You say you knew him before? A Yes sir.
- Q What was his business? A He was a miner.
- Q No mines near Los Angeles, were there? A No sir.
- Q And he was spending the winter there, was he? A Yes sir.
- Q And you did not do any gambling there? A No sir.
- Q And Grant did not do any gambling there? A No sir.
- Q What did you do? A I did not do anything except look around the city.
- Q Just had a good time? A Yes sir, a pleasure trip.
- Q And then where did you go? A Back to Salt Lake.

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- Q By what means did you go back to Salt Lake? A On the railroad.
- Q And then your Salt Lake experiences commenced as you have related them? A When I came back at that time I worked on the Keystone dairy.
- Q How long? A From the time I got back until some time that fall.
- Q That was in the city proper? A Yes sir.
- Q You were delivering milk? A Yes sir.
- Q Now, you got back, you say, in May or June you think? A I think I got back some time in June.
- Q So you worked probably three or four months for that dairy?
- A Yes sir.
- Q And what was you doing, peddling milk? A Yes sir.
- Q How much money did you make at that? A \$50. a month.
- Q Was you able to save any of it? A Not very much.
- Q You gambled a little? A No sir, not much while I was on the milk wagon.
- Q It took it about all to live on? A Yes sir.
- Q So there was not much to be saved? A Not much.
- Q Now, you have told us all your experiences until the time you went to Colorado? A Practically so.
- Q Up to that time you had not known any of these men connected with this case, Simpkins, Pettibone, My Meyer or Haywood? A No sir.
- Q And had never heard of them? A Not that I know of.
- Q Very well, and in all these experiences that you had in Utah and California you had not joined any miner's union? A No sir.

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- Q Had you been a town where there was a miner's union? A I don't think I had.
- Q You don't know whether there was one in Bingham or not? A I don't think there was a union of the Western Federation of Miners there.
- Q You don't think there was? A I don't think so.
- Q Can you give us the longest time that you worked in any one mine from the time you commenced at Burke, Idaho, until you went to Colorado in 1902? A I worked the longest time out at Little Cottonwood Canon.
- Q How long was that? A From July until Christmas of that same year.
- Q A period of about four months? A Four or five months.
- Q Outside of that-- was that in one mine? A Yes sir,-- it was in a prospect, it was not a mine.
- Q In a prospect? A Yes sir.
- Q Were you working for yourself or for a company? A I was contracting most of the time for a company.
- Q You were getting paid for the work? A Yes sir.
- Q You had no part in the venture yourself other than to take your pay in stock? A I did not take my pay in stock at that place.
- Q There was one place where you took \$2.00 a day in cash and \$2.00 a day in stock? A Yes sir, but that was not up there.
- Q Did you work continuously for four or five months at any other place? A I may have been in Salt Lake City.
- Q What was the longest period of actual work that you did in any one mine from the time you left Burke, Idaho, until you started for

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Colorado? A Possibly it was up at the St. James.

Q At the St. James? A Yes sir.

Q Tell us about that? A I worked up there on a contract where I got \$2.00 a day and \$2.00 in stock for possibly three months steady, that I was up there and was not down at all.

Q That was the longest time you worked any place steady? A I think it was possibly; I am not quite sure about it.

Q When you went to Colorado you went directly to Cripple Creek, did you? A Yes sir.

Q Was that in the year of 1902? A Yes sir.

Q Do you remember the date you arrived at Cripple Creek? A No sir, I do not.

Q One thing, I want to go back just a little bit, you said something about Governor Steunenberg at the time you left Wardner, some remark that Mr. Cochran made about it? A When I left Wardner?

Q Yes, when you left Burke? A I did.

Q "There would be no trouble from Steunenberg"? A Yes sir.

Q And all they had to do was to avoid getting into a conflict with the federal authorities? A Yes sir.

Q Did you know of their being any trouble with Steunenberg? A I did know of it afterwards.

Q You did know of it afterwards? A I heard of it, yes sir.

Q You knew as a matter of fact that there had come to be a conflict up there in which the military took part and that they were there at the instance of Governor Steunenberg of this State? A That is
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what I understood.

Q You understood that? A Yes sir.

Q Now, we will go to the Colorado proposition, I guess. What time was it that you went to Colorado? A I think it was in July or August.

Q You don't know whether it was July or August of 1902, do you?

A I think we left Salt Lake City just after the 4th of July.

Q Just after the 4th of July, 1902? A I think so.

Q Was there any particular reason why you went to Colorado?

A I went there to look for work.

Q No one connected with the Western Federation of Miners or connected with you in any way had urged your going there? A No sir.

Q You went there because you thought it was a good place to get work?

A Yes sir.

Q There was not any trouble when you got there at Cripple Creek?

A Not that I knew of.

Q Did you go with anybody that you are acquainted with? A Yes sir.

Q Who? A Arthur Dalin.

Q Where had you met him? A In Salt Lake City.

Q How long had you knew him? A A year or so.

Q What was his occupation? A He lived in the city and used to work at everything-- teaming, and worked in the mines some, and so on.

Q Where had you met him? A I met him in Salt Lake City.

Q At what place? A Down in the city somewheres, I don't know as I can tell exactly what place.

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- Q What was he doing at the time? A I think he was driving a team.
- Q Was he a gambler also? A He used to gamble some.
- Q Did you meet him in a gambling place? A I might have.
- Q Did you not go with him as a gambler to Cripple Creek? A No sir.
- Q Well, in any event you and he did go there together? A Yes sir.
- Q And arrived there shortly after the 4th of July of 1902?
- A Yes sir.
- Q You learned when you got there that there was a strike on in regard to a certain mill at Colorado City which was handling Cripple Creek ores? A No sir, I didnot when I got there.
- Q Didn't you know anything about that? A No sir.
- Q The mines were not working at that time in any event? A They were working as far as I knew.
- Q How soon after you got there did you apply for work? A I applied for work in two or three days.
- Q To whom did you apply? A I went to the Trachyte mine first.
- Q Who owned the Trachyte mine? A I don't know who owned it but Jim McElvie was the Superintendent
- Q Had you known him? A No sir.
- Q You applied to him as a stranger? A I was introduced to him.
- Q Did Dulin go with you? A No sir, he was looking for work too.
- Q Had he ever been a bartender? A Not that I know of.
- Q Nor in attendance in a bar room upon gambling outfits of any kind?
- A Not that I know of.
- Q Deal faro or playing poker? A Not that I know of.

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- Q Did you meet anybody in Cripple Creek whom you had known before about that time? A I did a short time after, yes sir.
- Q Was that before or after you had gone to work? A It was after.
- Q How long had you been working? A It was a week or two.
- Q Who did you meet then? A W. F. Davis.
- Q Had you worked continuously at the Trachyte mine from the time you had gotten a position? A I think I had. I may have laid off a day for some occasion, as they do some times.
- Q You worked one shift every day so far as you can remember now, didn't you? A Yes sir.
- Q What was W. F. Davis doing there? A He came there with the Secretary of the union.
- Q Came to the Trachyte mine? A Yes sir.
- Q With the purpose of soliciting you to become a member of the union? A Yes sir, he asked me.
- Q And you told him that you was already a member of the union? A Yes sir.
- Q And you had the evidence of it on your person did you not? A No sir,
- Q Didn't you have a card with you? A No sir.
- Q Didn't you get a card from Mr. Boyce of Montana? A Yes sir.
- Q What had become of it? A I had lost it.
- Q But he had issued a card to you-- Mr. Boyce had? A Yes sir.
- Q And you had lost that card? A Yes sir.
- Q Did you tell Mr. Davis about that? A Yes sir.

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- Q And you joined Altman No. 19, did you? A Yes sir.
- Q And that was the lodge of which Mr. Davis was President? A Yes sir.
- Q He did not come to you because he had known you in the Coeur d'Alenes? A No sir, I don't think he did.
- Q He came there to solicit the men who were working in the mine to become members of the union? A I think they came for that purpose to collect dues.
- Q There was nothing exciting about your joining Altman No. 19 in any way? A No sir.
- Q You were willing to become a member of Altman No. 19? A I said I would.
- Q Was Mr. Davis the president at that time? A Yes sir, he was-- he was president when I joined after that.
- Q What kind of work was you doing there? A I was running a machine drill.
- Q When did you cease to work there? A About four months.
- Q Going there in July of 1902 that would bring you up to some time in November of 1902? A Possibly, some time along there.
- Q Possibly some time in November of 1902? A Yes sir.
- Q And all the time you worked continuously in this Trachyte mine? A So far as I worked anywhere, yes sir.
- Q Then you went to work, did you, on the Vindicator? A No sir.
- Q Where did you go to work after that? A In the Hull City?
- Q The Hull City Placer? A Yes sir.

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- Q That is now consolidated with the Vindicator, isn't it? A Not to my knowledge.
- Q How long did you work on that? A Three or four months, I think.
- Q That is right near the Vindicator, isn't it? A Yes sir.
- Q That would bring you along into the winter? A Yes sir.
- Q Did you work continuously on the Hill City placer? A I might have been off a shift once in a while.
- Q Who were you working for there? A Con Call.
- Q Who was he? A He was the foreman there.
- Q Was that a company or a corporation? A I believe it was.
- Q You did not know who were the officers of the corporation?
- A I knew one of them.
- Q Who was that? A Mr. Russell.
- Q Did you have any talk with him about your work there? A No sir.
- Q There was no trouble there so far as your work was concerned?
- A Not that I know of.
- Q Why did you cease working at the Trachyte? A Because I went to work for another man. The most of my work was on contract work there and the man who I was working for got through with his contract and he got a contract on another mine.
- Q But you worked with him on the other mine? A Yes sir. Excuse me, I worked for Con Call and then I worked for this other man on the same mine.
- Q Did you work continuously during the winter of 1902 and 1903?
- A I was off some times.

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Q How much of the time was you off? A I was off once and went to Denver for a while.

Q Did you gamble any during that period of time? A Yes sir, some.

Q How much? A I cannot tell how much.

Q Kept yourself broke? A I did not get much ~~xx~~ ahead.

Q You would work a while and get some money and then go somewhere and gamble it away? A Yes sir.

Q And that had been your experience practically all the time?

A I had worked and gambled it and spent it other ways. I did not save much money.

Q Well, after you got through on the Hull City placer where did you do the next work? A On the Vindicator No. 1.

Q You had not got acquainted with Steve Adams, Pettibone, Haywood, or Moyerup to that time? A No sir.

Q Although you had made at least one trip to Denver? A I was to Denverence.

Q Was you to Denver more than once? A No sir, not during that time.

Q How long did you stay in Denver? A Three or four days.

Q You knew Moyer and Haywood were officers of the Federation at that time? A I had heard that they was, yes sir.

Q But you had no personal knowledge of them in any way? A No sir.

Q You kept up your acquaintance, I suppose, with Davis? A Yes sir.

Q Davis did not know you in the Coeur d'Alenes, did he, at all?

A Yes sir, he did.

Q He knew you by name? A Yes sir.

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Q Or just as one of the men who was up there? A He knew me by name.

Q He was president of the Gem union, wasn't he? A I don't know that he was.

Q You had never sat in lodge with him, that is, in a Federation meeting? A Not that I know of.

Q How did you come to get acquainted with Davis in the Coeur d'Alenes?

A The first time I met him I spoke to him down at Wardner the day we were there blowing up the Bunker Hill and Sullivan mill the 29th of April, 1899, and I afterwards saw him when I was leaving the mills to go to some place around there, and I also saw him when I was leaving Wallace.

MR. BORAH: Had you renewed your acquaintance with Davis?

THE WITNESS: I met him that morning.

Q Your acquaintance with him was limited to the time you were with him at Wardner and the talk you had at the Hercules mine that you spoke of before? A Yes sir.

Q And I suppose that you recall that? A Yes sir.

Q And when you mentioned that talk he remembered you, did he?

A He remembered me all right.

Q You did not know how? A He remembered the talk we had at the Hercules mine.

Q Where did you go to work after you left the Hull City Placer?

A On the Vindicator No. 1.

Q Why do you call it the Vindicator No. 1? A Because there are other shafts with others numbers, 1, 2 and 3, and so on.

383 Q That "1" means a certain shaft on the property of the Vindicator

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property? A Yes sir.

Q And you went to work in that shaft, that is to say, you went down that shaft to go to work? A Yes sir.

Q What did you say you were engaged in there? A Running a machine drill.

Q Was that the first time you had run a machine drill? A No sir.

Q Where before? A In the Hercules, Trachyte and the Hull City.

Q You had had all your experience with machine drills in Cripple Creek? A No, I had run a drill in Nevada.

Q Down at State Line? A Yes sir.

Q How continuously did you work after starting in ~~the~~ with the Vindicator people? A Pretty steady. They laid off some times in the mines for some cause.

Q When did you commence? A Possibly in April or May.

Q What had you done between the time you left work on the Hull City placer and commenced work for the Vindicator people? A I had not done anything; I went right over there to work I think the same day.

Q I thought you said you left the employment of the Hull City placer people some time in March; maybe I am mistaken about that; you can have it the way you think is right? A It may have been March or April, I would not say which it was.

Q You did not take any vacation between the Hull City placer work and the Vindicator work? A Not very much.

Q That might have been the time you went down to Denver? A No sir.

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- Q When was it you went to Denver? A It was during the time I was working at the Hull City placer.
- Q Where did you stop when you went to Denver? A I don't remember where I did stop; it was the first time I had ever been to Denver and I think I stopped at a rooming house on Lawrence street.
- Q Did you meet William Vaughn at that time in Denver? A No sir.
- Q You knew him long before these other people whose names I have heretofore mentioned? A No sir, I did not.
- Q You did not? A No sir.
- Q You worked in the Vindicator until August of 1908? A Yes sir.
- Q What level did you work on? A On the 8th level.
- Q Is that where you commenced? A Yes sir, and I worked on the 12th, and I worked on some of the others.
- Q Now, this jury is composed of men some of whom have not been connected with mines. What do you mean by levels? A There is a station--
- Q You leave the surface and the first level is where you run off at the side? A That is the first station.
- Q Then you go down 100 or 150 feet and cut another station and work off from that? A Yes sir.
- Q And that is the second level? A Yes sir.
- Q These are the levels? A Yes sir.
- Q And so on, the third, fourth, fifth, and so on? A Yes sir.
- Q So you commenced working on the eighth level of that mine?
- A Yes sir.
- Q Was there anybody working on the levels above? A Yes sir.

- Q How many were being worked above? A One of them.
- Q Which one was that? A The 7th.
- Q They were still working there? A Yes sir.
- Q But before you ceased working there those levels had been practically worked out until you got to the 12th? A No sir, they were not.
- Q How many were they working on when you worked on the 12th?
- A The 7th, 8th, 9th, 10th, 11th and 12th.
- Q The 1st, 2nd, 3rd, 4th and 5th had been abandoned? A They were not working on them that I knew of.
- Q You never worked nearer the surface than the 8th level? A I worked a little on the 7th.
- Q So you are familiar with the workings of the mine from the 8th level down? A From the 7th down.
- Q But knew nothing about it, of the upper levels, above the 7th level? A No sir, I had been off on the 6th level.
- Q Now, on the 10th of August, 1903, there was a strike declared there?
- A Yes sir.
- Q And you being a member of the Altman union, you walked out with the rest of the strikers? A Yes sir.
- Q What did you do after going on August 10th, 1903? A I stayed in Cripple Creek for a while.
- Q How much money did you have at that time? A About \$150. or \$200.
- Q That is the amount you had left? A I think so.
- Q Was it at that time that you got acquainted with John Neville?

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- A No sir, I had been acquainted with him before that.
- Q How long had he lived there? A I got acquainted with him as soon as I got to Cripple Creek.
- Q You made his saloon your headquarters did you not? A In a way I did, yes sir.
- Q He ran a saloon there? A Yes sir.
- Q And in that saloon there was a poker game going on? A No sir, I never saw any game going on there except freeze-out for the drinks, or something like that.
- Q Neville did not carry on any gambling? A No sir, and did not have any gambling in his place.
- Q And you never played in there? A No sir, not for money.
- Q Was there any place in Cripple Creek where one could gamble if he wanted to? A Yes sir, there was plenty of them.
- Q Did you gamble some? A I did a little.
- Q And did you gamble before August 10th, 1903? A Yes sir.
- Q And did you gamble after August 10th, 1903? A Yes sir, I have.
- Q There was not much to do after August 10th for Union men? A I did not do much for a while.
- Q You were not connected with any mine that was exempt from the strike like the Portland which was not involved? A No sir.
- Q The ~~mine~~ men did continue to work on the Portland and some few of the other mines? A I believe so, yes sir.
- Q You have said in your direct examination that this man Davis, Sherman Parker and Charles Kennison had charge of the strike?

- A Yes sir, they were the strike committees that I knew.
- Q They were the strike committees? A Yes sir.
- Q There was a central union there, wasn't there, called a district union? A Yes sir.
- Q And there were the several local unions? A Yes sir.
- Q And this district union was composed of the presidents of the several local unions? A I don't know that it was composed of the presidents.
- Q Well composed of a delegate from each of the local unions in the district? A Yes sir.
- Q And there were three of those unions, were there? A Of which unions?
- Q Three local unions in the Cripple Creek district? A There was more than three.
- Q In any event-- A I beg your pardon, you asked if the district union was composed of one delegate; I think it was composed of more than one, but I am not sure of that.
- Q There was a district union? A I believe there was.
- Q And that was not the union formed for the purpose of carrying on the work which the local unions handled,-- the local unions took care of the local business didn't they? A I think so, yes sir.
- Q And the district union handled the business for the whole district, isn't that right? A I hardly know what business the district union did. I never could remember of it.
- Q But you did say that Davis, Parker and Kennison were the men who

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- managed the central union? A No sir, I did not.
- Q What did you say? A I said they were the strike committee.
- Q Was that because they had been elected to that position by the central union, or don't you know? A I could not say positively who elected them?
- Q Where is Sherman Parker now? A I have understood he was dead.
- Q And where is Charles Kemison? A I understood he was dead also.
- Q And so of the threemen you have mentioned there is only one that is living today and that is Mr. Davis? A I don't know for sure.
- Q You never heard that he was dead? A No sir.
- Q But you have heard that the other two were dead? A I have.
- Q In reference to a question asked you by Mr. Hawley, you said, "I ~~xxxx~~ had been highgrading in the Vindicator after the strike commenced"? A Yes sir, I did.
- Q By that you meant that you were an ore thief, didn't you? A I don't know what you call it; we used to call it highgrading or glomming.
- Q It means taking the high grade ore and stealing it or carrying it away? A I suppose so. We took it and took it away secretly.
- Q You stole the ore? A I took it.
- Q You stole it, didn't you? A You can call it what you like,-- I took it.
- Q You took it, didn't you? You concealed it on your person didn't you, and took it away? A Yes sir.
- Q Took it to some so-called assay office? A Yes sir, that is what

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we usually did with it.

Q Sold it to the assayer? A Yes sir.

Q And got the money for it? A Usually got the money for it, yes sir.

Q And then you did with the money what you pleased? A Yes sir.

Q You did not take it back to the Vindicator people, did you?

A I never did.

Q How long were you engaged in this occupation of highgrading?

A Well, I took some of the high grade ore while I was working there for wages and I went down in the mine after the strike and got some.

Q You took their coin for the work you were doing and also stole their ore at the same time? A Yes sir, I did.

Q And kept that up all the time you were working for them? A I kept it up anywhere and wherever there was any high grade that looked good enough to take.

Q What were your wages at that time? A \$.00 a day.

