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C. S. DARROW

HAYWOOD TRIAL

June 12-13-14-15, 1907.

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Moyer Haywood, Petitioner Trial Transcript - Vol. 3

Boise, Idaho, Wednesday, June 12th, 1907.

9:20 o'clock A.M.

Parties met pursuant to adjournment.

The clerk called the names of the jurors and announced all were present.

WITNESS HARRY ORCHARD ON THE STAND

CROSS EXAMINATION CONTINUED

BY MR. RICHARDSON:

MR. RICHARDSON: There was an unanswered question last night at the hour of adjournment, but we have changed stenographers and I may ask it again I suppose?

THE COURT: You may ask it again.

Q. You were at the Aberdeen flats to see Mr. Moyer, were you, before going to Canon City? A. Yes sir, I was.

Q. And Mrs. Moyer left the room? A. She left the room we were in, yes sir.

Q. Before you had any talk about Mr. Peabody? A. Yes sir.

Q. Who opened the conversation relative to Peabody, you or Mr. Moyer? A. I don't know that I remember which opened it.

Q. Had you gone to the Aberdeen flats on your own motion?

A. I rather think I had.

Q. How did you come to go to the Aberdeen flats? A. I went to see Mr. Moyer.

Q. What was your object in going to see him? A. Well, I went over to see him first just because I hadn't seen him in a long time to have a little talk with him.

Q. How long had it been since you had seen him? A. I hadn't seen him since I left him at Telluride -- or at Ouray before he went to Telluride.

Q. That was in March of 1904? A. It was in 1904, I am not sure it was March.

Q. So that from the time in 1904 when you left him at Ouray until April of 1905 you had never seen Moyer at all?

A. I am not sure that it was in April, but somewhere about that time, I think, March or April, might have been in March.

Q. And so you went over at your own instance to have a talk with Moyer? A. I think I went at my own instance, yes sir.

Q. How did the Peabody matter come up? A. I am not just sure how it came up.

Q. Who spoke first on it? A. I don't remember who did speak first on it.

Q. What was the first thing that was said about it? A. I don't remember just the first thing that was said about it.

Q. Do you remember anything that was said about it? A. Yes sir, I remember some talk of it.

Q. What was the first thing that you remember to have been said?

A. I don't know that I remember the first thing that was said about it.

Q. What was the first thing that you do remember? A. I don't know that I could tell you the first word; I could tell you the substance of the conversation we had.

Q. What is that? A. I could ~~xx~~ tell you the substance of the conversation we had, but I don't know what was the first words exactly that was said.

Q. I don't ask you for the first word, I ask you for the first words that you remember to have been said if you remember any?

A. Well, we talked of me going down to Canon City for him to get Mr. Peabody.

Q. What did you say about this? A. Mr. Moyer went on and said he would be glad to get him out of the way, told me the indignities he had suffered through him, he believed it was through him, and so on, and he sad he would like to get him out of the way.

Q. You had never heard Mr. Moyer or Mr. Haywood say that they had no personal animosity against Peabody at all because he was only a representative of his class and any other man of his class would do the same things that he had done, did you, never heard anything like that? A. I have heard them say that they believed he was only carrying out what he agreed to do before he was elected.

Q. Just simply a representative of his class, wouldn't make any difference whether it was Peabody or a man by some other name?

A. I heard them say that they believed he was, that he was a tool.

Q. Did he say anything about it there that night? A. Well, I believe it was talked of. I don't remember, I couldn't say positively whether it was or not.

Q. Did he say anything at any time about if Peabody was gotten out of the way there would be a thousand more just as bad as he was to take his place? A. I don't remember any talk like that. He said if he was got out of the way maybe the next man that come to take his place wouldn't follow in his footsteps or words to that effect.

Q. Notwithstanding that class of people were in power and had the

authority to seat the governor of the state of Colorado?

A. He said maybe the next one wouldn't be anxious to follow in his footsteps if he was gotten out of the way.

Q. What did he say to you about it? A. He said he would like to get him out of the way and I should go down there and do it if I could.

Q. What did you say about it? A. I don't know just exactly what I said any more than I said I would go or was a going.

Q. You had tried twice on Peabody in Denver and failed, hadn't you? A. Yes sir.

Q. And he was anxious to get Peabody out of the way because the man who took his place would probably not follow in his footsteps, that is right, is it? A. Something to that effect, yes sir.