Q And what was your high grade wages at that time? A I could not tell how much it was; some times I would get quite a lot and some times would not get anything.

Q You sometimes got up as high as \$25.00 or \$30.00 a day?

A Some times.

Q What would you average in your opinion? \$12.00 to \$15.00 a day?

A I don't think I got over \$150. while I was there working altogether.

Q Did you high grade at the Trachyte? A I never got any that was good enough there.

Q Now, how did you obtain access to this mine after you quit working

there for wages? A We went down through the Whiting shaft.

Q You went through the Whiting shaft? A Yes sir.

Q And where is that with reference to the place where you did your highgrading? A We went down on the 9th level of the Whiting and went through an old stope and climbed up on the 8th level above, and then we climbed up from there again through a level and an old stope to the 7th level of the Vindicator.

Q In what shaft? A We went into the Whiting shaft and went through some tunnels and stopes to the Vindicator and before we got to the 7th level of the Vindicator we went through a stope and went down to between the 8th and 9th levels.

Q Had you discovered that while working for the Vindicator people?

A Yes sir.

Q How soon after August 10th of 1903 was the militia put in there?

A I think it was some time in September.

Q Did you continue your highgrading after they came in? A I did some.

Q The mine was guarded by the military? A Yes sir.

Q But that did not hinder you about going into this Whiting shaft?

A They was camped about a hundred feet from that on the Vindicator No. 2.

Q And yet you went right through and went down this Whiting shaft?

A Yes sir, some times we did.

Q Who was with you? A Joe Shultz was with me and his brother and a fellow named Wilson.

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Q Joe Scholtz and his brother and Wilson and yourself are the ones that did the high grade? A Yes sir.

Q Four of you in all? A Yes sir.

Q How many of you went at one time? A I think three was the most at any one time and mostly two of us.

Q Did you have any trouble in getting by the military? A No sir.

Q Notwithstanding that they were only a couple hundred feet away?

A Only about a hundred feet away.

Q What were they doing? A They were stationed there; they had their quarters there in the shaft house of the Vindicator No. 2 at that time.

Q And they did not bother you any? A Well, we got around it.

Q Now, you say that while you were in the Vindicator you discovered they had a carload of powder down there in the Vindicator mine? A Yes sir, I did.

Q You found out what part of the mine the powder was in? A Yes sir.

Q And you yourself went to W. F. Davis about that matter and told it to him? A I told him, yes sir.

Q There had been talk between you and Davis about the subject of violence until you broached the subject to him yourself? A No sir, not that I know of.

Q So you spoke about it in the first place and told him that you had discovered this powder there? A I told him about it in a conversation.

391 Q Why did you tell him there was a carload of powder in the Vindicator?

mine? A I had heard them-- I had been over there and got some of this powder and sold it to a fellow that was leasing and I told Davis about getting it there.

Q You were not only a highgrader but a powder thief as well, were you?

MR. HAWLEY: We object to that method of cross examination.

THE COURT: The objection is sustained.

MR. RICHARDSON: I would like to inquire, if the court will permit me, upon what theory the question is not proper, this is a cross examination of a man who is a witness for the State and is opposed to us, and his character and everything else is in question.

THE COURT: The witness has testified that he stole the powder.

MR. RICHARDSON: ~~Excuse~~ Can I not ask him that direct question?

THE COURT: I cannot see how you can be benefitted by pursuing the question further.

MR. RICHARDSON: Note our exception.

THE COURT: You may take your exception.

Q How much of this powder had you stolen before you told Mr. Davis this story? A I took two fifty pound boxes.

Q At two different times? A No sir.

Q At one time? A Yes sir.

Q Who did you sell it to? A Paddy Moloney and Floyd Miller.

Q When had you sold it to them? A Well, it was some time after the strike; some time.

- Q They were working a lease on somebody's property? A Yes sir.
- Q And needed powder to work that with? A Yes sir.
- Q And you sold it to them for something less than the market price?
- A They gave us about the market price, I think they gave us \$14. for it.
- Q \$14.? A Yes sir.
- Q Did you suggest to Mr. Davis that something could be done with this powder that would be to advantage? A No sir.
- Q Why did you tell him about it? A I just told him about it in a conversation.
- Q Why? A I told him we had taken some of that powder and sold it.
- Q Why did you want to tel him about it? A I just incidentally told it to him in a conversation.
- Q It was none of his business then? A No sir.
- Q And you had no ulterior object in telling him that? A Not at the time, no sir.
- Q Did you have an object in referance to it? A I did after that, yes sir.
- Q What was that object? A He asked me if I would go and touch this powder off and blow up the mine.
- Q I wanted to know if you had any object in telling him about it?
- A I did have some, yes sir.
- Q What was that object? A I had heard by miners that the strike committee or the leaders of the Western Federation of Miners had blown up mines before that.

Q You had heard that? A Yes sir.

Q You did not know anything about it because you had not had anything to do with the Bunker Hill and Sullivan mine, or mill, I suppose?

A I had heard it in the Cripple Creek district.

Q How you had helped, yourself, in blowing up a mill before that?

A Yes sir.

Q How did it come about that you heard this new matter down there? Who told it to you? A I don't know as I could tell; I heard about blowing up the Strong mine there in 1894, I believe.

Q And you knew there had been some contest over it? A I knew there had been some trouble over it.

Q And you knew that the man who owned the mine had been sent to jail?

A No sir.

Q You cannot give us the name of a single person who talked with you about that? A Well, Arthur Dulin talked with me about it.

Q This man you brought from Salt Lake with you? A The man who came with me.

Q Was that the object and purpose which you had in telling Mr. Davis with respect to this, to suggest to him the advisability of touching off this powder? A No sir, I don't know that it was exactly that. I thought of that too.

Q Now, if there was any other object I want to know that-- what other object had you? A Well, I don't know, in attending the union meetings up there and talking to Mr. Davis and all these times, and seeing the men go to work, non-union men coming in, and the militia coming in and running us around, I felt an enmity towards them too, and felt like blowing it up myself.

- Q. It was because you had seen this powder there and because they had suggested this to you, to blow up that mine? A. I had thought of it, yes sir.
- Q. Had thought of it and therefore you communicated this thought to some of the others? A. I did.
- Q. What has become of Arthur Dulin? A. He was in Salt Lake the last time I knew of him.
- Q. When did he go back to Salt Lake? A. I couldn't tell. He went back I think about 1908 sometime.
- Q. Did he join the union with you? A. No sir, I don't think he did.
- Q. Don't know he was ever a member of the Western Federation of Miners? A. I think he was a member of the union at Victor, but I am not sure.
- Q. Not a member of your lodge? A. I don't think he was.
- Q. And so far as you know he was not a member of any lodge?
A. So far as I knew he was not.
- Q. But you talked with Arthur Dulin about it, did you, that is about the blowing up of the Strong mine? A. Arthur Dulin had told me about that. He had been to Cripple Creek before.
- Q. Well, there was nothing in your experience which you had had up to Wardner which suggested to you that you blow up this mine? A. Well, I thought of it, yes sir.
- Q. That might have had something to do with it, too? A. Yes sir.
- Q. As well as the story which Dulin told you about the Strong mine. Did you know this man "Slim" Campbell that you spoke of?
A. Not personally.
- Q. Didn't know him at the time that you had the conversation with

Davis? A. No sir.

Q. When did you get acquainted with this man Slim Campbell?

A. I never got acquainted with him personally.

Q. Was that the first time you had ever heard of him when you talked with Davis?

THE COURT: What is this name, Mr. Richardson?

MR. RICHARDSON: Slim Campbell. Your Honor will remember that Mr. Davis had made a suggestion and used that man's name.

THE WITNESS: Yes sir, I believe that was the first time I heard of him.

Q. And wasn't it the last time you ever heard of him? A. No sir.

Q. You never got acquainted with him personally, however?

A. No sir.

Q. Nor had anything to do with him personally whatsoever?

A. Not personally, no sir.

Q. Did that suggestion come from Davis or did it come from you that that car load of powder in the Vindicator mine should be touched off? A. Come from Mr. Davis.

Q. Was there any discussion as to the right under the law of the Vindicator people to keep a carload of powder in their mine?

A. No sir.

Q. Davis didn't say anything about that? A. No sir.

Q. Did you ask Davis if there was anything in it for you if you complied with his request? A. He told me when he asked me to do it.

Q. He told you when he asked you to do it? A. Yes sir.

396 Q. Did you haggle with him about the price at all? A. No sir.

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- Q. About how much money you was to have if you did it? A. No sir.
- Q. ~~You~~ ^{He} just said he would give you \$200 if you touched it off?
- A. Yes sir, he did.
- Q. He didn't tell you he had any authority from anybody else to give you \$200? A. Didn't say that he had any authority.
- Q. Just simply made the statement? A. He said he would give me \$200, it might take him two or three days to get it after it was done.
- Q. Well, when he made the suggestion that Slim Campbell could go with you you told him, did you, that you would get a man to go with you yourself? A. I told him that I would see whether I would do it or not. If I did, I would get a man myself.
- Q. You told him right at once then that you didn't want Slim Campbell? A. No sir, I didn't tell him at once.
- Q. Didn't tell him at once? A. No sir.
- Q. What did you say to him as to whom you were going to get?
- A. I didn't tell him who I was going to get, I don't think, at the time. I said I would get a man myself that had been down there high-grading with me that knew the road.
- Q. You told him in the first place then that if you considered his offer you would get a man to help you yourself?
- A. Yes sir, I did.
- Q. Did you say anything about the man wanting any money?
- A. No sir, I don't think I said anything about it.
- Q. Didn't ask him to raise the price of \$200 at all? A. No sir, I didn't.
- Q. And the object and purpose of touching off this carload of powder was what? What was you going to do it for?

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A. To scare the non-union men out of the district.

Q. Going to kill any of them? A. I presumed I would kill some of them, yes sir.

Q. Any talk between you and Davis on that subject? A. Yes sir, there was.

Q: There was? A. Yes sir.

Q. What did you say? A. I don't know as I said anything. Mr. Davis said something to me about it.

Q. You presumed it would kill some of them? A. I did.

Q. How many did you presume you were going to kill that time?

A. I believed it would kill everybody that was working in the mine.

Q. And it would have, wouldn't it, if you had touched the carload of powder off? A. I think it would have.

Q. How many men were there working in the mine at one time?

A. I don't know how many there was there, probably fifty on a shift, maybe more.

Q. Fifty men on a shift? A. There might have been more.

Q. And you proposed to murder fifty or more men working on that shift for \$200? A. I proposed to touch off the carload of powder.

Q. With the result that it would kill every man who was in there working? A. I believed it would, yes sir.

Q. Did you average them up at about \$4 a head?

MR. HAWLEY: I object to that as being improper.

THE COURT: Objection sustained.

MR. RICHARDSON: Note our exception.

Q. Did you give any consideration to the amount of it you was

- to get per man? A. No sir, I did not.
- Q. Didn't think of that? A. No sir.
- Q. Didn't care how many you killed? A. No sir, I didn't.
- Q. Did you know any of these men? A. No sir, I didn't.
- Q. Had you worked with any of them? A. I don't know that I had. I might have knew the shift bosses -- the shift bosses there or the foreman.
- Q. You do know, do you not, when the strike was declared there were quite a number of the men who didn't quit work and couldn't quit work? A. They all quit where I was working. I mean they all quit, the men all quit I believe; I don't think the superintendent or the shift bosses quit. I think they were working yet.
- Q. The men who were connected with the Miners' Union, did they all quit? A. I believe they all did.
- Q. Were all the men who were connected with the mine members of the Miners' Union? A. I don't know they were all. They were all practically union men who were working at the Vindicator at that time.
- Q. Had Joe Scholtz been employed with you there working on the mine? A. He had worked at the Vindicator mine, yes sir; I think he was working there at that time.
- Q. Before this conversation occurred between you and Davis had you attended a speech which was made by Charles H. Moyer in the district? A. Yes sir.
- Q. You had? A. Yes sir.
- Q. That was the first time you had ever seen Charles H. Moyer, was it? A. Yes sir.

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- Q. You didn't meet him on that occasion, did you? A. No sir, not to speak to him.
- Q. You was in the hall and heard him make a speech? A. I heard him make the speech out in a park.
- Q. Pinnacle Park? A. I believe that is what they call it.
- Q. And that is not so very far away from the Vindicator mine, is it? A. Not so very far.
- Q. Is it not a fact, sir, that in this speech he cautioned every member of the Miners' Union against every form of violence whatsoever in the strongest terms? A. I believe he did, yes sir.
- Q. He said that in substance and effect if anything should happen in the district it would be bound to be laid to the Western Federation of Miners, whether rightfully or wrongfully, and therefore every member should do what he could to keep law and order and preserve it? A. I believe he did, yes sir.
- Q. Used the strongest kind of language upon that subject, didn't he? A. I couldn't say how strong it was. I believe he said that, something in substance to that.
- Q. And you heard that speech? A. I did.
- Q. By Mr. Moyer? A. Yes sir.
- Q. You say you never saw Haywood in the district? A. Yes sir, I seen Haywood in the district.
- Q. At that time? A. Yes sir.
- Q. When had you seen him? A. He was there the same day that Mr. Moyer was.
- Q. At Pinnacle Park? A. Yes sir.
- Q. They were having a Labor Day picnic or something of that kind,

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- weren't they? A. Something like that, yes sir.
- Q. And you didn't meet Mr. Haywood? A. No sir.
- Q. You saw him but he didn't see you that you knew of?
- A. Not that I know of.
- Q. You were one of the audience and he was another speaker?
- A. Yes sir.
- Q. Now is it not a fact that Mr. Haywood followed Mr. Moyer in a speech at that time? A. He made a speech. I don't know which one spoke first.
- Q. Very well, the order is not very material. And isn't it a fact that he enlarged upon the same proposition, using different language but to the same effect as Mr. Moyer? A. I believe he spoke in the same effect, yes sir.
- Q. And didn't he caution you against drunkenness? A. He may have; I don't remember all his speech.
- Q. And against being in saloons? A. He may have did that; I don't remember.
- Q. And against gambling lest it should lead to disorder?
- A. He may have said that, too.
- Q. Well, you believe he did it, don't you? A. I don't remember that part of it.
- Q. You know that he told you, did he not, and both of them told you that from their experience in conducting these strikes that the dangerous thing to the union was to have trouble in the district where the strike was going on, have violence?
- A. He may have said something like that.
- Q. Well, didn't he? A. Well, I believe he said something about not using violence, yes sir.

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- Q. And that it would react on the union and hurt them worse than it would anybody else? A. He may have said something like that.
- Q. And that disorder and violence was the very thing that the capitalists wanted in carrying on a strike? A. I don't know that he said that. He may have said that, too.
- Q. Didn't he say that that was the way that was adopted in order to get the troops in there to break up the union and coerce the men into working as the mine owners wanted them to?
- A. I don't remember of him saying that, no sir.
- Q. You didn't know then whether or not any considerable number of the miners who had been called out by the strike of August 10th of 1903 had refused to go and still continued to work?
- A. I didn't know of any number, no sir. I believe that they most all came out.
- Q. Of course you would call them, if they all did go back to work, notwithstanding the fact that they were union men, then they were just the same as any other men that you call scabs? A. They were.
- Q. Now isn't it a fact that in this Vindicator mine there was a considerable number of men who belonged to the Miners' Union, but notwithstanding the action of the district and of the district union, refused to go out on strike?
- A. At the Vindicator mine?
- Q. Yes. A. No sir, they practically all came out.
- Q. Practically all? A. I think every man came out.
- Q. Well, in any event, if they didn't, why, that was their own

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- fault with respect to this carload of powder that you proposed to touch off? A. I might say that the mine closed down at that time. It wasn't working after the strike for some time.
- Q. You first talked with Mr. Scholtz about this matter, about going down there and touching off that powder? A. I talked with Mr. Scholtz after I did Mr. Davis.
- Q. Were the militia guarding the mine at that time? A. Yes sir, they were.
- Q. You and Scholtz actually went down there? A. We did.
- Q. And there were sentries posted, were there not? A. Yes sir.
- Q. Did you get by the sentries? A. Yes sir.
- Q. How did you do that? A. Well, we went up the Whiting shaft, and that is a little off of the street. We didn't have any trouble to get by them. We didn't come in contact with any of them.
- Q. You thought all of the men had gone off shift, did you, when you went down, or didn't you know or care? A. We thought they were all off of shift when we were down there, when we were going out on the 8th level.
- Q. Because you saw the cage going up with men in it, was that the reason? A. ~~We had~~ ^{We had} the time and we knew what time they went up for lunch.
- Q. Well, as you went out toward the shaft you say you saw the cager, did you? A. We saw him when he spoke.
- Q. You and Scholtz? A. Yes sir.
- Q. The cager told you to come on, that that was the last car up? A. That was the last cage up.
- Q. The cage in a mine is just the same as an elevator in a

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- building, isn't it? A. Something similar.
- Q. Answers the same purpose? A. Yes sir.
- Q. Hauls men up and down, and material up and down? A. Yes sir.
- Q. This eager told you to hurry up? A. Yes sir.
- Q. And then you and Scholtz both took a shot at him, did you?
- A. No sir, not right there.
- Q. Well, you ran back into the drift? A. Yes sir.
- Q. And he followed you into the drift? A. Yes sir.
- Q. And you shot at him and tried to kill him? A. We did.
- Q. But didn't succeed so far as you know? A. No sir.
- Q. Well, do you know whether you did succeed or not?
- A. We heard that we didn't hit him at all.
- Q. Do you know the name of that eager? A. No sir, I do not.
- Q. Well, did you go on out of the mine at that time in the same way that you had come in? A. Yes sir.
- Q. And you didn't stop to touch off the powder that night?
- A. No sir, did not.
- Q. Thought the eager would give the alarm and you might get caught at it? A. Yes sir.
- Q. That was the reason, I suppose? A. Yes sir, that was the reason.
- Q. What time in November was it that you made this first attempt to discharge this carload of powder? A. I don't think it was in November; I think it was in September.
- Q. You think it was in September? A. I think so.
- Q. And your next attempt was in November, was it? A. I think so.
- Q. Did you and Davis have any conversation about it in the near-time? A. Yes sir.

- Q. Any thought about the powder getting away? A. We talked about the powder, yes sir.
- Q. Did you take away any more of that powder? A. No sir, I did not.
- Q. Did you go into the mine any more? A. Not for a time, no sir.
- Q. Did you resume your high-grading? A. No sir.
- Q. Any time after that? A. No sir.
- Q. Did not? A. No sir.
- Q. But finally in November you concluded to renew the attempt, did you? A. Yes sir.
- Q. Was that conclusion on your own part or did somebody ask you to? A. Somebody asked me to.
- Q. You had given the idea up completely and absolutely, had you? A. I don't know that I had given it up. I had given it up for the time.
- Q. Given it up for the time? A. Yes sir.
- Q. Did you go to Mr. Davis or Mr. Parker to talk to them about it or did they come to you? A. I don't know. We talked when we were together after that.
- Q. You said yesterday that you had some talk with Mr. Davis and Mr. Parker, didn't you, about it? A. Yes sir, I did. I had some talk with them.
- Q. When did you talk with them about it? A. I talked to them about it the next day after we had been down there and attempted to set it off.
- Q. What did you say to them about it? A. I said I thought we was pretty lucky to get out of there and not get caught.

They had eleven or twelve ways to get into the Vindicator mine and they had them all guarded except this one passage we come out when we got out there.

Q. When you had this second talk who was it suggested the scheme of attaching a gun to the guard rail and blowing it into some giant caps, discharging a revolver into some giant caps?