Q. Now Peabody was already out of power, wasn't he? A. Yes sir.

Q. He was an ex-governor? A. Yes sir.

Q. Had no more to do with the administration of affairs whatsoever, did he? A. Not officially I don't think.

Q. Gone back to Canon City to run his little bank down there?

A. He had gone back to Canon City I believe.

Q. And was living there in Canon City at that time? A. Yes sir.

Q. That you had this talk with Mr. Moyer? A. Yes sir.

Q. Was there any discussion with you as to how much you was to be paid for it? A. No sir, there was not.

Q. Were you hard up at that time? A. No sir, not necessarily.

Q. Well, maybe not necessarily because you always had unlimited resources. A. I had money at that time; I had got a hundred dollars just a few days before I was talking with Mr. Moyer.

Q. You hadn't spent it? A. I had some of it, yes sir.

Q. Who had you gotten that from? A. Mr. Pettibone.

Q. Did you mention the subject of money to Mr. Meyer in this talk?

A. I don't think so.

Q. Nothing said about it? A. I don't think so.

Q. Nor the price you was to get for killing Peabody? A. I don't think so.

Q. Nor the manner in which you were to kill him? A. I was to use my own judgment.

Q. Nor the means by which you were to kill him? A. No sir.

Q. Nothing whatsoever on the subject except that he would like to get Peabody out of the way? A. I may have spoken about it, and I rather think I did speak about using a bomb or a shot gun --

Q. All Meyer said was he would like to see Peabody gotten out of the way? A. Yes sir, he said he would.

Q. And that is all of it, is it, that you remember, or the substance of it? A. Well, he said he would like to get rid of the son of a bitch, like I said the other day.

Q. Like to get rid of the son of a bitch? That is what you said the other day and is what you now say? A. Yes sir, I do.

Q. And you and he were there entirely alone? A. We were there in the room alone, yes sir.

Q. How long did this conversation last? A. Possibly an hour.

Q. You had failed twice on Peabody before that? A. Yes sir, I had.

Q. And you were going back for another attempt? A. Yes sir.

Q. And the conversation was not spent entirely on the subject

of somebody? A. We talked over other things I think too.

Q. And all that you can tell us about that conversation is that Mr. Moyer said he would like to get rid of the son of the bitch, the next man might not follow in his footsteps?

A. The substance, what I have told you, yes sir.

Q. Now you say you had a talk with Haywood and Pettibone about the same thing? A. Yes sir, I did.

Q. Where did you talk with Haywood? A. I talked at Pettibone's store or over to his residence, I think at his residence.

Q. Don't you know which place it was? A. No sir, I don't.

Q. A subject of that importance? A. We usually talked there in those places.

Q. And you cannot distinguish one place from the other? A. We talked possibly in both places.

Q. You had quit going to headquarters by that time, had you?

A. I hadn't went to headquarters yet at that time.

Q. Had never been to headquarters at that time? A. Yes sir, I had been at headquarters.

Q. How long had it been since you had been at headquarters?

A. I hadn't been at headquarters since before the time I went to Cripple Creek that we blowed up the Independence depot.

Q. Well, it had been some nine months, more than that, ten months since you had been inside of headquarters? A. You can count up the months it had been before I went up there.

Q. Very well, that would make about ten months, that was in 1904, that you blew up the Independence depot, and this was some time in April of 1905? A. I think it was in April, I am not sure about that.

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Q. April and May would bring it up to June, and that would be another year, and two months off of twelve would leave about ten. Now what did Haywood say to you about Peabody on that occasion? A. I don't know exactly what he said -- he said he would like to get rid of him, to get him out of the way.

Q. Just the same as Moyer had said? A. Something to the same effect.

Q. You never had talked with Moyer and Haywood together about getting Peabody out of the way? A. I don't remember that I did.

Q. And yet you went over there and talked with Haywood and you found him saying precisely the same thing that Moyer had said, did you? A. I don't know that they were precisely the same.

Q. Well, the effect of them exactly the same, were they?

A. They were the same in effect, yes sir.

Q. Can you give us one word that Haywood said without regard to the effect of it, tell us exactly what he said?

A. I can't tell you exactly what he said. I was alone there and he thought if I would go down to Canon City and get him out of the way -- he said he had gone down there, if we got him out of the way after he had been governor that the next governor would be apt to want to follow in his footsteps, something to that effect.

Q. Just the same thing that Mr. Moyer had said? A. Nearly so, yes sir.

Q. Except if you got him out of the way after he had been governor; Mr. Moyer said nothing about "after he had been governor"? A. Mr. Moyer held a personal enmity against him.

He said he claimed it was his that caused him to be arrested and lay in jail down in Telluride, and so forth, and in Cripple Creek after that.

Q. Went over just about the same ground? A. Something the same.

Q. You can't distinguish between the two conversations?

A. That is the substance, I think. Mr. Moyer talked more about it than Mr. Haywood did.

Q. You had a longer conversation with Moyer than with Haywood?

A. Yes sir.

Q. How long did you talk with Haywood? A. I don't remember just how long, possibly fifteen or twenty minutes or half an hour.

Q. So then you went to talk with Pettibone about it, did you?

A. I did talk with Pettibone about it, yes sir.

Q. How many times did you talk with him about it? A. I talked several times with him about it, I think, more than I did with either of the others.

Q. Did you talk with him about it before you talked with either Moyer or Haywood? A. I am not sure that I did.

Q. All the talk you had with him then was after you had talked with both Moyer and Haywood? A. I wouldn't say whether it was or not.

Q. Did you talk with Moyer first or Haywood first?

A. I think I talked with Haywood first.

Q. You think you did? A. Yes sir.

Q. How long before you talked with Moyer? A. Not very long, right about the same time, maybe a day or so afterwards.

959 Q. Well, you think you talked with Pettibone both before and after you talked to Moyer and Haywood, do you? A. I know I

talked after, I am not quite sure about talking before.

Q. Where did you first talk with Pettibone about it?

A. At his store.

Q. Did you go down to Canon City before you talked with Pettibone or after you talked with him? A. After I talked with him.

Q. What did you say to Pettibone and what did he say to you?

A. I talked about going down to Canon City to get Mr. Peabody.

Q. What did he say about it? A. About the time we were talking about that, or some little time afterwards, there was a man came in that had been working for him, in a way, and writing life insurance.

Q. I asked you first, Mr. Orchard, what you said to Pettibone and what he said to you about it? A. I am telling you what he said. I said we were talking to this man, and he thought that would be a good scheme for me, to go and get a life insurance contract and I would have a good excuse to stay around down there, a little town like that; I might have --

Q. Don't you know and isn't it a fact that quite a number of men who had been solicitors for Mr. Pettibone had gone into the life insurance business and some under this man Stearns?

A. I know some had.

Q. Were you there when this man talked ~~to~~ to Pettibone?

A. I was in his store when he came in, yes sir.

Q. Pettibone's business was selling novelties, wasn't it, like wringing machines and what are known commonly as Yankee notions?

A. House specialties, I believe that is what he sold.

Q. Well, you would call them Yankee notions? A. I never heard them called that.

Q. They consisted of wringing machines and things of that kind ?

A. There was wringers amongst what he sold.

Q. And carpet sweepers and things of that kind? A. Wringers and carpet sweepers.

Q. These men would go out over the country and get orders for these things and then Pettibone would deliver them and collect for them on the installment plan? A. I believe that is the way they were sold.

Q. So he had quite a large number of solicitors all the time, didn't he? A. He had several, yes sir.

Q. And they were constantly going out and coming in? A. Yes sir.

Q. And they were constantly getting better positions if they could get better positions, weren't they? A. I don't know they were; I suppose they were.

Q. So his help was constantly changing, wasn't it? A. They changed some; he had several men that was there since I knew him.

Q. They sold on commission, didn't they? A. I think so, yes sir.

Q. Their wages depended upon the amount of goods that they got rid of? A. Yes sir.

Q. Well, now, do you say that Pettibone mentioned this agency of Stearns' to you or you to him? A. He mentioned it to me.

Q. He did? A. Yes sir.

Q. You had never thought about this insurance business at all?

A. I didn't think about it then, no sir.

Q. Had you ever been in the insurance business? A. No sir.

909 Q. Never been connected with life insurance or other kinds of insurance in any way except to collect for the building your

burned? A. That is all.