A. Sherman Parker.

Q. You hadn't thought of anything of that kind yourself at any time? A. I may have thought of it.

Q. You may have thought of it? A. Yes sir.

Q. But you got the idea of that from him, did you? A. Well, we talked it over together, and I and Mr. Davis, too, and Mr. Easterly.

Q. And Mr. Easterly? A. Yes sir.

MR. RICHARDSON: Is Mr. Easterly in the room, Mr. Will Easterly? Stand up, Mr. Easterly. Come over here where Mr. Orchard can see you. (To the witness): I want you to look at this man coming down the aisle here and see if this is the man you are speaking about?

A. Yes sir, that is the man.

Q. That is the man? A. Yes sir.

MR. RICHARDSON: Very well. That is all, Mr. Easterly.

Q. Now you talked with him, did you, in November of that year with Sherman Parker and Mr. Davis? A. Yes sir.

Q. About blowing up the Vindicator mine? A. Yes sir.

Q. And Mr. Parker is the man who suggested the method by which it should be blown up? A. Yes sir, Mr. Parker and I talked about it, and Mr. Davis and Mr. Easterly.

Q. So in order to see if the proposition was feasible you took

some giant caps and a revolver and went up on Bull Hill?

A. Yes sir.

Q. And discharged the revolver into the giant caps and exploded them to see if the thing worked? A. Yes sir.

Q. The militia were in the district? A. Yes sir.

Q. All around there? A. Yes sir.

Q. And you chose an eminence where everybody could see you from every direction? A. No sir, we chose a place where nobody could see us or we supposed nobody could. We went up to an old abandoned shaft house or blacksmith shop -- an abandoned building anyway.

Q. And went into that blacksmith shop? A. Yes sir.

Q. Inside of it? A. Yes sir.

Q. It was on top of a hill? A. It was on Bull Hill, it wasn't on the highestpoint of the hill. It was on a ridge between the Isabella mine -- a draw that goes through between that and the Independence.

Q. How far was it from the High Line car? A. Four or five hundred yards I think.

Q. And a high line car was passing there every fifteen minutes within four or five hundred yards, wasn't it, at that time?

A. I don't know how often they passed. I think every half hour.

Q. You think it was a half hour schedule instead of a fifteen minute schedule, do you? A. I think it was.

Q. What did you take up there to experiment with? A. We had a box of caps and a six-shooter, a box of giant caps.

Q. That means 100 caps, does it not? A. That is, I think, what is in a box.

Q. And do you know what sized caps they were or whether they were

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all the same size? A. There is different grades of them,
3, 4 and 5 X.

Q. What is that? A. They are graded, 3, 4, 5 and 6 X.

Q. What were these? A. I am not sure which it was.

Q. Used for Reppane powder? A. I beg pardon.

Q. Were they caps that were made to use with Reppane powder or
nitro-gelatine? A. They were giant caps.

Q. You know the different manufacturers of powder, don't you?

A. I know some of them.

Q. And the caps are made to correspond with the directions of the
manufacturer of the powder, aren't they? You use one kind of
caps with one powder ordinarily, and another kind with another,
don't you? A. I don't think so; I don't know that they do.

Q. Haven't had any experience of that kind? A. My experience was
that we used giant caps with any kind of powder. They are
graded off 3, 4, or 5 X.

Q. You don't know that different manufacturers recommend different
caps to be used with their powder, if that is the fact?

A. I don't know that they do, no.

Q. What kind of caps were they that you and Bill Easterly took
up on top of that hill? A. They were giant caps.

Q. What brand? A. I don't remember what brand.

Q. Don't remember what number X they were? A. No sir, I do not.

Q. What does the "X" mean with the figure before it? A. It means---
"3X" means that that is the grade of that; "4X" is another
grade; "5X" another -- the "X" makes a stronger cap, 4X
stronger than a 3, and so on up.

408 Q. It is the number in front of it that means the strength of the

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cap, isn't it? ~~xx~~ A 4X is stronger than a ~~x~~ 3X, isn't it?

A. Yes sir.

Q. And 5X is stronger than a 4X? A. That is what I said.

Q. Now what is the effect of the discharge of 100 giant caps such as you took up therethat day? A. I don't know. I never discharged a hundred at a time so that I couldn't tell what the effect would be of that alone.

Q. What is the effect of discharging one giant cap alone?

A. I don't know what it is. I discharged one once in my coat pocket; it didn't hurt me any, but tore my coat to pieces, my pocket.

Q. Makes a good loud report, doesn't it? A. Pretty loud report, yes sir.

Q. About as loud as you usually have with an ordinary 45-calibre revolver, something like that, isn't it? A. I think it is about like that.

Q. Now you say that Easterly and you made this experiment: I want you to describe the experiment. A. We took about four or five of these giant caps and tied a string around them and fastened them in a solid position; fastened the six-shooter solid against the side of the building, with a string onto the trigger, and got back and pulled the trigger and shot into these caps.

Q. Fastened the revolver so that it was aimed at the caps?

A. Yes sir, close to it.

Q. And put the caps on one wall of the interior wall of the building? A. We fastened them somewhere to the wall.

Q. Well, it was in the interior of the building, wasn't it?

- A. Well, there might have been a board or something off on the one side of it, I think there was; they were fastened near the revolver, was only two or three inches from the muzzle of the gun.
- Q. You said yesterday it was inside of a building? A. Well, we were inside of a building.
- Q. What kind of a building was this? A. Well, I think it was a blacksmith shop or an old shaft house, I am not sure which. It was a small place.
- Q. What was it built off? A. Out of boards.
- Q. Out of boards? A. Boards and --
- Q. Just a cheaply constructed building? A. Yes sir.
- Q. Now how far away from it was the revolver which you fastened?
- A. About two or three inches I think.
- Q. Fastened it within two or three inches of the caps? A. Yes sir.
- Q. What was the result when you pulled off the revolver? A. It set the caps off.
- Q. What kind of a report did you have? A. A pretty loud report.
- Q. A very loud report? A. A pretty loud report, yes sir.
- Q. Was the discharge of the revolver and the report of the caps simultaneous? A. It seemed to be all together.
- Q. Now how far away were the militia at that time? A. I don't know how far away they were -- might have been three or four hundred yards, something like that.
- Q. Did they pay any attention to it? A. No sir.
- Q. Didn't some come to ask you what was going on there at that abandoned shaft house? A. No sir.
- Q. How many of them were there within three or four hundred yards?
- A. I don't know how many there were. I think there was a camp of

them up there.

- Q. Sentinels out, were there? A. There might have been.
- Q. Soldiers patrolling around over the country? A. At intervals they were, I believe.
- Q. Soldiers stationed as guards at the shaft houses, all the property? A. Some of them.
- Q. Some of them but not all of them? A. No sir.
- Q. Was you going to select this particular place because it was a little out of the way, because there was no guard there?
- A. No sir, there was no guard there.
- Q. And yet they were camped within two or three hundred yards and sentinels around in various places? A. Within three or four hundred yards, something like that; I don't know just the distance.
- Q. And yet nobody paid any attention to this report? A. No sir.
- Q. Nor asked you any question about it? A. No sir.
- Q. Nor apparently thought that you were suspicious in going there or coming away from there? A. No sir.
- Q. And you made no attempt to conceal yourselves? A. Inside of the shaft house, that is all.
- Q. And chose a position which was about as conspicuous as any could well be in that district? A. No sir, we chose a position that was isolated as much as we could.
- Q. Now what time was it that you and Easterly made this experiment which you have testified to? A. Some time in November.
- Q. Did you talk with Easterly about the object of making the experiment? A. Yes sir.
- 411 Q. He knew what it was? A. Yes sir.

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- Q. That was some time in November? A. Yes sir.
- Q. Can you tell what time it was with reference to the time you set the contrivance in the mine? A. Just a few days before.
- Q. Why didn't you take Easterly along with you to carry out your design in the mine? A. Easterly wouldn't go.
- Q. Notwithstanding the fact that you told him about it?
- A. Yes sir.
- Q. Did you ask him to go with you? A. No sir.
- Q. Didn't ask him to go? A. I don't think I did, no sir.
- Q. Did he decline to go? A. No sir.
- Q. How do you know he wouldn't go on with you if you had asked him? A. He said he had been an officer of the union and if anything like that was pulled off he would have to be somewhere where he could prove an alibi easy.
- Q. So he entered a declination before you asked him or anybody asked him to go? A. He said he wouldn't go.
- Q. The caps which you exploded were within how far from the muzzle of the revolver? A. Two or three inches.
- Q. What was the effect on the revolver when the caps exploded?
- A. Scratched up a little, that is all.
- Q. Didn't displace it? A. No sir.
- Q. What effect did it have on the boards of the building where you had placed the caps? A. Shot some brass of the caps -- copper or whatever they are made out of -- into the boards.
- Q. It didn't tear off the boards nor anything of that kind?
- A. No sir.
- Q. Whose revolver was it that you used? A. Mine.
- Q. This same revolver that you had taken out of Idaho with you?

- A. No sir.
- Q. You had got another one in the meantime, had you? A. Yes sir.
- Q. What had you done with the revolver? A. I have forgotten what I did do with it.
- Q. Where did you get this revolver that you used on that occasion?
- A. I bought it from Johnny Neville.
- Q. And when? A. Possibly a month or so before that, when we was away hunting.
- Q. He wasn't in the revolver business, was he? A. No sir.
- Q. But he had a gun that you wanted so you bought it from him?
- A. He had one that I bought; he wanted to sell.
- Q. You had never worked at the Finley mine, had you? A. No sir.
- Q. You said yesterday or day before that Mr. Parker ~~said~~ said something to you about pulling off this bomb in the Finley mine? A. Yes sir, he did.
- Q. What did he say about that? A. He said he would like to have it put in the ~~Finley~~ Finley or the Vindicator, he didn't care which.
- Q. Just used the names of the two mines, did he? A. Yes sir.
- Q. How far was the Finley from the Vindicator? A. Probably four hundred yards, something like that; I don't know just how far.
- Q. The Finley and the Vindicator were not owned by the same people were they? A. I don't think they were.
- Q. You know who owned the Finley, don't you, or who was the head man connected with it? A. I knew who was manager.
- Q. Who was it? A. Jim Murphy.
- Q. How long -- you know who was the man that had control of Murphy don't you? A. I knew the man who was interested with him.

- Q. - A. H. Carlton, wasn't it? A. I believe he was.
- Q. And he was a man that the union and union people didn't love at all, wasn't he? A. I don't think they were very good friends.
- Q. He was the best hated man or the worst hated man, as the case may be, in the district, wasn't he? A. I don't know about that.
- Q. And there wasn't any particular trouble with the Vindicator people, was there, except there was a strike on, a general strike? A. There was a strike. I don't know that there was any particular trouble with the Vindicator, any more than there was with the Finley.
- Q. There was no hatred or animosity, personal hatred or animosity, toward the people who controlled the Vindicator mine and owned it, was there? A. There was an animosity toward all the non-union mines that were working there and the managements.
- Q. I am asking you if it isn't a fact and you don't know it was a fact that there was no personal hatred or animosity toward anybody connected with the Vindicator only as it had been engendered by the strike. A. No sir, I think there was a personal animosity.
- Q. You know there was an intense personal hatred of Carlton, don't you, all through the district? A. I don't know that there was, no sir.
- Q. Now on this occasion they had raised your price, hadn't they, from \$200 to \$300? A. Yes sir, Barker said he would give me \$300.
- Q. Was there any hickering about the amount? A. No sir.

- Q. Or any statement that the amount of \$200 would not be sufficient? A. No sir.
- Q. None whatsoever? A. No sir.
- Q. And yet the job that you were to do would not be nearly so dangerous as the explosion, that is to life, as the explosion of the carload of powder, would it? A. Wouldn't be any difference so far as we were concerned.
- Q. You were going to explode a bomb? A. Yes sir.
- Q. And that bomb would probably have an effect upon some people who were at or near the place where it exploded, but it would not destroy all of the people who were in the mine like a carload of powder would, there would be some of them would probably escape, wouldn't there? A. It wouldn't have so much effect as a carload would.
- Q. It wouldn't extend so far? A. No sir, I don't think it would.
- Q. So with the bomb there would be a chance for some of the people in the mine to get away alive? A. I think so.
- Q. But with the explosion of a carload of powder there would be no chance for them in all human probability to get away alive? A. I don't think there would.
- Q. Don't think there would? A. No sir.
- Q. But you say that didn't make any difference with you so far as you were concerned? A. I didn't think of it, no sir.
- Q. Just as soon blow up a carload of people -- or a mine full of people as to blow up a few? A. That is the way I felt at that time, yes sir.
- Q. But without your making any statement about it or any complaint upon the subject they offered you \$500 to set off this bomb?

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A. Yes sir.

Q. Now there was nothing due you up to that time, you hadn't accomplished anything? A. I hadn't accomplished anything, no sir.

Q. And so for the work which you was about to do you were going to get \$500? A. No sir.

Q. There wasn't any claim then that the \$500 was composed of two items, \$200 and \$300, it was all one thing? A. It was all one thing.

Q. Well, you went to see your man Joe Schultz and he didn't want to go? A. I did.

Q. Did you know Billy Ackerman at that time? A. I knew him by sight, yes sir.

Q. How long had you known him? A. I had known him for several months.

Q. At that time he was personally a stranger to you, was he not?

A. Personally so, yes sir.

Q. You had never been introduced to him? A. Oh, yes, I had spoken to him.

Q. You had spoken to him? A. Yes sir.

Q. But never done any business with him in any way, shape or form? A. Nothing to speak of, no sir.

Q. And yet you were willing to go with perfectly an absolute stranger and set off this bomb, plant it and set it off?

A. Yes sir, I was going with him.

Q. Didn't know what kind of a man was nor much about him?

A. I knew only what Davis and Parker told me.

Q. Do you know what became of Billy Ackerman? A. No sir, I do not.

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- Q. Don't know whether he is alive or dead? A. I do not.
- Q. Never heard that he was dead? A. No sir.
- Q. Don't know what has become of Scholtz? A. No sir.
- Q. Never heard that he was dead? A. No sir.
- Q. And without being introduced to Ackerman or without Parker taking you there you yourself went to Ackerman and broached this subject to him, did you? A. I went and spoke to him. Parker said he would see him about it. He told me to go and see him.
- Q. You said yesterday did you not "I went and spoke to Ackerman"?
A. I did.
- Q. "And asked him if he wanted to go and do a little job like that". A. Yes sir.
- Q. "And he said yes, and we got some -- we got fifty pounds of powder, he got it rather from Joe Craig, and we went down to Billy Ackerman's house," and so forth. A. Yes sir.
- Q. Was that the first that Billy Ackerman knew of it, so far as you knew, at the time you went to him, was what you told him about it yourself? A. Parker had told me to go to Billy Ackerman, that he was all right.
- Q. I say so far as you yourself knew when you went down to Billy Ackerman he didn't know anything about it? A. Personally not, ~~was~~ no sir.
- Q. And when you talked with Billy Ackerman he didn't disclose to you that he knew anything about it? A. He said he was ready to go.
- Q. But you didn't discuss with him whether anybody else had spoken to him about it or not? A. I don't remember whether I did or not.

- Q. So you met this man whom you had never had any conversation with before, invited him to participate with you in a crime which would probably result in killing a few people anyway, maybe thirty or forty, and he at once said to you he would do it? A. I went to him that way on the strength of what Parker and Davis said to me about it, yes sir.
- Q. Now you made a mistake in the level, you think, do you?
- A. Yes sir, we did.
- Q. You had intended to set this bomb at the 7th level?
- A. We had.
- Q. Do you know that you didn't set it at the 7th level? A. I believe that we didn't know.
- Q. You heard afterwards that two men were killed at the 6th level? A. Yes sir.
- Q. Now you had had some considerable experience in mining at the time that you went down there, had you not? A. I had, yes sir.
- Q. You have told me that you knew that the 6th level was not used from the time that you went into the Vindicator mine some time in March or April? A. Yes sir.
- Q. You know, do you not, that there is no difficulty in telling an unused level in a mine when you pass it, don't you?
- A. No difficulty about telling it?
- Q. Can't you tell when you go down in the shaft and stop at a station whether the levels are being worked or not?
- A. I don't know as you could, no sir.
- Q. Can't you tell just the same as you can when you go into a room that has been shut up for four or five months on account of the air that is in the room? A. No sir, I don't think so.

- Q. At a level when the mine is being worked isn't there usually and almost always some tools around the station? A. Yes, there is usually some, yes sir.
- Q. Did you notice whether there was any tools around this station or not? A. I don't know that I did particularly notice. I didn't look much for any.
- Q. Do you know that the ventilation in an unused level is entirely different than it is in a used level? A. No sir, I do not, if the air space is open above the same.
- Q. Did you ever notice that dust in a used mine accumulates in an unused level to a greater extent than it does in a used level? A. I believe it does if it quits for any length of time.
- Q. You didn't notice that in this level? A. No sir.
- Q. Well, this level had been unused, according to your statement, for at least four or five months had it not, if not longer? A. I don't know how long it had been unused.
- Q. Was this a dry mine or a wet mine? A. It was dry some places, wet some places.
- Q. In a wet mine it is still easier to tell an unused level from a used one? A. It might be if you looked close.
- Q. The amount of moisture in a mine affects an unused level more than it affects a used level, doesn't it? Or had you never thought of that? A. It drops down on the timbers and the timbers would get moldy, and so forth.
- Q. And you didn't notice any of these things in this mine that you was so familiar with that you could pass the guards at any time that you wanted to and go into it and go through it? A. I didn't notice it. We didn't go through the mine any on that

level. We got off at the station on the sixth level, as I supposed, we wasn't out from the station only a few feet.

Q. You thought you were on the 7th level? A. I did.

Q. Where work was still going on? A. I believed it was.

Q. And you fixed the bomb as you have stated there at that time, did you? A. Yes sir.

Q. Davis came to your house the next morning and asked you about it? A. He did.

Q. And you didn't hear anything about it for a week or so?

A. No sir.

Q. About a week after that you ascertained that McCormick, who was the superintendent, and Beck, the shift boss, got killed by an explosion in that shaft? A. Yes sir.

Q. Where you had set the bomb? A. Yes sir.

Q. But you never went back there to see anything about it?

A. No sir.

Q. And didn't really know whether that was the bomb that killed them or not except you supposed it was? A. That is all I know about it.

Q. Now you saw Davis after McCormick and Beck were killed, did you? A. Yes sir, I did.

Q. Right shortly after that? A. Yes sir.

Q. Where did you see them? A. I seen them in Victor.

Q. At the Miners' Union hall you said, didn't you, yesterday?

A. Yes sir.

Q. Did you go right to the Miners' Union hall? A. I did a short time after I heard of the explosion.

Q. Was that because you was ready for the money? A. I was ready

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for the money, yes sir.

Q. Had you gotten married to anybody there in the meantime?

A. Yes sir, I had.

Q. Whom did you marry? A. I married a woman named Mrs. Tony.

Q. Mrs. Ida Tony? A. Yes sir.

Q. A widow with two children? A. A widow with three children.

Q. Was she living with the children at that time? A. Yes sir.

Q. Where was she living? A. She was living between Altman and Independence.

Q. When had you married her? A. I married her in June, I think, 1903.

Q. In June of 1903? A. I think so.

Q. Where had you been living before you married Mrs. Tony?

A. I was living down at Independence or stopping with a man named Dan Kelly in a cabin.

Q. What name had you married her under? A. Under the name of Orchard.

Q. Had you gone continuously by the name of Harry Orchard from the time you went from the Coeur d'Alenes up to that time or had you had some other names? A. I went by the name of Dempsey for a time after I left the Coeur d'Alenes.

Q. Steven Dempsey? A. Jack Dempsey, I think. I aint positive about the first name.

Q. You are a little bit doubtful about your front names, are you, sometimes as well as your last name?

MR. HAWLEY: We object to that.

THE WITNESS: I am not sure about what I used for a first name. I think it was Jack Dempsey.

Q. How long had you continued under this name of Jack Dempsey?

A. Just for a short time after I left the Coeur d'Alenes, probably two or three months.

Q. And then did you resume your Coeur d'Alene name when you went to Salt Lake? A. I resumed the name of Orchard, yes sir.

Q. And have had it continuously during all of these trips that you have spoken of? A. Yes sir.

Q. Did you marry this widow as Harry Orchard? A. Yes sir.

Q. And she became Mrs. Harry Orchard? A. Yes sir.

Q. You moved into her house to live, didn't you? A. Yes sir.

Q. The house at least that she had been living in? A. Yes sir.

Q. And that house was right near the Vindicator proper, wasn't it? A. Not very close to it.

Q. How far away was it from it? A. Four or five hundred yards I think.

Q. Well, it was between the Vindicator property and the town of Goldfield, wasn't it? A. No sir, it was not.

Q. Where was it with reference to the Vindicator property?

A. It is north, closer to Altman than anywhere else, just below Altman, between Altman and the Vindicator mine, a little bit on the right of it.

Q. That is what I really meant, Altman, when I said Goldfield, Mr. Orchard. It was up the hill from the Vindicator? A. Yes.

Q. And about five hundred yards away from the Vindicator?

A. I believe it was something like that; I am not sure about that distance.

Q. Do you mean shaft house No. 1 when you say the Vindicator was five hundred yards away? A. Yes sir.

Q. As a matter of fact the Vindicator had a number of shafts all around there, hasn't it? A. It has, yes sir.

Q. And you continued to live with Mrs. Tony all of the time that you remained in the district as her husband, did you not?

A. All the time I lived in the district after I was married I did, yes sir.

Q. And left her there when you went away? A. I did.

Q. She is there yet for all you know to the contrary?

A. For all I know she is.

Q. Was the reason that you went to the Miners' Union hall when you heard about Beck and McCormick being killed that you wanted to collect your money? A. I went to see Davis and Parker.

Q. You was broke then, wasn't you? A. I was.

Q. And when this explosion occurred and you learned that these two men had been killed, then you thought it was time that you had some money? A. I went after some money, yes sir.

Q. Well, that is the reason you went so promptly, wasn't it?

A. I talked with Davis and Parker about it.

Q. And get the money if they had it? A. And get some money, yes sir. I asked them for some money.

Q. And when you got there they stood you off, didn't they?

A. Yes sir, at the time they did.

Q. And that made you a little warm, didn't it, because they did stand you off after having done so good a job as that?

A. Not so much at that time, it didn't.

Q. Well, a little later on it did? A. I was a little sore at them when they wouldn't give me some money when I went down and made the attempt in the Vindicator mine to set off that powder.

- Q. When was that? A. That was some time before we made this second attempt.
- Q. Now did you say anything to them about your being sore about their failure to pay you for the attempt which had been unsuccessful? A. No sir, I didn't say anything to them about it.
- Q. You just told me a little while ago that you didn't claim anything on account of that first attempt because the pay didn't depend upon the attempt, it depended upon your success.
- A. Well, I didn't say that I didn't claim anything, I don't think; if I did, I didn't mean that. I asked them if they couldn't give me some money even though I failed at it. I didn't expect to get the \$200, but I asked Mr. Davis if he wouldn't give me \$35 once or twice, and I asked Mr. Parker; I told him that my wife had some property over in South Park and there was some taxes due on it, and if they wouldn't give me \$35, and Parker said that he had to give quite a few some money, that they had been trying to do jobs and he wanted some pulled off before he could get it, and then he said he would go down to headquarters and get the money.
- Q. You hadn't had any talk with Parker whatsoever about your having any money at all for this job, had you, up to that time? A. Yes sir, I had.
- Q. Your talk had been with Davis, as you told us here yesterday, hadn't it? A. My first talk was with Davis. I talked with Parker afterwards.
- Q. But you forget that when you was testifying about it yesterday?
- A. I don't know as I forgot it or that I was asked. I don't think I was asked that.

- Q. Well, then, you had had some altercation with them or had some feeling with them because notwithstanding the fact that you had made this attempt in September still they hadn't given you any money up to November? A. I thought they ought to give me some money when I asked them for it.
- Q. Well, when you talked with this this time about it they didn't give you any money either, did they? A. Parker said they would give me some money the next day, and he would go to Denver in a couple of days and get the rest. I asked him if he couldn't give me some then, that he was liable to be arrested for that, and he said he didn't think he would, he would give me some the next day.
- Q. Well, he didn't give you any? A. No sir, he didn't.
- Q. Stood you off? A. Didn't give me any money.
- Q. And did that make you angry? A. Not particularly. I thought I would get some the next day.
- Q. Thought you would? A. Yes sir.
- Q. Well, was that the time that you went to D. C. Scott because you were offended at Mr. Davis and Mr. Parker and told him about the attempt to pull the spikes in the rail?
- A. No sir, it was a day or two before that.
- Q. A day or two before that? A. Yes sir.
- Q. What was the occasion of your going and telling Scott about the pulling of the spike in the rail? A. I had been talking to Mr. Parker after we had set this in the Vindicator and after we had been down and made the attempt to set off this powder, at Victor, and he told me -- I had asked him for some money again and told him I had rustled this powder to be put in the

Vindicator -- this bomb, and furnished my own gun, that I was broke, and asked him if he couldn't give me some money; and he told me, as he had before, that there hadn't been anything done; that there was two or three more or some more that he had had attempting some things, and that he would have to go to Denver to get some money but he would have a hard time to get it until something was pulled off; but he says if things goes all right tonight, he says there will be something pulled off, we will be able to get money on. I asked him what it was and he said they were going to wreck the Florence & Cripple Creek train that night; but when we started home it began to snow and he said it was hard luck, that they wouldn't be able to do it that night. And I ~~asked~~^{thought} after he told me this, that after I went down in the Vindicator mine twice and made these attempts and he wouldn't give me a cent of money, I felt sore, I thought we had taken a great deal more chances going down ~~xxx~~ there, and then he had taken somebody else into his confidence to wreck a train, which looked easy, so I concluded that I would go over and tell D. C. Scott -- not tell D. C. Scott, I didn't know who I would go to when I started, but tell the railroad official; and I met a man on the train that I knew, a conductor by the name of Jones, and I asked him who would be the proper official to go to to tell them about this. He said to go to D. C. Scott of the Florence & Cripple Creek railroad. He told me where his office was and I am not sure but what he introduced me to Mr. Scott at the depot in Cripple Creek.

Q. Do you think that is responsive to the question? Any time

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when you think the question has been fully answered I would like to ask another question.

MR. BORAH: All right, we will notify you.

MR. RICHARDSON: I submit I ought not to be required to allow this witness to deliver a lecture not responsive to the question.

THE COURT: Nothing before the court. Proceed with your examination.

- Q. Mr. Orchard, notwithstanding the fact that you were sore at him because you had made the two attempts and notwithstanding the fact that he hadn't paid you, you at the same time was willing to go over to Mr. Scott and tell the other side with regard to a thing which he was doing which was less important than the thing which you had done? A. I went over to tell him, yes sir.
- Q. Went over to tell him? A. I did; I did go to tell him, yes sir.
- Q. You was not sore because you were not employed to wreck this train then, were you? A. Well, I was kind of jealous, I guess, something like that.
- Q. You thought you ought to have been employed to wreck the train, did you? A. I felt like that; I was sore.
- Q. Well, now, yesterday you told us, did you not, that it was after you had gone to the Miners' Union Hall to talk with them about getting money for the killing of McCormick and Beck and not getting it that you got sore and went to Scott? Didn't you say that? A. No sir, I don't think I said anything about getting sore.
- Q. Let us see: Maybe I am wrong about that. A. I might be mistaken, but I don't think so.

Q. I will call your attention to it. "After McCormick and Beck were killed state whether or not you saw Davis or Parker or any of these parties? A. Yes sir, I seen both. Q. State what talk you had with them in reference to the matter, state all that was said and done between yourself, Beck and Parker with reference to the killing -- to the explosion in the Vindicator and the killing of McCormick and Beck? A. I met them after that just an hour or so, in Victor, in Union Hall. Q. Miners' Union hall? A. Yes sir. Q. Yes, go on. A. We talked it over a little.

THE WITNESS: Parker and Davis.

Q. Go ahead. A. We talked it over a little and I went home with them that night about five o'clock I think. Q. Where were they living? A. Lived at -- Sherman Parker lived at Independence and Davis lived at Altman. Q. Which place did you go to? A. We went home, we went to both places going through Independence and then going on up to Altman, I lived between the two, I went on up with Davis. Q. Go on and state fully what was said and done with reference to this matter, state it fully? A. I wanted them to give me some money. I said I was broke, before this, and they said they would have to go to Denver to get it, Parker told me. Q. To whom? A. He said he would have to go to headquarters, and Davis came to my house later that evening and wanted me to go over to Victor to the Union there -- the union met at Victor that night, on Saturday night. I told him that I didn't think it would be wise for me to go with him, but I didn't think I would be suspicious there as I hadn't been very active but he had better

not be seen. He said I was no good being afraid about it, I might as well go. He said they were talking of lynching Parker. So I did get ready and go with him and went to the Union meeting, and when we come out from th shall they wanted us to walk back instead of going on the electric car, Parker did. So we did start and walk back and we get pretty near to Independence. I told them they were liable to be arrested for that and they ought to dig up some money for me, I might have to get out of there, and Parker said he would give me some money the next day and then he would get the balance of the pay promised me when he went to Denver; the nat day they were arrested, both of them."

A. Yes sir.

Q. Now you remember of testifying that way, do you? A. Yes sir.

THE COURT: We have passed the hour for adjournment.

Gentlemen, the court will give you the statutory admonition again, that it is your duty not to converse among yourselves nor with anyone else on any subject connected with this trial, nor to form or express any opinion thereon until the cause is finally submitted to you for your consideration.

Swear the bailiffs, Mr. Clerk.

(Bailiffs sworn).

The witness will be remanded.

The jury will now retire with the bailiffs.

The defendant will be remanded.

We will take a recess until 1:30 this afternoon.

Boise, Idaho, Friday, ~~May~~ June 7, 1907.

1:30 o'clock P. M.

Parties met pursuant to adjournment.

The clerk called the names of the jurors and stated all were present.

WITNESS HARRY ORCHARD ON THE STAND:

CROSS EXAMINATION CONTINUED

BY MR. RICHARDSON:

- Q. When we adjourned this noon we were talking about a conversation which you had with Mr. Davis about the pay for setting off the bomb in the Vindicator mine. Now you had made some complaint, you say, to Mr. Davis with regard to not being paid for setting off that bomb before the time that it went off?
- A. No sir, not before the time it went off.
- Q. Well, you had made no complaint then whatsoever to Mr. Parker before the time that it went off? A. I ~~was~~ made no complaint, only asked for some money for the work I had done in setting it in there before it went off.
- Q. When was it you asked him for that money? A. I asked him for it two or three times from the time I had set it in there until it went off -- between the time I set it in until it went off.
- Q. How many days do you say it was after you set it in there before it went off? A. I think it was six or seven days, possibly eight; I am not sure.
- Q. Do you know the date that it went off? A. No sir, I do not.
- Q. You talked with Parker about it also, did you? A. Yes sir.
- Q. And was it because that they wouldn't pay you for that job

that you went to Scott about the derailing matter?

A. No sir, it was not.

Q. Or was it because you wanted to do the derailing that you went to Scott about it, that somebody else had been given the job?

A. It was because I had done the other work for them and they gave me nothing, and when they wanted this done they went and got somebody else to do it.

Q. Was that prior to the time that the second bomb had been set that the derailing case took place -- derailing matter?

A. It was the night before the derailing case.

Q. The night before the derailing? A. Yes sir.

Q. How long was that after the Vindicator explosion?

A. It was before the explosion.

Q. How long before the Vindicator explosion? A. I think it was one or two days; I am not sure whether it was the next day or --

Q. About one or two days? A. Yes sir.

Q. Did you have your talk with Parker between the time -- any talk with Parker between the time of the derailing and the explosion?

A. Yes sir, I had some talk with him.

Q. You said yesterday, did you not, to continue the reading of this morning, in response to a question propounded to you by Mr.

Hawley: "Parker said that he had two men to go and wreck that train that night. They was going to tear up the track near the Economic mill on the Florence & Cripple Creek railroad. As we started home it began to snow -- started from Victor to go around to Bull Hill -- Altman -- he lived at Independence and I lived between Altman and Independence, and he said he wouldn't be able to pull it off that night, it was snowing.

He said it was hard luck they was having. I had been after him for some money for this other work I had done, I was broke, and he kept putting me off. He said he would have to come to Denver and get it before he could give me any. He said there was several others that had been doing a little work and he would have to get some money and he said he would have a hard time to get it because nothing had been pulled off, but he said we will get lots of money in the morning if this train is wrecked tonight, or get lots of money for that. I felt kind of provoked and made up my mind that I would go and tell the railroad officials and stop it." Did you say that?

A. I did.

Q. Now when was it that you told him that you felt kind of provoked or when was it that you felt kind of provoked? A. I didn't tell him that I felt provoked.

Q. Didn't say anything to him about it? A. No sir.

Q. But you did feel somewhat provoked? A. I did.

Q. Now don't you know as a matter of fact that the Vindicator explosion occurred on the 21st day of November of 1903?

A. I don't know the day it occurred, no sir.

Q. And don't you know as a fact that the train case, the first train wreck case that you are talking about, occurred on November 14th of 1903, one week prior to that time?

A. I don't know the dates, no sir.

Q. Don't know? A. No sir.

Q. Well, when you said this morning that you didn't consider that anything was due you and that you had made no complaint in regard to that because you hadn't set off the ton of powder-- the carload of powder that was in the Vindicator mine, you

- didn't mean that you didn't think there wasn't anything due you?
- A. I don't think I said that I didn't think there was anything due me. I said I had asked them for money several times, which I did after I had set off -- tried to set off the carload of powder and set ~~the~~ the bomb in the Vindicator mine.
- Q. Well, you say now that you don't think there was anything due you? A. I don't say any such a thing.
- Q. You did think there was something due you notwithstanding the fact that no thing had been pulled off? A. I did.
- Q. Although your contract, as you call it, with Davis was for \$200 in case you discharged that carload of powder? A. Yes sir.
- Q. And then you made a new contract with him for \$500 to discharge the bomb? A. I didn't make a new contract with Davis for the \$500.
- Q. Who did you make the contract with? A. I made it with Parker.
- Q. I thought you said you made it with Davis and Parker together?
- A. Well, Davis and Parker had both talked of it.
- Q. Both talked of it? A. Yes sir.
- Q. So that without any claim that there was anything due you on the \$200 item you made a new contract for \$500? A. I didn't claim there was nothing due me. I had asked them for money since I made the first attempt to set off the carload of powder and I asked them for money after I put the other in there.
- Q. Before you married did you room at Johnny Neville's place?
- A. Yes sir.
- Q. How long had you roomed there? A. I don't know. I roomed there from -- I don't know just how long I roomed there,

possibly two or three months.

- Q. Who was your room mate? A. A man by the name of John Thompson was part of the time.
- Q. Did he work on the Vindicator also? A. No sir.
- Q. Was he a high-grader also? A. I guess he was.
- Q. He had \$600 worth of ore, didn't he, in the room there at one time? A. I never knew that he did.
- Q. Didn't you take \$600 worth of ore that belonged to him and take it away and dispose of it? A. No sir, I did not.
- Q. Nor any ore from your room mate? A. Yes sir, I took some ore.
- Q. Took some ore from your room mate? A. Yes sir.
- Q. What room mate was it? A. John Thompson.
- Q. How much did you take? A. I got ten dollars and some cents for what I took.
- Q. You thought because he had high-graded it, why, there was no good reason why you shouldn't high-grade it again? A. I presume --

MR. HAWLEY: We object to that as being an improper question.

THE COURT: Objection overruled.

- A. I had been out at night and went broke and wanted some money and I knew he had that high grade in his trunk and I went down and got it.
- Q. What part of his trunk was it in? A. I don't know; it was inside of the trunk.
- Q. You broke open the trunk, did you? A. No sir, I didn't break open the trunk.
- 434 Q. Didn't have to? A. No sir.

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Q. It wasn't locked? A. I guess it was locked but I had a key to it.

Q. Well, did you break it open in the sense you opened it then?

A. I had some ~~stuff~~ stuff in the trunk.

Q. The stuff didn't belong to you in it? A. Some of it did.

MR. BORAH: Who was this man?

THE WITNESS: John Thompson.

Q. Now isn't it the fact that the day after the explosion which killed Beck and McCormick that Davis and Parker and Easterly and a whole lot more of them were arrested? A. The day after?

Q. Yes sir. A. I think they were, yes sir.

Q. Arrested by the military, weren't they? A. I think they were.

Q. And some of them sued out habeas corpus writs -- you said Easterly did, I think? A. I believe he did.

Q. Now you didn't get a chance then to see Davis or Easterly or Parker after that explosion for some little time, did you?

A. Yes sir, I did.

Q. Where did you see them? A. I seen them that some evening of the explosion.

Q. Well, I mean after they were arrested? A. I seen them once. I seen Parker and Davis once after that.

Q. Where did you see them? A. I seen them in the county jail in Cripple Creek.

Q. Did you interview them there? A. I talked with them a few minutes.

Q. ~~Have you ever been~~ Allowed to talk to them alone, were you?

A. No sir, not very much. I whispered a little to them.

- Q. Well, was that the only time that you saw them? A. That was the only time I saw them until they was released from jail.
- Q. When were they released, if you know? A. I think it was some time in February.
- Q. From the time of their arrest the day of or the day after the explosion which killed McCormick and Beck, Parker and Davis you think stayed in jail until some time along in February, didn't they? A. I think it was in February; I am not positive.
- Q. Easterly got a writ of habeas corpus and got out? A. Yes sir.
- Q. What time did he get out, if you know? A. I think he got out some time in December.
- Q. You don't know what time in December? A. I am not positive.
- Q. Did you see him after he got out in December? A. Well, I think it was in December when I seen him.
- Q. Where did you see him? A. I seen him in Denver.
- Q. You didn't see him any more in Cripple Creek at all?
- A. I seen him in court I think the day he got out.
- Q. But you didn't have any talk with him? A. No sir.
- Q. Now you went to Denver then some time in the month of December of 1903? A. I think it was in December, yes sir.
- Q. What part of the month of December was it that you went there?
- A. I couldn't say I think it was about the middle of December but I am not positive.
- Q. What was your business in going there? A. I went down to see if I could see Mr. Easterly and get some money.
- Q. Easterly didn't owe you any money, did you? A. No sir.
- Q. Hadn't agreed to pay you any, had he? A. No sir.
- Q. How did you get down there? A. I went down with D. C. Scott.