Q. Did you make out written proof in that case? A. I don't know that I did. I don't remember.

Q. Sign an affidavit, did you? A. I don't remember.

Q. Don't remember whether you had to commit perjury in order to get that insurance? A. No sir, I don't.

Q. If you did have to, why, you did it of course? A. I suppose I did if I had to.

Q. You got the insurance all right? A. Yes sir.

Q. Well, now, did you go down to see John L. Stearns yourself?

A. Yes sir, I did.

Q. Did you go with this man who had been Pettibone's solicitor?

A. No sir, I don't think so.

Q. Why didn't Pettibone go to John L. Stearns, do you know?

A. He didn't want any contract, I wanted one.

Q. What did you want one for? A. Just as I told you, to go down to Canon City, it would be a plan for me to stay down, I would have an excuse of some business.

Q. This was Pettibone's business and Moyer's and Haywood's business, not yours? A. It was me that was going to get the contract.

Q. So far as getting the contract is concerned Pettibone might just as well have taken you down and introduced you as for you to go alone? A. He could have introduced me I suppose if he thought it was necessary.

Q. But he didn't do it? A. No sir.

969 Q. You went down by yourself to solicit this position? A. Yes sir, I did.

Q. And then it was Mr. Stearns said to you you would have to have letters recommending you before you could get this job?

A. He asked me who I could give for reference.

Q. And among others you gave him the name of Pettibone?

A. Yes sir.

Q. Why didn't you go back to Pettibone to get him to get letters from these other people? A. I did for some of them.

Q. Why didn't you go to Haywood to get letters? A. Because I didn't want Haywood connected with that.

Q. Did not? A. No sir.

Q. Why did you want Pettibone to get some of these letters?

A. Because I could not get them myself.

Q. Which ones couldn't you get? A. I wasn't acquainted with some of them, Henry Cohen and J. J. Sullivan.

Q. Did Pettibone get the letters from Cohen and Sullivan, or did you get these? A. He went and spoke to them himself.

Q. How do you know that? A. Because I was with him.

Q. You had to go and get the letters yourself, didn't you?

A. No sir, I did not.

Q. You did not? A. No sir.

Q. Why didn't you take somebody with you to Mr. Hawkins when you got the letter from him? A. Because I knew Mr. Hawkins.

Q. When had you known him? A. I knew him in Cripple Creek when he was up defending Parker and Foster.

Q. When you came into the office, however, you had to introduce yourself, didn't you? Mr. Hawkins didn't remember you, did he? A. Yes sir, he did.

970 Q. Didn't Mr. Hawkins tell you when you came into the office,

didn't he ask you who you were, and didn't you tell him you must remember me, I saw you when you were up there defending that spike pulling case, and I met you in Hangs' office?

A. No sir, I don't think I said that, I may have.

Q. Did you tell him you met him in Hangs' office when he was defending the spike pulling case? A. I don't remember that I did. I may have told him that.

Q. You may have told him that? A. Yes sir.

Q. What do you think you told him that for? A. Well, I thought possibly he might not remember me.

. That was to identify yourself, wasn't it? A. But he did remember me.

. Yes, after you told him that you had been up there in the spike pulling case and had seen him in Hangs' office?

A. I don't know that I told him exactly that. He remembered me when I spoke to him.

. You had never seen Hawkins anywhere else, had you?

A. I had never seen him to know him only in Cripple Creek?

A. You had never been introduced to him? A. I think I was introduced to him up there.

Q. You came into Hangs' office along with a number of others, didn't you, that were engaged in consulting with Mr. Hawkins and Mr. Hangs from time to time about witnesses? A. Yes sir, I was there several times.

Q. That is the way you met him, wasn't it? A. Yes sir.

Q. And there were a large number of the men who were in Cripple
971 Creek who did the same thing besides yourself, weren't there?

A. I think there were, yes sir.

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Q. So when you went into Mr. Hawkins's office you told him what your name was, and you said it was an assumed name, didn't you?

A. Yes sir, I did.

Q. And you said "I am Harry Orchard, and I met you up at Cripple Creek in Mr. Hanna's office when you was trying this Parker-Foster case". A. I don't remember that I told him just that.

Q. Well, did you tell him that in substance and effect?

A. I may have told him something like that, yes sir.

Q. Now why didn't you go to Mr. Haywood and get Mr. Haywood to get a letter for you from Mr. Hawkins? A. Because I didn't want Mr. Haywood connected with that thing.

Q. He knew very well that we had tried many cases for the Western Federation of Miners? A. Mr. Haywood told me himself afterwards, after I had told him I had gone over and Mr. Hawkins was going to give me a recommendation that that was bad, if I did anything down there and was caught they would connect him up with it right away.