- Q. Went down with D. C. Scott? A. Yes sir.
- Q. And D. C. Scott furnished you transportation to go on, didn't he? A. Yes sir.
- Q. The fact of the matter is you were reporting to D. C. Scott right along there all of the time, wasn't you? A. I reported to him a few times, or went to see him. I didn't make any reports to him.
- Q. D. C. Scott was connected with K. C. Sterling, too, wasn't he? A. Yes sir.
- Q. You knew about that, didn't you? A. Yes sir.
- Q. K. C. Sterling was the man who had charge of the detective service for the Mine Owners' Association? A. Yes sir.
- Q. You knew that at that time? A. I did.
- Q. And D. C. Scott was the detective for the Florence & Cripple Creek railroad? A. Yes sir.
- Q. That is, he had been? A. He was at that time, I believe.
- Q. And he and D. C. Scott were working together, weren't they? A. I think they were.
- Q. You know they were, didn't you? A. They told me they were.
- Q. You went to see Scott and Sterling both on a large number of times, all along that fall and winter, didn't you? A. I went to see them several times after I went the first time.
- Q. Well, you went the first time along about the time of the spike pulling, which was some time in November of 1903? A. Yes sir, I went some time in November, 1903, about it.
- Q. You were a pretty constant visitor with Sterling and Scott from the fall of 1903 until you finally left the district in 1904? A. No sir, I was not.

- Q. How many times did you go to Sterling's house or where he roomed? A. I never went to Sterling's house or where he roomed.
- Q. Never went where Sterling roomed? A. No sir.
- Q. Did you tell Sterling that you would go up to headquarters?
A. No sir, I did not.
- Q. Did Sterling ~~ask~~ and Scott tell you to go to headquarters?
A. No sir, they did not.
- Q. Didn't you have some talk with Sterling and Scott about your going up to Denver and getting next to the officers of the Federation so that there could be something that would be put up against them that was going on in Cripple Creek? A. No sir, I did not.
- Q. Didn't go to Denver for that purpose? A. I went to Denver to see Easterly.
- Q. Who paid your expenses to Denver? A. Mr. Scott did.
- Q. Who paid your expenses while you were in Denver? A. Well, I got some money from Mr. Meyer while I was in Denver.
- Q. What did you tell Scott that you were going to do that made him give you a railroad pass and pay your expenses?
A. I told him that I would go to Denver and find out what I could about Easterly.
- Q. And find out what you could about Meyer and Haywood too, didn't you? A. Yes, through Easterly.
- Q. And any other officer of the Federation who was in power?
A. I told him I would, yes sir.
- Q. You didn't know anything about Pettibone at that time?
A. No sir, I did not.
- Q. Did Scott tell you about Pettibone? A. I don't know that he did.

- Q. What? A. I don't think he did.
- Q. Don't think that he did? A. No sir.
- Q. Didn't Scott tell you that they were anxious to connect Meyer and Haywood and Pettibone up in some way with the outrages which were being perpetrated in the district, and weren't you employed by him to go to Denver for that purpose? A. No sir, I was not.
- Q. You were not? A. No sir.
- Q. How much money did he give you? A. He give me \$13 or \$15 and a pass to Denver and back.
- Q. How many times did you go to Denver on a pass that was issued by D. C. Scott or K. C. Sterling or at their instance?
- A. Once.
- Q. Only once? A. Yes sir.
- Q. That is the only time you ever had a pass? A. Yes sir.
- Q. And that was in the month of December, 1903? A. I think it was in December, yes sir.
- Q. You were working then for Scott and Sterling, whether you were getting any pay for it or not, at that time, weren't you?
- A. I wasn't working for them. I wasn't in their employ.
- Q. You were doing what they directed you to do, weren't you?
- A. No sir, I wasn't doing what they were directing me to do.
- Q. You were making a report to them of what you found out? A. I went over to see them when they sent for me.
- Q. How often did they send for you? A. Well, I think five or six times.
- Q. Did you go to the Mine Owners' Headquarters? A. No sir, I did not.

- Q. Where did you see Scott and Sterling? A. I seen them in Scott's room or office at the Cripple Creek depot.
- Q. You avoided allowing anybody to see you with them, didn't you?
- A. I tried not to let anybody see me with them.
- Q. Did you know whether any of the strike officials knew at that time you were connected with Scott and Sterling? A. I don't know whether they knew at that time; they knew some little time after.
- Q. When did they know of it? A. When Parker and Davis got out of jail I told them I had talked to Scott.
- Q. When Parker and Davis got out of jail in February? A. When they got out of jail; I am not sure just when.
- Q. Do you know A. C. Cole? A. I don't know as I know A. C. Cole; I know a Cole when I see him.
- Q. Is that the Cole who was the secretary of the Citizens' Alliance there at Victor? A. I believe there was a Cole; I am not quite sure about the name, though.
- Q. You were intimate and pretty friendly with him, weren't you?
- A. No sir.
- Q. Did you ever talk with him? A. No sir.
- Q. Never said anything to him at all? A. No sir.
- Q. At any time? A. No sir, I never spoke to him in my life.
- Q. Did you ever go to his office? A. No sir.
- Q. Nor had anything to do with him in any way, shape or form?
- A. No sir.
- Q. Well, when you went to Denver where did you stop? A. I am not sure where I stopped. I think I stopped on Lawrence Street. I stopped in a rooming house.

- Q. Did Scott stop with you? A. No sir -- oh, yes, I can tell you where I stopped. I stopped at the Markham hotel.
- Q. Did Scott stop with you? A. No sir.
- Q. Where did he stop? A. He stopped at the Adams, I think.
- Q. He went up to the Adams while you went to the Markham hotel?
- A. I think so.
- Q. There was a purpose in that, was there not? A. Yes sir.
- Q. That was so you shouldn't be seen with Scott, wasn't it?
- A. Yes sir.
- Q. So that you could find out and report to Scott anything that you could find out, anything against the Western Federation?
- A. No sir.
- Q. That is what you did it for, wasn't it? A. I told Scott I would.
- Q. Told Scott you would? A. Yes sir.
- Q. Were you lying to Scott? A. Yes sir.
- Q. You were? A. Yes sir.
- Q. You know where Sterling roomed in Cripple Creek? A. No sir.
- Q. Don't know? A. No sir.
- Q. Never went to a rooming house there where Sterling roomed that was kept by Mrs. King? A. No sir.
- Q. Do you know Mrs. King? A. No sir.
- Q. Do you know her daughter, Miss King? A. No sir.
- Q. And you are certain that you never went to the house occupied by them where Sterling roomed? A. Yes sir, I am.
- Q. Did you ever go any place to meet Sterling after dark at some place where he was in a room? A. I don't think that I ever met Sterling after dark; I never met him only a couple of times.

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Q. Where did you meet him those two times?

MR. HAWLEY: Hold on, hold on.

MR. RICHARDSON: No, I won't hold on.

MR. HAWLEY: You will hold on until he finishes his answer.

MR. RICHARDSON: I will if the court tells me to.

THE WITNESS: I was going to tell you where it was; I am not sure it was after dark, but it was in Scott's office or his room down at the depot, the only place I ever met Sterling.

Q. Do you know a woman named Mrs. Henderson? A. No sir.

Q. Did you ever go to her house? A. No sir.

Q. How long did you stay in Denver on that trip, December of 1903?

A. I think I stayed there five or six days, something like that.

I am not quite sure how long, about that time I think.

Q. That was the first time that you ever met Moyer and Haywood in your life? A. Yes sir.

Q. Personally. A. The first time I ever met them personally.

Q. And you went to headquarters and introduced yourself? A. Yes sir.

Q. No one went with you? A. No sir.

Q. Masterly was not there? A. He was not at that time, no sir.

Q. Told them who you were and what your name was? A. Yes sir.

Q. And so far as you know they had never seen you prior to that time? A. I didn't know that they had.

Q. Did you tell Parker that you had reported this train wrecking to Scott? A. No sir, I did not.

Q. Did not? A. No sir.

- Q. You were around trying to collect pay for the explosion which killed Beck and McCormick from Davis and Parter? A. Yes sir.
- Q. And I suppose they talked some about the train wrecking case, didn't they? A. Yes sir, they spoke of it.
- Q. There wasn't any train wrecked, though, was there? A. No sir.
- Q. It was not because you had told either, was it? A. No sir, I don't think it was.
- Q. Well, when you went up there neither Mr. Meyer nor Mr. Haywood knew who you were until you told them? A. I don't think they did.
- Q. And you say then they said that they had heard of you?
- A. They did.
- Q. Was it then that you asked them for some money? A. No sir.
- Q. What did you talk about? A. Well, I told them who I was and where I was from and they said that they knew of me.
- Q. Now what office did you tell them in?

MR. HAWLEY: We object. We insist the witness be allowed to continue his answer.

THE COURT: Were you through with your answer?

THE WITNESS: No sir.

THE COURT: You may answer.

THE WITNESS: I told them who I was and they said Easterly had told them who I was.

MR. RICHARDSON: I want to know which one of them said it and I want to be allowed to interrupt to find out, and I want to know where it was said, and I submit I have a right to know.

MR. BORAH: We have no objection to that, Mr. Richardson.

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THE COURT: The court will permit the witness to answer the question.

MR. RICHARDSON: Will your Honor permit him to go on and answer a whole lot of things that are not in the question at all?

THE COURT: No sir.

MR. RICHARDSON: Then I submit I have a right to ask him where this occurred, what room it was in.

MR. BOKAH: Don't take the lid off unless you want to see what is under it.

MR. RICHARDSON: Whenever I take the lid off I am willing everything shall come out that is under the lid. Don't worry about that. I know the lid that has been fixed up for us and we are going to show what is under it.

MR. HAWLEY: When you make a statement of that kind it is absolutely false.

THE COURT: Go on, gentlemen.

MR. RICHARDSON: Read the last question and see if there is an answer to it.

(Question read as follows: "Now what office did you tell them?")

A. I told them in the Federation office.

Q. There is more than one room in the Federation offices.

A. Well, it was either in Haywood's room or Moyer's.

Q. And you don't know whether it was Haywood's room or Moyer's room? A. I think it was in Mr. Moyer's room.

Q. That is the inner room? A. Mr. Haywood's was in the corner;

Mr. Moyer's room was next to that.

- Q. When you go into the offices whose room do you go into first?
A. I think you go into the stenographer's room.
- Q. Well, where is the stenographer's room? A. The stenographer's room opens right out of the end of the hall. You can open into Mr. Meyer's room out of the hall on the right hand side.
- Q. You go into the middle room then, do you, in order to get in from the inside, and to the right is Meyer's room and to the left is Haywood's room, is that right? A. You have to go through the -- I don't know whether it is the stenographer's room or whether it is just a little -- I think it is just a little lobby or entrance.
- Q. The end of a hall? A. Yes sir.
- Q. Partitioned off? A. And you go out of that into Mr. Haywood's room.
- Q. Where was that? A. It was in the corner to the right.
- Q. That would be to the right hand side? A. Yes sir.
- Q. And Meyer's room, where was that? A. Meyer's room was on the right hand side of the hall on the other side from him.
- Q. Before you got to Haywood's room? A. Yes sir.
- Q. Well, did you go into Meyer's room, that is what I want to get at? A. I did go into Meyer's room, yes sir.
- Q. Now was this conversation that you are now telling us about held in Meyer's room? A. It was held in Meyer's or Haywood's, I am not sure which; I think Mr. Haywood's.
- Q. Who was present? A. Mr. Haywood and Mr. Meyer.
- Q. Was there any stenographer there? A. No sir.
- Q. Any clerk? A. There was some stenographers there but they wasn't in the room at the time we were talking.

- Q. Were the doors open while you were talking? A. They might have been when we first started to talk, when I first went in.
- Q. Well, were they, do you know? A. I don't know if they were. I know they were shut afterwards.
- Q. Before you got through talking they were shut? A. Yes sir.
- Q. Now what was the first thing that you said when you got into that room? A. I told them who I was and where I came from.
- Q. And who answered? A. I am not sure. I think Mr. Haywood is the first man I met.
- Q. What did Haywood say? A. He said he already knew who I was, that Mr. Easterly had told him who I was before.
- Q. Did he say when Easterly had told him who you were?
- A. I don't know as he mentioned the date.
- Q. Was it then that he got up and shut the door, if he did?
- A. I couldn't say that he did right then.
- Q. Well, what was the next thing that you said? A. Well, he asked me about the strike up there, and how it was getting along, and so on. After we got to talking awhile he asked me about that McCormick and Beck -- he said Easterly had told him who done it, and he said it was a fine job.
- Q. He said it was a fine job without your soliciting anything about that? A. Yes sir.
- Q. And said Easterly had told him about it? A. He did.
- Q. Do you know where Easterly was at that time? A. Yes sir.
- Q. Where? A. Down to Pueblo.
- Q. How do you know that? A. Mr. Haywood and Meyer told me.
- Q. When did Easterly go to Pueblo, if you know? A. I don't know when, only he went after he had gone to Denver.

- Q. When did he go to Denver? A. Well, he went when he got out of jail at CrippleCreek.
- Q. How long were you up there with Moyer and Haywood?
- A. Probably fifteen or twenty minutes the first time.
- Q. Fifteen or twenty minutes.
- Q. Was it that time you asked them for money? A. I wouldn't say how long I was there; something like that time.
- Q. Was it that time you asked them for money? A. No sir, I didn't ask them for money that time.
- Q. Didn't say anything about it? A. No sir.
- Q. You went up there to see them and talk with them and report to Scott, didn't you? A. I went up there to see them to find out where Easterly was.
- Q. What did you want to find out where Easterly was for?
- Q. I wanted him to introduce me to Moyer and Haywood.
- Q. You had already introduced yourself to Moyer and Haywood, hadn't you? A. I had introduced myself, but I wanted him to tell them who I was; he would tell them about this railroad wreck.
- Q. You said they told you he had already told them who you was.
- A. They did.
- Q. And they at once said, or one of them had at once said that they knew about the McCormick and Beck matter and it was a fine job? A. Yes sir.
- Q. Right there to a man whom they had never seen before in the world? A. Yes sir, but I didn't expect maybe that they would say that to me without Easterly being there, but they did.
- Q. Then there was nothing to prevent you asking them for money

if you wanted to, was there? A. I didn't want any right then. They offered me money before I went away.

Q. Which one offered you money? A. Mr. Moyer.

Q. What did he say? A. He said to stay down a few days, if I wanted any money I could get it.

Q. That was during that first fifteen or twenty minutes' conversation that Moyer said that to you? A. Yes sir, it was during the first time I was there.

Q. And you told him you didn't need any money at that time?

A. I told him I didn't need any right then, I wanted some before I went home.

Q. Now all that you wanted to see Easterly for was for the purpose of having Easterly introduce you to Moyer and Haywood and tell them who you were? A. I wanted him to introduce me to Moyer and Haywood, I wanted to ask him if he could introduce me and ask them about getting this money that Parker and Davis promised.

Q. Why did you go away then without asking for it? A. Because Easterly was not there and I was going to wait until he come up. They said he would be back in a day or two.

Q. They knew all about you: You found all that could be accomplished by an introduction from Easterly was already accomplished, didn't you? A. I don't know whether it was or not. I didn't expect they would offer me money, but I wanted to see Easterly anyway.

Q. Well, now, you went there to get money. You were offered money while you were there? A. Yes sir.

Q. And you refused to take it? A. No sir, I didn't refuse to

take it.

- Q. I understood you to say that you didn't take it, told them you didn't need any then but you might need some before you went home? A. Yes, I took \$20 from Mr. Moyer.
- Q. At that time? A. I think it was that time, yes sir.
- Q. I thought you just said a few minutes ago you didn't need any and wouldn't take any? A. I told him I didn't need any that time, I would want some before I went home, and he said to stay around there a few days, and I think he gave me \$20.
- Q. Didn't you say a few minutes ago that you didn't get any that day? A. I don't know that I did or not; if I did --
- Q. You made a mistake, did you? A. I wouldn't say positively no whether he gave me that money that time or the next time I was up there. I think I was up there twice before Easterly came back.
- Q. So that there were two trips there that you made before Easterly came in? A. I think I went twice, yes sir.
- Q. And on one of those trips you got \$20 from Charles H. Moyer?
- A. Yes sir.
- Q. Who was present when he paid it to you? A. I don't know whether there was anyone but him; I think he give it to me in his room.
- Q. What did he give it to you in? A. He give me a \$20 bill.
- Q. Took it right out and handed it to you? A. Yes sir.
- Q. Was that all you asked him for? A. I didn't ask him for that.
- Q. Didn't ask him for that? A. Not at that time.
- Q. He was just anxious to get action on his money, was he --
appeared to be?

MR. HAWLEY: We object to that question as being improper.

THE COURT: Objection overruled.

- A. He said I might need some money and I better take that.
- Q. Without your asking him anything about it? A. Without my asking for it.
- Q. How much of Scott's money did you have in your pocket at that time? A. I didn't have very much.
- Q. Didn't have very much? A. I might have had --
- Q. Spent that, did you? A. I had a few dollars.
- Q. Now you had the same talk the twotimes that you went up there and saw Moyer and Haywood that you had when you went up with Easterly, the same in effect? A. Not exactly the same talk. We didn't talk so much.
- Q. Now finally Easterly got there, did he? A. Yes sir.
- Q. When did he get there? A. He came two or three days after I was in Denver.
- Q. Give me the date that you had this talk with Easterly was there.
- A. I couldn't give you the exact date.
- Q. Didn't keep any books? A. No sir.
- Q. Nor keep any track of time? A. Not then, no sir.
- Q. But you are absolutely certain that all three of these conversations occurred in the month of December? A. I think it was in the month of December, but I am not positive. I wouldn't say whether it was.
- Q. Well, you want to say that, do you? Maybe it wasn't in December at all? A. No sir, I would say it was in December to the best of my recollection.

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- Q. With reference to the event of Christmas, you ought to be able to tell us whether it was before or after? A. It was before Christmas.
- Q. You saw these men then, you saw these men threetimes before Christmas? A. Yes sir.
- Q. And Easterly was with them upon one of the three occasions? A. Yes sir.
- Q. You know about the time, don't you, that you left Cripple Creek to go up there? A. I don't know the exact time, no sir.
- Q. You know whether it was the fore part of the latter part of the month, don't you? A. No sir, I do not.
- Q. Do you know where you was when Christmas day come around? A. Yes sir.
- Q. Where? A. I was in Cripple Creek.
- Q. How long before that had you gone back to Cripple Creek? A. Well, it was a few days before, not very long I don't think.
- Q. I don't remember exactly.
- Q. Your idea is that you got down home to spend Christmas there? A. I know that I got home to spend Christmas, yes sir.
- Q. How many days were you in Denver in all? A. Well, I think I was there four or five or six days. I am not positive as to the time.
- Q. Four or five or six days? A. Somewhere near there.
- Q. And got home just before Christmas? A. I got home before Christmas, I don't know just how long.
- Q. And the three days that you saw them were all within that period of eight or ten days prior to Christmas? A. I didn't say it was eight or ten days prior to Christmas.

- Q. What did you do say about it? A. I said it was during the time I was in Denver, four, five or six days probably.
- Q. Then you got back to Cripple Creek you said shortly before Christmas, didn't you? A. I didn't say shortly; I said before Christmas.
- Q. How long before? A. I don't know how long. I don't think it was very long, but I am sure it was in December, I think, before Christmas.
- Q. Well, you would say it was later than the 15th that you saw Moyer and Haywood and Eastery, wouldn't you? A. No sir, I wouldn't say what time it was.
- Q. Would not? A. No sir.
- Q. Would you say it was before the 15th? A. I wouldn't say, no sir.
- Q. Don't know? A. I think it was in December before Christmas sometime.
- Q. Let me ask you this: There was no executive board of the Western Federation in session while you was up there, was there? A. Not that I knew of.
- Q. If there had been an executive board meeting that was over and the members of the executive board had gone away?
- A. I don't know. I didn't know anything about it.
- Q. Well, you didn't see any of the members of the executive board around the place there, did you? A. Not that I remember of-- yes, I saw one of the members of the executive board.
- Q. Who was it? A. Mr. Kirwan.
- Q. Did you have any talk with him? A. No sir.
- Q. Was he present when you had any of these talks with Moyer and Haywood? A. No sir.

- Q. Do you know what time it was that you saw Mr. Kirwan?
- A. It was that same time when I was down there. I seen him the last time after Easterly came there.
- Q. But you saw no other men connected with the executive board there? A. No sir, I don't remember of any.
- Q. Didn't appear to be any meeting going on there in the office of the members of the executive force? A. I don't remember.
- Q. So far as you could see. A. There might have been. I don't remember.
- Q. Was there anybody present at any of these conversations between yourself and Moyer and Haywood and Easterly except yourself, Moyer, Haywood and Easterly? A. No sir.
- Q. None of the time? A. No sir.
- Q. Now at the time that you had the talk when all three of them were present "Haywood said that he would rather have some of them bosses or managers than to have a good many scabs, as he called them, and that he was well pleased with it; there wouldn't be no work for me for a good while -- nor any work. He said we had to clean up them fellows up there or they would run us out of there." That was the time when Easterly was present, Moyer was present and yourself and Haywood, was it? A. We had a part of that conversation; that wasn't exactly it, though, I don't think.
- Q. Well, had anything like that, did you? A. Something like that.
- Q. This was your language that I was reading here, trying to.
- A. I think you left some of it out.
- Q. Think I did? A. I think so.
- Q. Well, I will read it again: "Well, they said that was a fine job. Haywood said he would rather have some of them

bosses or managers then to have a good many seats, as he called them, and that he was well pleased with it; there wouldn't be no work for me for a good while, nor any work. He said we had to clean up them fellows up there or they would run us out up there." What is there left out?

- A. He didn't state there wouldn't be no work or any work, he said there would be no work only night work.
- Q. So you left that out yesterday when you was examined?
- A. I don't think I did.

MR. BORAH: No, he didn't.

- Q. If it isn't in here you left it out, didn't you? A. I don't know what you have got there. I don't think I did leave it out.

MR. HAWLEY: Nor he didn't.

- Q. That isn't one of the things that is under the lid, so far as you are concerned? A. I don't know anything about that.
- Q. That will come out when the lid is taken off? A. I don't know anything about the lid.
- Q. The next question was, after the language which I have read, "This talk was had between Haywood and yourself, was it? A. Haywood and Moyer and Easterly".
- A. Yes sir.
- Q. When Moyer gave you this \$20 Haywood asked you how much money you wanted when you went back, did he? A. He didn't ask me at that time.
- Q. This question was asked you yesterday, was it not? "Was anything done in regard to the money matter? If so, what?" To which you replied: "Mr. Moyer had given me \$20 and

wanted me -- said I might as well stay down there a few days and enjoy myself before I went back. He asked me how much money -- Mr. Haywood asked me how much money I wanted when I went back. I told him I wanted \$300 anyway." That wasn't then at the same time that those two things occurred?

A. I don't think it was; it might have been.

Q. You stated them together yesterday, did you not? A. It was during the talks he asked me that and I might have told him at that time.

Q. Now I want to get at this. Haywood was present then when Moyer paid you the \$20, was he? A. I don't think he was. I think he paid it to me in his room alone.

Q. But Moyer was present when Haywood asked you how much you wanted and you told him you wanted \$300 anyway? A. Yes sir, I think he was.

Q. Then you wasn't asking for any money on account of any contract which you had with Davis or Parker or Easterly, was you?

A. Yes sir, I was.

Q. You was entitled to \$500 under that contract, wasn't you?

A. Yes sir.

Q. Why didn't you ask for \$300? A. Well, Mr. Easterly told me that he didn't think -- he said he had talked with them about it and he didn't think that they wanted to give me all of that at once. He said that he would see about it.

Q. Now you hadn't as a matter of fact seen Easterly after you left Cripple Creek, had you, up to that time? A. I hadn't seen him until he came to Denver that time.

455 Q. Where did you meet him when he came to Denver? A. I met him

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at the Federation headquarters.

Q. And it was right at the Federation headquarters at the very time that you met him that this conversation took place, wasn't it? A. No sir, it wasn't right at the time.

Q. It was not? A. No sir.

Q. This conversation which you had with Mr. Haywood in regard to telling him that you wanted \$300 anyway then was at a time when you had talked with Easterly in the Federation office, was it? A. I think Easterly came ⁱⁿ there, but I was with him over night, we roomed together, and talked a little bit.

Q. Where did you room? A. I think it was on Lawrence Street, but I am not sure. I went over to a room that he had after he came there, stayed with him two or three nights.

Q. Did you report these three meetings to Scott? A. Meeting with

Q. Meeting Moyer and Haywood? A. No sir.

Q. Did you say anything to him about it? A. No sir.

Q. You and Scott saw each other all of the while you were in Denver, didn't you? A. I saw him every day, yes sir.

Q. And you went back to Cripple Creek together, didn't you?

A. No sir.

Q. Did not? A. No sir.

Q. Who went first? A. Mr. Scott.

Q. How long before you went did he go? A. I went two or three days after.

Q. What did you see Scott every day for? A. Well, I seen him to tell him that Easterly wasn't back yet.

Q. Just to tell him that Easterly wasn't back? A. Yes sir.

Q. And yet you went up, told him that you went up with him and

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at his expense to see Moyer and Haywood and see what you could find out from them and report it to him? A. No sir, I didn't tell him I went up to see Moyer and Haywood.

Q. I say you did tell him that that was what you went to Denver for? A. No sir, I did not.

Q. Did not? A. No sir.

Q. He didn't ask you if you saw Moyer and Haywood at all?

A. No sir, I don't think I did.

Q. What did you want to see Scott for after Easterly came back?

A. Well, I had promised to tell him what I could find out from Easterly.

Q. Every day then you simply saw him and told him that Easterly hadn't got back yet? A. I did.

Q. And Scott was contented with that and finally went back to Cripple Creek? A. He did go back to Cripple Creek, yes sir.

Q. Notwithstanding he had told you that the object and purpose of your going to Denver was to see Moyer and Haywood and report to him? A. No sir, he didn't tell me my object was to come to Denver to see Moyer and Haywood.

Q. Didn't you say that just a minute ago, Mr. Orchard? A. No sir.

Q. Did not? A. No sir.

Q. Didn't you say that the object was to come to Denver to see Moyer and Haywood and report to him what you could find out?

A. No sir.

Q. Did you get any more money of Scott? A. I think I got \$5 from Scott; I am not positive about that though.

Q. Did you tell Scott what you had done on the Vindicator?

A. No sir, I did not.

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- Q. Scott was not paying you for what you had done on the Vindicator too, was he? A. No sir.
- Q. Never said anything to him about that? A. No sir.
- Q. Did you tell Sterling anything about that? A. No sir.
- Q. Do you know whether Scott and Sterling knew anything about the Vindicator matter? A. I don't think they did.
- Q. That reminds me, I want to ask you one more question: You said you went into the Vindicator through what shaft when you placed that bomb? A. I think it is No. 11.
- Q. No. 11 shaft. What was the name of this shaft that you went in through when you were stealing ore? A. Whiting.
- Q. The Whiting shaft? A. Yes sir.
- Q. Then you didn't go into the Whiting shaft when you went in and planted this bomb? A. No sir.
- Q. Did not? A. No sir.
- Q. Where is No. 11 shaft with reference to the Whiting shaft? A. I am not positive it is No. 11, I think it is No. 11; well, it is between the No. 11 -- the No. 11 is between the Whiting shaft and the Golden Cycle mine about half way I think.
- Q. Didn't you say here yesterday that you went in through the Whiting shaft? A. I went through the Whiting shaft, yes sir.
- Q. Has there been any talk with you by anybody to the effect that there was -- that a bulkhead had been erected at that time between the Whiting shaft and the workings of the mine so that it was impossible to get into the other parts of the mine through the Whiting shaft? A. Had anybody?
- Q. Had anybody talked with you about it? A. When?
- Q. Since yesterday? A. No sir.

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- Q. Do you know that there was a bulkhead in that mine separating the Whiting shaft and the drifts from it so that you couldn't get into any other parts of the mine? A. I don't know if there is or not.
- Q. Did you ever know of it? A. No sir.
- Q. Have you seen McParland since last night, since you went off the stand? A. Yes.
- Q. Yes. How long did you see him? A. About five or ten minutes.
- Q. Where? A. Over at Mr. Hawley's office.
- Q. After you left the stand here yesterday afternoon?
- A. I seen him there today noon, about five or ten minutes.
- Q. Did you see him this morning, before you came on the stand, there? A. No sir.
- Q. Didn't he get up in time for that? A. I didn't see him.
- Q. You told Haywood that you had been promised \$500, did you?
- A. Yes sir.
- Q. Did you tell him who promised it to you? A. Yes sir.
- Q. And Haywood demurred to paying you \$500? A. He said not to take too much, that I could get more any time I wanted it.
- Q. Every time you saw Haywood he always said "Now don't take too much, you can't get more any time you want it"?
- A. I didn't say every time.
- Q. Nearly every time? A. No, nor nearly every time.
- Q. You had an unlimited credit at Haywood's office? A. He told me I could get money any time I wanted it.
- Q. And then after that I suppose you were never broke in the world, were you? A. I got money when I wanted it. I might have went broke sometimes, but I got more money.

- Q. You wouldn't stay broke any longer than for you to get over to Meyer's and Heywood's to get more money, would you, after a promise like that? A. I always get money whenever I asked him.
- Q. And you always asked them for it when you wanted it, and you wanted it whenever you lost it at play or for any other reason that it was gone, didn't you? A. I asked him for it when I wanted it.
- Q. Well, you still continued to gamble, didn't you? A. Some.
- Q. And you ~~was~~^{drank} ~~some~~, too, at that time, didn't you? A. I drank a little.
- Q. What do you call a little? A. Well, I would take a few drinks probably every day.
- Q. A few drinks every day: Whiskey? A. Not much whiskey.
- Q. What, beer? A. Yes sir.
- Q. Have any other habits that cost you anything besides drinking and gambling, without stating what they were? A. Not much that I know of, no sir.
- Q. You spent some money for other purposes besides drink and gambling, didn't you? A. I spent a little, yes.
- Q. You wasn't as expensive in your habits then with respect to clothing as you are now, were you? A. I always had good clothes.
- Q. Most of the time you didn't wear a collar and you wore a woolen shirt, didn't you? A. No sir, I didn't.
- Q. Didn't you most of the time? A. I used to wear a collar when I dressed up
- 460 Q. You said yesterday that you went back to Gripple Creek in three or four days after you got to Denver, didn't you?

A. I might have said three or four days. I am not sure as to the time exactly.

Q. How much do you want to say now, that it was three or four days? A. I said three or four days or five or six days, I think; I am not sure.

Q. I will ask you if this question was asked you: "Q. How long was it before you started and went back up to Cripple Creek?

A. It was three or four days." A. How long before I started from what time?

Q. From the time you went to Denver until you went back, I suppose that is what you are talking about.

MR. BORAH: That is not the question there.

MR. RICHARDSON: I am reading the question exactly: "How long was it before you started and went back up to Cripple Creek? A. It was three or four days."

THE COURT: How long from what time, Mr. Richardson?

MR. RICHARDSON: I don't know. I am just reading the question.

MR. BORAH: If you don't know why should you expect the witness to know?

MR. RICHARDSON: I don't know how. I am reading the question as I find it.

MR. BORAH: If you don't know anything about that you ought not to ask about it.

MR. RICHARDSON: I don't know, I am simply reading it as it is. How should I know what he was referring to?

MR. BORAH: I will try and teach you.

MR. RICHARDSON: Suppose you do try and teach me.

THE COURT: Go on, gentlemen.

MR. RICHARDSON: You might learn something, at least some good manners out of it.

MR. BORAH: I will start a kindergarten school and --

MR. RICHARDSON: When you do you better go to it yourself for awhile.

- Q. You got \$300 out of Haywood, did you? A. Yes sir.
- Q. And then you went back to Cripple Creek? A. Yes sir.
- Q. Well, you got the rest before you started back, didn't you, besides the \$300? A. No sir.
- Q. Got \$200 more? A. No sir, I got \$300.
- Q. You got \$300 in all? A. Yes sir.
- Q. That money was paid to you by Mr. Haywood himself, was it? A. \$280 of it was.
- Q. \$280? A. Yes.
- Q. Didn't come through Mr. Pettibone? A. No sir.
- Q. Who was present when Mr. Haywood payed you that money? A. Mr. Easterly and Mr. Moyer.
- Q. Easterly, Moyer and Haywood all present when \$280 in cash was handed to you? A. Yes sir.
- Q. With a statement that you had already had \$20? A. I think it was. I am not sure whether it was stated I had \$20. I got \$280 more, I know that.
- Q. What did you do when you went back to Cripple Creek? A. I didn't do anything for awhile. I went home.
- Q. You said you hadn't done any work since that time to speak of? A. I haven't.
- Q. You have not? A. No sir.
- Q. Hadn't done much before that time to speak of, had you?

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A. Yes sir, I had.

Q. Did you see Scott or Sterling when you went back? A. Yes sir.

Q. Did you report to them? A. I reported to Scott, yes sir.

Q. Gave him a full history of all that had taken place in Denver, did you? A. No sir, I did not.

Q. Why not? A. Because I didn't propose to.

Q. You told him that you did, didn't you? A. Yes sir.

Q. Did you let him know that you had seen Moyer and Haywood?

A. No sir.

Q. Never did? A. No sir.

Q. And yet he took you down to Denver for that express purpose?

A. No sir, he didn't.

Q. And you haven't said so in your testimony? A. No sir, I have not.

Q. How much more did Scott and Sterling pay you, or either of them? A. They never paid me any more after that.

Q. Never did? A. No sir.

Q. At any time? A. No sir.

Q. Did you discuss with Moyer and Haywood what you would do when you went back to Cripple Creek? A. Some, yes sir.

Q. Well, what did you say about that? A. I don't know that I discussed with them any particular thing I would do. They told me what I might do if I wanted to.

Q. Did you discuss the spike pulling case with them? A. I might have spoke about it. I don't know whether I did or not.

Q. The spike pulling case was set for trial at that time, wasn't it, or it was known that it was going to be tried shortly in any event? A. I don't think it was very shortly -- quite a while after that.

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- Q. And Davis and Barker were in jail on that charge, weren't they?
- A. I believe they were.
- Q. Believe they were? A. Yes s r.
- Q. Well, there was no discussion then with regard to the entire pulling case at all? A. It might have been spoken of. I think probably it was.
- Q. For any part you had taken in it? A. I didn't take any part in it.
- Q. You told Scott about it, didn't you? A. Yes s r.
- Q. And was that because you didn't take part in it, that you didn't have a larger part, ^{assigned to} ~~assigned to~~ you?

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- Q You say they spoke about killing some of them soldiers?
- A Yes sir.
- Q Did they tell you how to kill them? A No sir.
- Q What did they say to you about it? A They said to do anything you wish, though to kill some of them soldiers would be a good thing.
- Q They told you to turn yourself loose and you could not go too fierce for them? A Yes sir.
- Q These people who had counseled peace and had reasoned against the use of violence all the time? A Yes sir.
- Q The very same people? A Yes sir.
- Q And they told you it would be a pretty good idea if you would kill some of them soldiers? A Yes sir.
- Q You didn't kill any? A No sir.
- Q Did you have any scheme on any of the soldiers worked up in your own mind at that time? A I don't know as I did at that time.
- Q The scheme was always left to you was it? A Some times it was and some times it was not.
- Q You could kill them or not? A Yes sir, some times.
- Q Make bombs or not, just as you pleased? A Yes sir.
- Q Both of them told you you could not go too fierce to suit them?
- A I think it was Mr. Haywood said that.
- Q But Mr. Moyer was present when he said it? A Yes sir.
- Q And Mr. Easterly was there too? A Yes sir.
- Q So that all three of them and you heard Mr. Haywood say you could not go in too fierce to suit them? A They were all there

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all right.

Q You say you went back and did not do anything for a month or more; why didn't you do anything for a month? You had full liberty to do anything didn't you? A I suppose I did.

Q Your pay was promised, wasn't it? A Yes sir, I could get money any time I wanted it.

Q And you had two hundred dollars still coming to you on the job you had last done? A Yes sir.

Q Did you collect that \$200.? A Yes sir.

Q When? A Some time after that when I was in Denver.

Q When was it? A I think it was some time in January or February.

Q Did you tell them you were \$200. shy on your last job? A No sir, I did not.

Q You did not? A Excuse me, I got some of that money in Cripple Creek after that.

Q Who from in Cripple Creek? A Mr. Moyer.

Q You did not tell us about that yesterday, did you? A I don't know as I was asked about it/

Q You did not tell about it,-- you forgot it? A I did not tell about it-- I did not forget about it.

Q You did not tell it? A I was not asked about it.

Q Where did you get any money from Mr. Moyer? A I got a hundred dollars from him in Victor.

Q When was that? A I think it was in February.

Q Where were you when you got it? A I was in Victor, on the street, going to the depot.

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- Q He paid you a hundred dollars on the street, did he? A Yes sir.
- Q What time in February was that? A I am not sure what time it was; it was when the trial was going on though.
- Q Did you dun him for it? A I asked him for it.
- Q And what did he say? A He gave me a hundred dollar bill.
- Q What did he say? A Nothing.
- Q Just handed it to you--- a hundred dollar bill? A Yes sir.
- Q This was right on the street, right there in daylight as you was going to the train? A Yes sir, it was.
- Q Now, this-- did he say this hundred dollars was on account of the \$200. that was still owing to you? A He did not say.
- Q He did not ask him to give you credit on account? A No sir.
- Q You was not keeping any account? A I kept track of it.
- Q Except that you knew you had \$200. more coming to you? A Yes sir.
- Q Did you collect the other hundred? A Yes sir.
- Q When did you collect that? A I got fifty more from Mr. Meyer shortly after that.
- Q When was that? A It was when the trial was going on of Parker and Foster.
- Q That made \$150. that you got in Cripple Creek? A Yes sir.
- Q Where was that paid to you? A Over in Cripple Creek.
- Q What part of Cripple Creek? A I think it was in Union Hall.
- Q That first hundred dollars was paid you on the street, one of the most public places in Cripple Creek? A It was a public place.
- Q On the way to the depot on Bennett Avenue, I suppose? A It was

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the back way, back of Miner's hall there, on the way to the depot.

Q Did you go by the hall? A Yes sir.

Q A lot of people saw you receive it, I suppose? A No sir.

Q The other \$50. you got in the hall at Cripple Creek? A I think it was; I am not positive.

Q Was there any of the boys there? A No sir, we were there alone.

Q What were you doing there at that time? A We were talking over the trial.

Q Was there anybody in the hall? A I think there was some one in the front office.

Q Can you give us the names of anybody who was there? A I don't know as I can.

Q Don't know as you can? A No sir.

Q The next event that you pulled off was the making of a couple of bombs to put in the Vindicator coal bunkers? A Yes sir.

Q Who told you to do that? A I don't know as any one told me to do that.

Q You did that of your own notion, didn't you? A I done it after I had a talk with Moyer and Haywood.