Q. That is another place where the lid is taken off, isn't it?

A. I don't know what you call the lid.

Q. You went right away to Mr. Hawkins, didn't you, yourself?

A. Yes sir, I did.

Q. Didn't you say to Mr. Hawkins that you had not been able to get work since you had been driven out of the Cripple Creek district, that you had changed your name for that reason, that there was nothing against you whatsoever, that your family were without means of support and therefore you wanted a good strong letter of recommendation from him? A. No sir, I didn't say all that. I said part of that.

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Q. What did you say to Mr. Hawkins to get him to write you that letter? A. I told Mr. Hawkins I wanted to get a contract with the Mutual Life Insurance Company to write insurance; I told him I had been mixed up in the Cripple Creek affair and I didn't want it known, I might not get much insurance if it was known that I was Harry Orchard and I was going by the name of Hogan.

Q. Did you tell him that was the only reason you had changed your name, that you had been driven out of Cripple Creek? That you were blacklisted and therefore you could not a job?

A. I don't know that I said anything about a job except the life insurance.

Q. Did you say you had been blacklisted? A. I don't think I did.

Q. Did you tell him there was nothing against you whatsoever?

A. I don't think I did, for he didn't ask me anything about it any more than I told him. He said he would give me a recommend.

Q. You told him you were from Cripple Creek and you had gotten out of Cripple Creek because you were a union man? A. I don't think that was mentioned either.

Q. Don't think you mentioned the fact that you were a union man?

A. No sir, I think Mr. Hawkins knew I was a union man.

Q. Well, he knew you were a union man? A. I don't think it was mentioned, I don't remember if it was.

Q That is the way you got your letter from him? A I did not get any letter.

Q Didn't you? A He said he would give me a recommend.

Q And did he? A No sir.

Q And you did not tell him that you had blown up the Independence depot? A No sir.

Q Or the Vindicator mine? A No sir.

Q Or that you had done anything else that was reprehensible in any way, shape or form? A No sir, I did not.

Q Mr. Hawkins gave you a letter of recommendation? A He did afterwards, I believe, or sent it over to Mr. Stearns.

Q And you got your contract from Mr. Stearns, did you? A Yes sir, I did.

Q Your contract to write insurance for the New York Mutual Life?

A Yes sir.

Q And you were recommended by Mr. Pettibone, Mr. Hawkins, Mr. Sullivan and Mr. Cohen? A Yes sir, and Mr. J. C. Sullivan.

Q Mr. J. C. Sullivan, the President of the State Federation of Labor? A Yes sir.

Q You got your letter from Mr. Sullivan yourself? A Yes sir, I got the letter.

Q And Mr. Sullivan and Cohen were attorneys in the Equitable also-- in the Ernest & Cramer Building also, weren't they?

A Mr. J. J. Sullivan was.

Q The same building where Mr. Hawkins was? A Yes sir.

Q And those were the letters of recommendation upon which you

got your position? A Those were the names that I gave Mr. Stearns.

Q And got employed Mr. Sullivan as your attorney? A No sir, not at that time.

Q But you did before you left Colorado? A I did in a way.

Q You and Jack Hullivan tried to go into the real estate business? A In a way.

Q And you tried to do some business in that line? A Yes sir, a little.

Q And you tried to sell the Virginia rooming house? A Yes sir, we tried to.

Q And you got into trouble? A Yes sir.

Q And you employed Mr. Sullivan and Mr. Cohen? A Yes sir.

Q To bring an action for you? A Yes sir.

Q Your suit was to collect a commission of a hundred dollars?

A I forget just how much it was; I think it was were than a hundred dollars.

Q You got a buyer? A Yes sir, we got a buyer.

Q And then the seller refused to sell? A Yes sir.

Q And you claimed your commission? A Yes sir.

Q And you employed Mr. Sullivan as your counsel? A Yes sir.

Q Now, you say you were going to get this insurance agency as a blind? A Yes sir.

Q A man by the name of Mr. Vaughn was already an agent for Mr. Stearns? A No sir, I think not at that time.

Q Did you know Mr. Vaughn at that time? A Yes sir.

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Q It was not he that led you into the insurance business was it?

A No sir.

Q You are sure of it? A Quite sure.

Q You got your job from Mr. Stearns? A Yes sir.

Q And you started out to write insurance? A Yes sir.

Q That is what you started out to do? A Yes sir.

Q As far as Mr. Stearns knew? A Yes sir.

Q And as far as Mr. Sullivan knew? A Yes sir.

Q And as far as Mr. Cohen knew? A Yes sir.

Q And as far as Mr. Hawkins knew? A Yes sir.

Q But you had another purpose behind it, did you? A Yes sir.

Q When was it you went down to Canon City? A I think some time in April.

Q Did anybody go with you? A No sir, not the first time.

Q Was Vaughn there at that time? A No sir.

Q What was he doing there? A I don't think he was doing anything.

Q He was living at the Belmont rooming house? A Yes sir.

Q How long had you been stopping there at that Belmont rooming house before you started for Canon City? A I don't know just how long; not very long.

Q And Vaughn was there with you? A He was there at that time.

Q And he was not doing anything, so far as you know? A No sir, he was not.

Q How long were you gone down to Canon City? A Which time do

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mean?

The first time. A I think three or four days-- five days possibly.

Q You took down no preparation for a bomb at that time?

A Nothing only a gun-- two guns.

Q What did you take for guns? A A shotgun and a six shooter.

Q Was that the same shotgun you have talked off, the sawed-off?

A I want to make a correction. I think you asked me if that was the same shotgun that I had when I first went to Denver.

Q I think the same thing. A It was not the same one.

Q Change it; have it any way you want it. A I want it right, that is all.

Q Tell us about this shotgun? A This was a shotgun that I got when I went to California first.

Q Where did you get it? A I got it from Pettibone, at his house.

Q It was not the original shotgun which you took down to Ouray?

A No sir.

Q And which you got from the Western Federation? A No sir.

Q Nor was it the one you sent up and got at the Federation head-quarters? A No sir.

Q This was a third one? A It was the third one I had, yes sir.

Q Did you buy it or Pettibone? A No sir.

Q Did he give it to you? A Yes sir.

Q Do you know wherehe got it? A I believe he got it from head-quarters.

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Q Did you see him get it? A No sir.

Q You don't know as a matter of fact where he got it except that you believe he got it from headquarters? A That is all.

Q Was that one which you could put in your grip? A Yes sir.

Q And you had got this automatic revolver I believe the same way? A Yes sir.

Q This six shooter? A Yes sir. When I speak of a six shooter I mean an automatic revolver.

Q Of course it was not a revolver for there was nothing that revolved, but it was an automatic gun? A Yes sir.

Q And you went down to Canon City armed in that way? A Yes sir.

Q Were you expecting to kill Peabody on that first trip? A I did not think very much about it. If I had got a chance I probably would have.

Q You expected to do it, that you would do it either with the shotgun or with the small gun? A That is all I had with me.

Q Well, did you think when you started that you would likely get a chance at him? A I did not know.

Q Why not? A I did not know where he was located or where he lived.

Q Now, how long did you stay down there? A I think I stayed three, four or five days.

Q Do you know whether it was three, four or five? A I would not say exactly how long.

Q Did you stop at the Strathmore hotel? A I stopped one night

there.

Q That is the leading hotel there? A Yes sir.

Q Did you register as Harry Orchard? A No sir.

Q Did you register as Thomas Hogan? A I think I did.

Q Of Denver? A I don't know, but I think I did.

Q You usually registered as Thomas Hogan, Denver, didn't you?

A I think I did at that time.

Q If that was the name that you was going by? A I think I registered by that name.

Q You changed your place the next day, did you? A Yes sir.

Q Was that because it was too expensive? A That was one reason.

Q What did you care about the expense? You could get all the money you wanted? A I did not usually spend any more money that way than was necessary.

Q You wanted to save all the money you could for the Federation?

A I don't know as I wanted to save money, but I usually stopped at a cheaper place than that.

Q The only object you had was to save money? A No sir, it was not.

Q What was the other object? I will take the lid off for you again. A Because it was in a better location and nearer to Governor Peabody's.

Q You found a rooming house there? A Yes sir.

Q Was it necessary for you to be near to Peabody's place in order to kill him? A No sir, but it would be better.

Q There were times when you got farther away from the object of your killing? A No sir.

Q You went out to Globeville to get as far away as possible, didn't you? A No sir.

Q And you found out what Peabody's habits were, did you?

A Some of them, yes sir.

Q You found that he sat on open window at night time and read his evening paper? A He sat there and read something.

Q And you observed him there on the nights that you were in Canon City? A I did, yes sir.