Q But you did that of your own notion. You did not ask anybody about it or whether you should do it? A Billy Eckman and I talked about it.

Q You had never seen him talking with Moyer or Haywood had you?

A No sir.

Q Nor heard him talking with them? A No sir.

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- Q You and he fixed up these two bombs, did you? A No sir.
- Q Who did? A Oney Barnes and I did.
- Q Your talk with Billy Eckman was the only thing he had to do with?
- A Billy Eckman told me that Oney Barnes was an expert at making bombs.
- Q Where did you make these bombs with Oney Barnes? A Over at his cabin.
- Q Where was that? A At Independence.
- Q How far from the Vindicator? A Not very far, probably 300 yards.
- Q What time of day did you make these bombs? A In the daytime, I think it was in the afternoon.
- Q Where did you get the powder and the stuff that you made them with?
- A I think I got the powder off from a leaser by the name of Perkins on Gold Hill.
- Q When did you get that powder? A I got it one night after dark.
- Q How much did you get? A I got ten pounds, I think.
- Q Went up there after dark and got it of Perkins, did you? A Yes sir.
- Q What is Perkins name? A Charlie Perkins.
- Q Did you buy it from him? A No sir.
- Q Steal it from him? A Yes sir.
- Q So that Charlie Perkins did not know anything about it as far as you know? A I did not tell him anything about it.
- Q You did not go to him and get permission to get it? A No sir.
- Q Where was this powder? A It was down in a shaft where he was

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leasing there.

Q Did he say anything about leasing it afterwards? A I never heard him say anything about it.

Q And you don't know that to this day Charlie Perkins knows who stole his powder? A No sir.

Q So you were a powder thief also?

MR. HAWLEY: Just a minute, we object to that.

Q Did you carry it direct down to Oney Barnes' cabin? A I don't think I did.

Q Don't think you did? A No sir.

Q Where did you take it? A To my house where I was living.

Q Were you living with your wife-- this second wife which you had, then? A Yes sir.

Q And what did you do with it? A I hid it around somewhere's in the outbuildings.

Q How old was those boys you had there that belonged to your wife?

A I think one was ten years old and the other fourteen.

Q And you carried over there this ten pounds of powder and laid it around there loose? A I hid it somewhere.

Q Don't you remember where you hid it? A I don't remember.

Q How long did it stay there before you put it into these bombs?

A Not very long. Probably the next day, perhaps.

Q Where did you get your caps and fuse? A I think I got the caps up there where I got the powder.

Q Stole them too, did you? A I did.

Q Where did you get the fuse? A I did not have any fuse,-- not any mining fuse.

Q Where did you get the stuff you stuck it together with?

A Over at Cripple Creek?

Q Steel that too? A No sir.

Q You bought it? A Yes sir.

Q Who did you buy it off? A I don't remember the fellow; he was engaged in putting on gravel roofs on houses.

Q Do you remember what part of Cripple Creek he was in? A It was between Bennett Avenue and the street below it, I don't remember its name.

Q And you and Oney Barnes made up these two bombs? A Yes sir.

Q How much of the day did it take you? A Probably an hour or so.

Q And then you went off and left them with Barnes? A No sir.

Q What did you do with them? A I took them down to Billy Salzman's saloon.

Q And you had no communication with Moyer, Haywood or "asterly or Pettibone about these bombs? A No sir.

Q This was a thing you were doing on your own hook? A Yes sir.

Q To go forth and do things generally? A Yes sir.

Q Who was Oney Barnes? A I don't know. He was a man about 40 or 50 years old I think.

Q I thought you said you did not know who he was? A I don't know who he was.

Q Did you know who he was prior to the time you made the bombs with

- him? A I was introduced to him.
- Q When was you introduced to him? A Two or three days before that or a week probably.
- Q Where and when were you introduced to him? A I think it was up to his cabin.
- Q Who introduced you? A Billy Eckman.
- Q Had you been pretty friendly with Barnes during that three or four days or a week? A No sir.
- Q But you went down to his house to make some bombs with him?
- A I did after I was introduced to him.

MR. RICHARDSON: Is Mr. Barnes in the room?

A voice. Yes sir.

MR. RICHARDSON: Will you please stand up, Mr. Barnes?

Mr. Barnes arose.

- Q Is that the man you made the bombs with? A Yes sir.
- Q There in the cabin? A Yes sir.

MR. RICHARDSON: All right, that is Mr. Barnes. You may sit down.

- Q What did you do with these bombs? A I took them down to Billy Eckman's saloon.
- Q Both of them? A I think I took both of them down there.
- Q Yesterday in your narrative form you said you took one down to Billy Eckman's saloon, did you not, and I will call your attention to page 151--

MR. BORAH: I have not any transcript, but I will follow

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you.

Q "I took one of these down to Billy Ekman's saloon and he gave it to a man by the name of Dempsey and he was going to throw it into the coal buckets"? A Yes sir.

Q That was not you? A No sir.

Q You was not acting in a double capacity there and have the two names? A I was not going by the name of Dempsey.

Q This name, Dempsey, was one you had been by on one occasion?

A Yes sir.

Q Who was this man Dempsey? A He was a man around Independence; had been around there ever since I had been there.

Q You know him? A Yes sir.

Q And knew he was a proper and fit subject to handle a bomb?

A Billy Ekman told me he was all right.

Q That was all you knew about him, was it? A Yes sir, that was from hearsay.

Q You did not know anything about that bomb which Dempsey was to throw into the coal bunkers of the Vindicator? A He told me he threw it in.

Q He told you that himself, did he? A Yes sir.

Q Yesterday, you were asked, "You did not know anything of your own knowledge of the result of it? A No sir, I did not hear anything of the result of it." A I did not hear anything going off.

Q You did not mean to say that you had never heard anything about it? A No sir.

- Q You did hear from Dempsey that he had thrown it in there?
- A Yes sir, he told me over the phone from Goldfield that he had delivered them goods.
- Q Had delivered the goods? A Yes sir.
- Q Did he say what the goods was? A No sir.
- Q So that at the time when there was military jurisdiction down there, in fact martial law at that time-- A I don't think so.
- Q This man called you up over the phone and told you he had delivered these goods? A He did.
- Q But you never heard anything further about it? A Not about that, no sir.
- Q Where were you when he telephoned you? A I was at Independence.
- Q ~~Where telephoned did he use for that?~~
- Q Whose telephone did you use? A I was in the saloon-- Billy McKman's.
- Q Billy McKman's saloon? A I don't know as it was his saloon then.
- Q What became of the other bomb? A I took it home.
- Q What did you do with it? A I buried it in an outbuilding for a while.
- Q What did you do with it after that? A I took it to Billy Masterly's cabin.
- Q When was that? A It was quite a good while after that.
- Q Quite a while after that? A Yes sir.
- Q Did you deliver it to Billy Masterly? A Yes sir.

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- Q He was there at the cabin and received it? A Yes sir.
- Q How long did it stay at your house before you took it to Masterly's cabin? A It might have been two or three months.
- Q What became of it eventually? A I don't know.
- Q That is the last you ever heard of it? A Yes sir.
- Q Were you on pretty good terms with Masterly then? A I was well acquainted with him, yes.
- Q Did you spend much of your time with him? A I seen him often when he was there.
- Q Wasn't it generally known that you were working with Scott and Sterling at that time? A No sir, I don't think so.
- Q Did you attend the Miner's union meetings after that? A Yes sir.
- Q How often? A Every time they met, I think, about.
- Q Well, that was all you did between the two times you went to Denver; was it, to make those two bombs? That is between the time you came home from Denver in December and went back there later on?
- A I did.
- Q And that was all that was done probably between those two times?
- A All in that line, yes sir.
- Q Very well, something had occurred in the meantime, had there not?
- A Yes sir.
- Q Didn't you go to Denver before the trials took place? A Yes sir.
- Q Did you go after the trials took place? A Yes sir.
- Q You did? A Yes sir.
- Q Now when you went to Denver before the trials took place, was

that the time in December, or did you go twice before the trials?

A I went twice.

Q But you went once in December and probably once in January? A

A January or ~~in~~ February.

Q Do you know when the trials took place? A I think they were in February.

Q They started in on the 14th day of February, did they not?

A I am not sure.

Q And lasted until the 17th day of March, did they not? A I am not sure. I am not positive when they started.

Q I will change that. They started on the 16th of February and lasted until the 18th of March. A I don't remember that those were the dates.

Q But before that you went to Denver? A Yes sir.

Q You went as a delegate to some convention called by J. C. Sullivan?

A Yes sir.

Q Who was he? A He was the president of the State Federation of Labor.

Q You were in that convention for the Western Federation at that time?

A I went as a representative of the Western Federation.

Q That convention was an organization of all the labor organizations?

A Yes sir.

Q And you went there as a delegate? A Yes sir, from our union.

Q Did you go purely upon the business of the convention? A Yes sir.

Q That was your only reason for going at that time? A I was a delegate.

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- Q And at that time ~~was~~ you went at the expense of the body electing you, didn't you? A Yes sir, they paid the expense.
- Q Did you see Scott or Sterling before you went? A I may have; I don't remember.
- Q Did you have any talk with them about your going? A No sir.
- Q Do you know when it was that that convention met in Denver? A I think it was the last of January or 1st of February.
- Q Is it not a fact, Mr. Orchard, that that convention was held for three days? A I don't remember the exact time it was held.
- Q It lasted three days, did it not, and those days were the 2nd, 3rd and 4th days of January, weren't they? A I could not say. It might have been in January.
- Q You did ~~you~~ say it was the latter part of January that you went up there. A I think it was.
- Q But if the convention was held on the 2nd to the 4th of January, that is the time you were there? A Yes sir.
- Q Isn't it a fact that you only went there once in January? A Once where?
- Q And that you did not go in December at all? A No sir, I went in December, or before December.
- Q And weren't those two visits made in January? A No sir, they were not.
- Q They were not? A No sir.
- Q Very well, it don't make much difference. You went up to Federation headquarters at that time did you? A Yes sir.

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Q You had some further talk with Haywood and Moyer about your actions in the Cripple Creek district? A Yes sir.

Q And at that time they told you not to pull off anything in the district until after those trials were over and out of the way.

A Yes sir.

Q And those same conditions existed then as when you were there in December, did they not? A No sir, not quite the same.

Q Those men were in jail and awaiting their trial, weren't they?

A They got out on bail.

Q And some time before Christmas they told you to come down there and turn yourself loose? A Yes sir.

Q But on the 2nd and 3rd of January they told you to keep very quiet until after the trials were over? A Yes sir, they did.

Q So that the whole policy was changed in the course of a couple of weeks, wasn't it? A It was more than a couple of weeks.

Q More than a couple of weeks? A Yes sir, I think so.

Q Were those men out on bail in January? A I don't remember that they were. They got out a short time before the trial.

Q As a matter of fact they remained in jail from the date of the Vindicator explosion on November 21st until they had been there about 93 days-- some time in the fore part of February, didn't they-- 83 instead of 93; it was 83 days? A I don't remember the exact time.

Q But in any event they were in precisely the same condition in December that they were in in January, weren't they? A I believe they were.

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- Q Went into jail on November 21st and stayed there until long after your second visit to Denver? A I don't remember just when my second visit was.
- Q They did not get out of jail until after you got back? A No sir.
- Q So these two different instructions which you got applied to the same condition of affairs so far as the men in jail were concerned, didn't they? A They were in jail; I ain't sure just what time my second visit was down there.
- Q All right. You say some of these men were in jail in regard to the train wrecking and some in regard to the blowing up of the Vindicator? A I think some of them were charged with that, yes sir.
- Q Now, who did you talk with when you were in Denver at union headquarters on your second visit in January? A I talked with Mr. Haywood, Mr. Hoyer, Mr. Pettibone, Mr. Snelzer--
- Q Where had you got-- A --- (and several others there)
- Q I want you to give me all you can remember. A John M. O'Neil.
- Q Was there a meeting of the executive board at that time? A I don't think there was.
- Q But a good many men came there to attend that meeting of the Federation of labor who were connected with the Western Federation of Miners? A Yes sir.
- Q And that is the way you met Snelzer? A Yes sir.
- Q And O'Neil is there all the time? A Yes sir.
- Q He is the publisher of the Miner's Magazine? A Yes sir.
- Q And a member of the executive board? A I don't know about that,

whether he is or not.

Q There were two attempts at wrecking that train, were there? A

A Yes sir, I believe there was.

Q I see that I left off with that meeting yesterday. Do you know anything about this second attempt? A Only what I was told about it.

Q Did Scott tell you that he advised the engineer that he wanted him to stop at a certain curve that night? A No sir.

Q Did not tell you that? A No sir.

Q Because they were going to remove some spikes from the track and lay it to the Western Federation of Miners? A No sir.

Q The spikes were pulled? A I was told that they were.

Q And the engineer was advised of it? A I heard so, yes sir.

Q But that had nothing to do with what you told Scott because you told him about the first attempt? A And that there was going to be another one.

Q That there was going to be another one? A Yes sir.

Q When did you tell him about this second attempt, Mr. Orchard?

A I don't remember the date; I told him just after Parker told me of it, the next day.

Q You told Scott of the first attempt, and then of the second attempt at another time? A No sir, I told him of both at the same time.

Q So far as Scott was concerned then, he did not know of but the one attempt? A I don't know what he knew.

Q You did not tell him there had been one attempt and would be another?

one? A Yes sir, I did.

Q Had anything resulted from the first attempt? A Yes sir, he said they had.

Q As a matter of fact there was nothing done in that first attempt because of the snow, isn't that right? A I don't think the snow had anything to do with it the first time.

Q Did the snow have anything to do with it the second time? A I don't think it did.

Q Didn't you tell them before the first attempt, and don't you know that Scott himself went out there and pulled those spikes so as to lay it to the Federation? A No sir, I do not.

Q You never heard him say anything about that? A No sir.

Q Nor Sterling? A No sir.

Q You did attend the trial? A Yes sir.

Q And know that the men were acquitted and on the ground that a detective confessed that he did it, don't you? A I know they were acquitted.

Q And you know that afterwards the man who confessed to it was turned loose, don't you? A I don't know that he was, no sir.

Q That was McKinney? A Yes sir.

Q A detective of the Mine Owners Association? A I don't know.

Q He said he was didn't he? A I don't remember of him saying he was.

Q Did you ever hear Beckman say anything about that? A I heard what he said on the witness stand.

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Q You attended that trial? A Yes sir.

Q And the men were discharged? A They were acquitted.

Q They were acquitted? A Yes sir.

Q While you were attending that trial were you in consultation daily with Scott and Sterling? A No sir.

Q Beckman was a detective of the Mine Owners Association? A He was a detective.

Q Beckman was a detective of the Mine Owners Association?

A I believe he was with the Thiel Detective Association, that was my understanding of it.

Q He was a member of the Miner's union at the same time? A I believe so.

Q That was proven at the trial? A I believe so.

Q And he was connected with the derailling of the train? A He said he was.

Q He said so, didn't he? A Yes sir.

Q Well, we will go back to that second meeting; I think that comes next. I will ask you one more question though: Notwithstanding what you had told Scott about your knowledge of this train wrecking business you were not arrested or charged with it? A No sir.

Q Or connected with it in any manner? A No sir.

Q And there were orders given that you should not be molested by the militia there? A Mr. Scott told me that if I had any trouble to let him know.

Q They let you go where you pleased? A They never bothered me at all.

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Q And you went in and out of the lines at all times just as though the militia were not there? A I went where I liked.

Q And your house was never searched or bothered by the militia?

A Not that I knew of.

Q You knew there was a general search there? A I knew there was some searches.

Q And that all the members of the miner's union were reported, or a large number of them? A I heard that they were.

Q And you were not called as a witness in that case? A No sir.

Q Scott knew about it, that you knew? A He knew what I told him.

Q And he was actively engaged in the prosecution of that case? A He was engaged in it, yes sir.

Q And he told the prosecution everything he could except about you?

A I believe he done everything he could..

Q Now you met Meyer several times during the trial up there didn't you? A Yes sir.

Q Meyer was in attendance upon the trial? A Yes sir.

Q And did you have any talk with Meyer during the trial? A Yes sir.

Q Other than to get this money from him? A I talked with him several times.

Q Did you talk with him at that time for the purpose of seeing whether you could not implicate him in any way? A No sir, I did not.

Q That was where you first had any intimate acquaintance with him?

A I talked to him more there than ever before.

- Q You never had talked to him but twice before? A Twice, oh yes; I had talked to him more than twice perhaps while I was in Denver.
- Q Meyer told you there must not be anything done while those trials were going on? A Yes sir.
- Q You say that McKinney made some allusion to a fluid that would burn in the course of his evidence? A Yes sir.
- Q Who was McKinney? A He was the man that was charged with wrecking the train.
- Q And that was the man that we call McKinney-- I see it is McKenna? A I think McKinney was what we called him.
- Q And that is the man that was the detective of the Mine Owners Association? A I don't know.
- Q He was a witness in that case? A Yes sir.
- Q And not withstanding his confession of what he had done he was allowed to go free? A I don't know about that.
- Q You know that McKinney and Sterling were been friends?
- A No sir.
- Q Did not learn it at that trial from McKinney's own lips? A No sir.
- Q Did not? A No sir.
- Q Did Meyer say anything about where this fluid was? A I don't know that he did.
- Q He told you that you must not use any of this fluid that McKinney had spoken of? A Yes sir.
- Q Did McKinney say that you had any of the fluid? A No sir.

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- Q Or that anybody else had any of it? A He said that Parker had told him about this.
- Q That Parker had told him about it? A Yes sir.
- Q So Moyer said if there was any such fluid as that it ought not to be used? A He said not to use any of that fluid.
- Q That did he say, give his language? A He said not to use any of that fluid there because it would be laid to them if it was.
- Q Did you have any of it? A Yes sir.
- Q Did you tell Moyer that you had it? A He knew I had it.
- Q Did you tell Moyer that you had it? A Why, he knew I had it.
- Q Moyer never said a thing to you about it until McKinnie made some statement about it on the witness stand? A Yes sir, he did.
- Q When? A In Denver, the second time-- when I was in Denver the second time.
- Q He did? A Yes sir.
- Q Where was Moyer when he made these statements to you? A Which statements?
- Q About the fluid. A He first told me about it in Denver in his office.
- Q Who was present at that time? A I am not sure whether Haywood was there or not or Pettibone.
- Q But in any event that is all there were there is there was anybody?
- A Yes sir.
- Q Other than himself. Now, where was he when he told you about this in Cripple Creek? A In the union hall.

Q Who was present at that time-- how many people were present?

A No one where they could hear us talking.

Q No one was present where they could hear you? A No sir.

Q Where were tharest of the people who were in the hall? A There might have been quite a few out in the front office of the hall.

Q What I want to know is where they were? A Out in the office, in the front of the hall.

Q Do you mean by that that there were people in the front part of the hall? A Yes sir.

Q Name them. A ^{Paul} ~~Hank~~ was there, I think.

Q That is one, go ahead. A I don't know. There was usually some one in therein the daytime.

Q What was Paul's front name? A I don't know as I can call it just now.

Q And that is the only one who was present that you can remember?

A I wouldnot say positively that he was there.

Q The fact is that Hall was used during the progress of that trial for the conveience of witnesses and attorneys, was itnot? A I don't know that it was.

Q It was convenient to the court house? A Quite a ways from the court house.

Q And that is where the evidence was discussed and the witnesses were examined, etc.? A No sir, it was not.

Q There was not any of that done there at all? A No sir. Some of it might have been done, but most of it was done in Mr. Heng's office.