Q There was no reason why you could not have shot him? A I could have, yes sir.

Q But instead of that you went back to Denver? A I did.

Q Was that because you wanted a partner to help you? A No sir, I wanted to be away from there. I thought I could put a bomb there on the window and get him, and it would be easier and I would not be so likely to get caught at it.

Q You quit to go back to Denver to build a bomb? A Yes sir.

Q And you wanted to put it on the window sill? A Yes sir.

Q You had your gun on that night that you saw him, didn't you?

A I had my six shooter.

Q And you went back to Denver notwithstanding the fact that you had gone down there to kill him, to devise other ways and means of killing him? A Yes sir.

Q And then it was that you made this bomb which you introduced

here in evidence? A Yes sir.

Q How long did it take you to get your materials together and make that bomb? A Not very long.

Q A bomb of that size would have blown Peabody's house into smithereens, wouldn't it? A It would have blown it up pretty well/

Q You did not need a bomb so large as that, did you? A I don't think it would.

Q What did you build one that size for? A It was really bigger than I thought it would be.

Q Did you build that because you wanted to kill Mrs. Peabody and the children as well? A No sir, I did not.

Q You did not? A No sir.

Q You did not think anything about that, did you-- or did you?

A I don't think I did.

Q You did not care whether you killed Mrs. Peabody and the children or not? A I don't think I cared about anything at that time.

Q You were starting off to kill Peabody and if anybody else got in the way they would naturally get killed too? A Yes sir, I think they would.

Q You built the bomb and started back, did you, to Canon City?

A Yes sir.

Q Did you try to write any insurance down there the first time?

A Yes sir, some.

Q Went around and talkedinsurance? A Yes sir.

Q How many people did you solicit for insurance? A I could not tell how many. I got a rig and drove out in the country there a coupel of times.

Q You were a stranger in the city, weren't you? A Yes sir.

Q All of them looked alike to you, didn't they? A I don't know as they did.

Q You did not know which ones had insurance and which did not? A No sir.

Q You had to spend considerable time in studying the insurance question before you weraallowed to go out and solicit, didn't you? A There was nothing put on me, what time I should study.

Q Didn't Mr. Stearns explain to you how you should solicit insurance? A Yes sir.

Q And show you about the rates and how you could figureout the different kinds of policy? A Yes sir.

Q And that is a very difficult matter to learn about? A It takes some little time to learn it all, but I learned enough in a short the so I could understand most of the policies, or some of them.

Q So that you could write any kind of a policy you wanted to? A Yes sir, from the blanks that I had.

Q You did not write the policy, did you? A No sir.

Q You wrote out an application and not thepolicy? A Yes sir.

Q How many applications did you get? A I did not get any.

Q So that your first trip you got none at all? A No sir, I did not.

Q Now, the next time you returned to Canon City you had company? A No sir.

Q Didn't you go with somebody? A No sir.

Q Wasn't Mr. Vaughn there in Canon City with you? A No sir.

Q How did he happen to go there? A He came a few days after I went there.

Q Did you help Vaughn to get his job with the New York Life? A I don't think I did.

Q Did you say anything about your having a job? A I told him I was writing life insurance.

Q Did you tell him it was a good job? A I told him I was making money.

Q And you were making money at it, weren't you? A No sir, I was not making a cent.

Q You had not made a dollar off of that? A No sir. They gave me $25. when I started out.

Q They gave you $25. to start out on? A Yes sir.

Q You had not earned that? A No sir.

Q And you went back and got your bomb and went down there again before Vaughn came there? A Yes sir.

Q And when you saw Vaughn there Vaugh was also representing the same company? A He was not when I saw him.

Q What was he doing? A When he came down there he was. He had

a contract with the same company.

Q He had a contract with the same company that you did? A Yes sir.

Q Now, isn't it a fact that Mr. Stearns sent you into that field because it had not been worked for some time for that company? A No sir.

Q What did he advance you this $25. for? A To go out and solicit insurance.

Q Was that a loan which you was to pay back? A It was to be paid back out of any insurance I would write.

Q What did you want a loan for-- you had plenty of money?

A He offered it to me and I took it.

Q Did you ask him for it? A No sir, he asked me if I wanted some money to start out with.

Q And you, a perfect stranger to him, he advanced you $25. to go out with and solicit insurance for his company? A Yes sir, he did.