- Q How far away was Hang's office from Union Hall? A Nearly a block I think,-- I think a little less than a block.
- Q And was it nearer the courthouse? A No sir.
- Q And that was where Mr. Hawkins and Mr. Hango carried on their business at Hang's office? A That is where I saw them do it.
- Q That is where you saw them? A Yes sir.
- Q I am not quite able to make out from this transcript, and I do not quite remember outside of it whether or not you went fully into your meeting with Moyer, Haywood and Pettibone in Denver before the trial that was held there in Cripple Creek, did you? You testified to both of those meetings, did you not, one before the trial and one after the trial-- you went to Denver after the trial?
- A Yes sir, I did.
- Q Now, let's take this meeting before the trial when you went to Denver to attend the convention of the Federation of Labor.
- A Yes sir.
- Q How often were you in the office at that time? A I don't remember just how often. I probably was in there four or five times, and maybe more.
- Q Did you stay there more than the three or four days that was occupied by the convention? A I think I went home right away after the convention.
- Q Did you spend your daytime with the convention? A Yes sir.
- Q Were the officers of the Federation open at all in the evening?
- A They were one evening.

- Q Did you go there one evening? A Yes sir.
- Q Who was present on that evening? A I don't remember everybody that was present. There was myself, Frank Saelzer, Mr. Moyer, Haywood, John M. O'Neil, a man by the name of Cochran.
- Q Well, go ahead. A J. C. Sullivan.
- Q Give us all you can remember. A George A. Pettibone.
- Q Was he a delegate? A I don't think he was.
- Q Were these men all delegates with the exception of Moyer and Haywood? A I think they were delegates, but I am not sure.
- Q Moyer and Haywood were delegates too, weren't they? A They may have been.
- Q They had a seat on the floor of the convention and took part in it?
- A Yes sir, they did.
- Q Did Pettibone have a seat in the convention? A I don't think he took any part in it.
- Q He was not there at all, was he? A He may have been; I don't know whether he was or not.
- Q Now, what did you talk about when you people were there, Saelzer, Moyer and Haywood and all, the people you mention? A We were talking about politics.
- Q Didn't talk about your affairs at all? A No sir.
- Q Was there any money paid you in the presence of those men?
- A No sir.
- Q Any asked for? A No sir.
- Q Any ~~mutual~~ acts of violence discussed? A No sir.

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- Q The Independence depot, or, wait a minute, the Vindicator explosion matter discussed? A No sir.
- Q The derailling matter discussed? A No sir.
- Q Or the wrecking of the train? A No sir.
- Q So there was nothing said in the presence of these men about violence at all? A No sir.
- Q When you discussed that subject Moyer or Haywood or Pettibone were together? A What subject?
- Q The subject of violence? A Yes sir.
- Q Did you have any discussion upon the subject of violence when you were there in January? A I don't think we did; I didn't.
- Q Don't think you did? A Yes, we did too.
- Q What was that? A We talked about this Pettibone dope there that they called it.
- Q Who was present at that meeting? A Mr. Moyer was there and Mr. Pettibone.
- Q Was Mr. Haywood there? A I don't remember whether he was there the first time we talked about it or not.
- Q What was said about it? A Mr. Moyer wanted me to go over the next day and have him fix me up some of that and take it to Cripple Creek with me.
- Q Did you go? A Yes sir.
- Q Did Haywood say anything about it? A I don't remember.
- Q What led up to the discussion of this Pettibone dope? A After I got acquainted with Pettibone he told me to come over and see him and he would show me how to mix it.

- Q Was that the first time you got acquainted with Pettibone?
- A Yes sir, that is the first time.
- Q So on that first occasion he commenced to talk with you about Pettibone dope? A Yes sir.
- Q And you went over and learned about it? A Yes sir.
- Q And took a bucket full of it down to Cripple Creek? A I took several cans of it.
- Q What kind of cans? A I think some were two quart cans and some quart cans. I took enough to make about four gallons I think.
- Q You took enough to make four gallons? A Yes sir, when it was mixed?
- Q Did you mix it? A No sir.
- Q What did you do with it? A I buried it.
- Q What did you take it for? A To throw in cars where scabs were riding and so on.
- Q Where did you bury it? A Between the house where I was living and the-- I don't remember the name of the mine, a little mine that was across from there.
- Q Every train was closely inspected by the military before it got into the camp, wasn't it? A No sir.
- Q They did not go through the train at that time? A They did not go through the train I went in on.
- Q You never heard of that? A No sir.
- Q And yet you carried all these cans with you on the train? A Yes sir.

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Q And took them to your house and buried them? A Yes sir.

Q Was that the last of it? A I never used it.

Q Did you take it up and take it away? A No sir.

Q And for aught you know it is there yet? A I don't think it is there yet.

Q You told McFarland about it and he sent down and dug it up?

A Yes sir.

Q But that stayed there until you told McFarland about it?

A That is my understanding of it.

Q This was the time that both Moyer and Haywood told you that there must not be anything done down there until after those trials?

A Yes sir.

Q And yet you went and got these cans of Pettibone dope to take down with you? A Yes sir.

Q How large a package did it make? A It was done up in a telescope, not a very big one, not an ordinary telescope.

Q How much did the package weigh? A Well, I don't know how much it would weigh; it probably would weigh 30 or 40 pounds.

Q Was there any soldiers there when you got in? A I don't know as I saw any that night.

Q Did you try to conceal this telescope you was carrying? A No sir.

Q Pretty heavy, was it? A Yes sir.

Q And yet you weren't interrupted in any way, shape or form? A No sir.

Q How many cans did you have of it? A I don't remember just how

many. There was-- I think there was six or eight cans.

Q What station did you get off at when you went back? A I got off at the-- before we got to the station near the Vindicator mine just before we got to the Vindicator mine.

Q Did the train stop there for you to get off? A The train stops there.

Q Some crossing there? A No, some switch there I think.

Q A switch of some kind? A Yes sir.

Q Nobody there to meet you? A No sir.

Q Was there any reason why you got off there? A It was nearer to my house.

Q And you knew you would not be disturbed by the military, didn't you, no matter what you got off with? A I did not run right into them. I kept away from them.

Q That was a time when every man/^{who}was a union man, unless they had some good reason to the contrary, was looked over very carefully when he went in or went out of the district? A I don't know; I don't think that all of them were.

Q You thought the dangerous ones were? A Some had been searched.

Q Some had been searched? A Yes sir.

Q But you was not among the number? A No sir.

Q Now, after this trial for this train wrecking case, you say you went to Denver? A Yes sir.

Q And that was at the request of Moyer and Haywood? A Yes sir.

Q You had not brought off anything in the meantime? A No sir.

Q Nothing had been done that you were responsible for? A No sir.

- Q And they sent for you? A Yes sir.
- Q Now, isn't it a matter of fact that you went to Denver of your own accord and made a statement to Moyer that you was going to Silverton to look for work? A No sir.
- Q It is not? A It is not?
- Q Did you go to Denver more than once after the train wrecking case?
A No sir.
- Q Just the once? A Yes sir.
- Q How long had you been in Denver before you and Moyer started for Ouray? A We went down the next day after I got there.
- Q Do you say that Moyer requested you to go to Ouray with him?
A Yes sir.
- Q You do? A Yes sir.
- Q What was you doing in Denver that day before you started for Ouray with him? A I was not doing anything. We got some things to get ready with.
- Q How did you come to go to Denver? Was it by reason of a letter or a telephone message? A Telephone.
- Q Who from? A Mr. Davis said that they wanted me down at headquarters I don't know whether he said Haywood or Moyer; one of them, he said.
- Q Davis phoned that to you from the district? A No sir, he told me personally.
- Q Told it to you personally? A Yes sir.
- Q I would not be certain about it, but didn't you say here that they

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telephoned you about it? A I said they telephoned up to the district, I think.

Q Who telephoned up to the district? A Davis told me they had a telephone from headquarters.

Q You did not get your word from Moyer and Haywood as to coming to Denver? A No sir, not direct.

Q So that you did not know that Moyer and Haywood knew that you were coming to Denver except by what Davis told you? A They told me that they had sent for me.

Q When you got there? A Yes sir.

Q Who was present when they told you that? A Mr. Moyer, Mr. Haywood and George Pettibone.

Q Did you know what you were going for? A No sir.

Q Didn't you go in go into headquarters-- A Excuse me. I did know too; Davis told me they wanted me to go to Ouray.

Q And you knew that Moyer and Haywood knew that because they said they knew it when you went up there and told them what Davis had said, they said they knew you were coming? A They said they had sent for me.

Q You asked them that when you first went in? A No sir, Mr. Moyer said he was glad I came; that he wanted to go off down there.

Q What was the first thing you said when you went in there? A I suppose I said, good day.

Q Isn't it a fact that you were in Denver and told Moyer you were going to Silverton and look for work? A No sir.

- Q Isn't it a fact that Moyer told you that he had to go to Ouray to see about the men who had been deported from Telluride four or five days before, and make arrangements for them, and that Mr. Evans had been beat up by the deputies and mine owners folks, and he would like to have you come along and protect him? A He said he would like to have me go and protect him, and he said he had applied for an injunction and Mr. Murphy was there then to go before Judge Stevens to ask for the injunction.
- Q And he was going down there to take care of these men? A Yes sir.
- Q Didn't he mention about Evans having been beaten up? A He mentioned some of the men.
- Q Didn't he mention Evans? A I don't remember.
- Q You know a man had been taken off the train who represented union labor, had been taken off the train and beaten most to death a day or two before? A Yes sir.
- Q You heard there had? A Yes sir.
- Q And you knew that two men named Farley and Mooney had been beaten up? A I don't remember their names.
- Q And Mr. Moyer told you they had threatened to beat him up? A Yes sir.
- Q And he wanted you to go along and protect him? A Yes sir.
- Q Now, who paid your expenses on that trip? A Mr. Haywood gave me the money.
- Q To buy a ticket? A Yes sir.
- Q Wanted you to go as far as Ouray and protect Mr. Moyer? A They

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wanted me to go down with Mr. Moyer to the San Juan country.

Q You did not have any return ticket, did you? A No sir.

Q Moyer had a return ticket, didn't he? A I don't know whether he did or not.

Q Weren't your tickets sent out for and bought at the same time?

A No sir, they were not.

Q Did you calculate to come back when you went down there? A Yes sir, I did.

Q I mean right away? A I calculated to come back with Moyer.

Q You did not expect to go to Silverton at that time? A No sir, I did not. I was going wherever he went.

Q You did not go where he did however? A He said he was going to the San Juan district.

Q You did not go he was going to Ouray when you started? A I was not sure; I think he said he was going to ~~the~~ Montrose and from there to Ouray.

Q They were taking care of them until they could get them home, weren't they down there? A Some of them were.

Q You knew they had been driven out of Telluride by Buckley Wells, now Adjutant General of Colorado? A I heard they were.

Q And run out over the mountains? A I heard they were shipped out on the train.

Q You heard they were shipped out on the train? A Yes sir, that is the way I heard it.

Q Now, you did not have any arms when you went to that office and

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agreed to go to Ouray? A Yes sir, I had some arms.

Q What kind of arms? A I had a couple of six shooters.

Q Where did you get them? A I borrowed one from Joe Craig, and another one belonged to Joe Scholtz.

Q Where was Joe Craig? A He lived up where I was.

Q In Cripple Creek? A Yes sir.

Q And where did Joe Scholtz live? A Down at Independence.

Q Where was your own six shooter? A I did not have any at the time.

Q Did you have these guns on when you went to Denver-- went to the office? A Yes sir.

Q How did you come to buy these shotguns, do you remember? A I did not buy any shotguns.

Q Didn't Mr. Moyer say something about carrying weapons on the person and he could not do that, and he was going to get something that he could put in his grip? A He said we could carry these sawed offs in the grips and carry our six shooters.

Q He did not have any sawed off shotgun at that time did he, that you knew of? A They had them in the room there.

~~knock~~

Q Isn't it a fact that he called Mr. Pettibone up on the telephone and told him that you and he were going down there and asked him to get two proper shotguns, and have them sawed off and send them up there? A He had them there when I got there.

Q Do you remember any talk to the effect between Moyer and Haywood,

that Pettibone could go and buy shotguns cheaper than they could because he was in business and could get the trade discount?

A Yes sir.

Q When did that occur? A It was either that time or the time I got acquainted with Pettibone.

Q Then the shotguns were not there? A Yes sir, they were there.

Q Already been bought? A Yes sir.

Q Notwithstanding the fact that they were talking about his getting them cheaper? A I am not sure whether they talked of it at that time.

Q You did hear a talk to the effect that you and he should have a couple of sawed off shotguns and that Pettibone being in the trade could get a trade discount on them and get them cheaper than they could get them to buy them themselves? A I did after that.

Q You did after that? A Yes sir.

Q And yet the guns were already bought and sawed off and you heard that talk? A Yes sir, they were in the office when I got there.

Q You could not be mistaken about that? A No sir.

Q The object of the ~~what~~ sawed off shotgun is to take it down and put it in your grip? A Yes sir.

Q Didn't you say in your narrative yesterday that the object was to put it in a scabbard and put it under your overcoat? A Perhaps I did.

Q The object of this was to put these shotguns in the grip to defend yourselves if some official thug should come in and undertake to

beat Mr. Moyer up? A That is what they were for.

Q And that is what was said upon the subject? A Yes sir.

Q And it was a genuine talk about it,-- there was not any fake about it, was there? A I don't think there would have been.

Q According to your notion? A No sir.

Q Now, when you went to Telluride you did ride in the center of the car didn't you? A I don't remember; I think we were closer to one end.

Q Weren't you particular to keep as near the center of the car as you could in order that you might have an opportunity to defend yourselves if it was necessary? A I don't remember that we were.

Q And didn't you watch people who came in to see that they could not come in and beat you up? A We watched them, yes sir.

Q Well, when you got to Telluride-- or got to Ouray, how long did you stay there before anything happened to Mr. Moyer? A I think about three days.

Q Nothing happened to you on the way down? A No sir.

Q Mr. Moyer was busy after you got there with the union and the desperates, providing a place for them and striving to find out whether they would be allowed to go back to Telluride? A Yes sir.

Q Telluride was not under martial law at that time was it? A I don't think so.

Q It was not under martial law at the time these men were sent out over the hill, was it? A I don't think it was.

Q Nor when they were sent out on the train? Part went out one way and

part the other? A I thought they were shipped out on the railroad.

Q Well, perhaps they were,-- I don't know for sure. You stayed there about three days? A I think so.

Q And Moyer was busy attending to his business? A He was talking over what he was going to do with the deported men.

Q He did not pay any attention to you? A He talked to me a good deal.

Q He telegraphed to the Governor of the State? A I think he did.

Q As to whether the men would be allowed to go back and would be protected by the Governor? A I think so.

Q And he got this reply that you mentioned here yesterday? A Yes sir.

Q Was you there when he got the reply? A Yes sir.

Q And you told us what the contents of it was as near as you could remember, did you? A Yes sir.

Q I may ask you a question further about that to-morrow, I haven't got a book here that I want to read from, and I will ask you more about it to-morrow.

MR. BORAH: We can agree upon that reply. We have it also.

MR. RICHARDSON: We have it in a book but the book is in the jail and we cannot get in very well just now.

MR. DARROW: Or get out either.

Q Now, after Moyer had been there two or threedays, martial law had been declared at Telluride while you were there? A I believe it had.

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- Q You believe it had? A Yes sir.
- Q And Mr. Moyer was arrested upon a warrant charging him with desecrating the American flag by making a picture of it and writing something on the ~~part~~ folds of the flag? A Yes sir.
- Q And was taken over to Telluride? A Yes sir, I believe so.
- Q So there was no further use of you there? A No sir.
- Q And you went over to Silverton with Frank Smelzer didn't you?
- A No sir.
- Q You went horseback? A Yes sir.
- Q Frank Smelzer had come into help Mr. Moyer? A Yes sir.
- Q How many of those deportees were there there? A I think nearly a hundred, as nearly as I remember it.
- Q And while you were at Ouray you say you telephoned to Moyer at Telluride-- he had been taken to Telluride? A No sir, I didn't say so.
- Q Didn't you say he telephoned you? A I said I telephoned him from Silverton.
- Q Well, did you take care of his grip after having that telephone talk with him? A No sir, he had his grip with him.
- Q He took it with him to Telluride? A Yes sir, I think so.
- Q The one that had the sawed off shotgun in it? A I don't know about that.
- Q How did you get that gun to take back to Denver? A I took some things he gave me after he was arrested.
- Q And put them in your own grip? A Yes sir.

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Q That was the way you took the two guns back to Denver, was it?

A I left my own grip there. I took the guns to Silverton and left the six shooter there.

Q What became of those two guns? A I fetched them to Denver with me.

Q What did you do with them there? A I took them to headquarters.

Q And did you leave them there? A Yes sir.

Q How long? A I don't know how long; until we got them or some others.

Q Didn't you say yesterday you got them? A I think they were the same ones.

Q Don't you know that as a matter of fact Mr. Meyer has today got that gun and it has never been used in the world? A That may be.

Q And yesterday you swore that you got those two guns and took them away and used one of them to kill Gregory with-- used both of them?

MR. HAWLEY: Are you offering that as an amendment?

A I would not say positively they were the same guns.

Q You think they were? A Yes sir.

Q The same guns that you went up there and got? A I did not send up and get them. I fetched them with me.

Q You got them? A Yes sir.

Q And used them to kill Gregory with? A I used one of them, yes sir.

Q And yet today you say it is entirely possible that Meyer may have that gun which had bought and had at the time you went to Oursy together? A He may have. They had three or four shotguns there in

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the office.

Q How many did they have? A Three or four.

Q When did you see these three or four shotguns in the office?

A After I came back from Ouray to Denver.

Q Did you see any more than these before you went to Silverton?

A I don't remember of any.

Q What were these guns doing that you saw there after you got back?

A They were not doing anything only laying around the office. I think they got them right after I got back.

Q What makes you think that? A It was reported that they were going down and arrest Mr. Haywood and they were going to defend themselves.

Q As a matter of fact Mr. Haywood was under arrest at that time?

A I don't think so.

Q Wasn't he under arrest also, charged with the desecrating of the flag, and wasn't he in custody of an officer there in the office for a month or two? A He was, but not at that time.

Q Well, the guns-- you say the guns then were not doing anything but just standing around there? A They was not standing around in sight all the time.

Q How many did you see in sight? A I saw three or four.

Q Ready for somebody to do something with them if they had occasion?

A Yes sir.

Q And you knew what the occasion was? A I knew what they expected it to be.

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Q How long was it after you came back from Silverton before Haywood was arrested? A I could not tell you just how long; it was not very long.

Q Well, give us the--

THE COURT: It is nearing the hour of adjournment.

MR. RICHARDSON: Let me fix this date; it won't take but a minute.

THE COURT: Go ahead.

Q Give us the best estimate that you can of the time that Haywood was arrested after you got back from Silverton? A I think it was some time in April.

Q And when did you come back from Silverton? A The last of March or first of April.

Q Moyer was arrested on the 23rd of March, was he not? A I don't remember the date.

Q And how many days after he was arrested before you came back to Denver? You cannot remember that, can you? A I think it was five or six days.

Q And Haywood was not in custody when you got back? A I don't think he was.

Q And was not put in custody until some time in April? A I don't think it was. It may have been in March.

MR. RICHARDSON: That is all for now.

The court thereupon gave the jury the statutory admonitions, the bailiffs were sworn and with the jury retired; the witness and defendant were remanded to the custody of the sheriff. Adjourned to 9:30 A. M.

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