Q You did not know, of your own knowledge, how Vaughn became connected with the New York Mutual Life? A Yes sir.

Q How did you know that? A I met him at the Belmont hotel when I got back there from Canon and he wanted to know what I was doing and I told him that I was writing insurance for the Mutual Life.

Q And was making good money at it? A Yes sir, and he said that he thought he would get a contract for he had written insurance before.

Q He was an old insurance agent? A He said he had written insurance before.

Q Did you make any arrangements with him to follow you to Canon City? A He asked me-- he said he believed he would go down there too, and I told him there was room for both of us.

Q That was before you left Denver? A Before I left the second time.

Q And yet you made an arrangement with him that if he got a contract he was to go down there with you? A He said he believed he would come down there, and I told him I guessed there was room for both of us, if he did.

Q You did not want to be identified there? A No sir.

Q You was there to commit a crime? A Yes sir.

Q And Vaughn did not you? A He did know me.

Q But he did not know that you were engaged in a criminal enterprise? A Not that I know of.

Q And yet you seconded his offer to come down there? A No sir, I did not. I did not think of that when he spoke of it. I did not want to say not to come though.

Q But you went down there and spent three days before he got there? A I think it was two or three days.

Q And did not do anything? A No sir, I did not write any insurance.

Q Did you solicit any insurance? A Yes sir.

Q How many people did you solicit? A I don't know.

Q More than one? A Yes sir, more than one; I talked with several people. I gave it out around that I was writing life insurance.

Q You was pretty active in your life insurance business?

A Yes sir.

Q Did you acquaint people with your name and the name of the company which you represented? A Yes sir.

Q It was your object to sneak into Canon City and sneak out again? A No sir.

Q It was your object to have as many people know you in Canon City as possible? A It was my object to be known as writing insurance.

Q And the reason you did not discharge this bomb was because Peabody no longer sat at the window and read his paper?

A No sir.

Q You had a bomb that if you had put it under one edge of the house it would have blown up the entire house, wouldn't it?

A I don't think so.

Q What difference did it make to you whether he sat at the window or not? A I wanted to be sure and get him.

Q And because he was fixing the house and no longer sat at that window you abandoned the enterprise? A That was one reason I abandoned it.

Q And took your bomb back to Denver? A I did eventually. I did not take it then.

Q You went right on with your insurancebusiness, didn't you?

A After a time I did.

Q Was it after a time? A Well, I solicited insurance all the time.

Q Did you write any? A No sir, I didnot.

Q Did you take a single application for the New York Mutual Life?

A No sir, I did not.

Q Not a single one? A No sir.

Q You and Vaughn after canvassing Canon City went to Rocky Ford?

A Yes sir.

Q And you went direct to Rocky Ford, didn't you? A Yes sir.

Q You did not go back to Denver to make any report at all?

A No sir.

Q You left your suit case or grip and bomb in Canon City?

A Yes sir.

Q And went to Rocky Ford? A Yes sir.

Q Which is somewhere in the neighborhood of a hundred miles away? A Possibly it is about that.

Q But there was nobody there that is connected with the Federation or that they wanted to get rid of? A Where?

Q At Rocky Ford. A No sir.

Q There was no object in your going there so far as the Western Federation was concerned? A No sir.

Q Or any of its officers? A No sir.

Q And no man lived there that they could want to get rid of?

A Not that I know of.

Q And you continued your work for the insurance company over at Rocky Ford, didn't you? A Yes sir.

Q And you wrote some insurance over there, didn't you? A Not for the Mutual Life Insurance Company.

Q You had worked hard for a straight line insurance company and you could not get people to bite at that, could you? A Not very hard.

Q What did you go there for? A I went to solicit insurance.

Q That's what I thought. A Yes sir.

Q But you were working for the Mutual Life? A Yes sir.

Q And were working in good faith? A Yes sir.

Q But you find it was a difficult thing to interest people in an insurance that it took a good deal of money to get into?

A I found it so.

Q You found it hard to get any one who would take a policy in a company that the premium ran up into hundreds of dollars?

A Yes sir, but we had smaller ones.

Q What was the amount of the premiums for the policies which you had? A Different prices,-- some of them as low as $35.

Q But most of those people whom you solicited objected to the payment of $35. for a thousand dollars insurance? A Possibly they did.

Q The amount of the insurance was too small and the premium was too high? A I did not write any insurance there.

Q And you were down there stranded weren't you? A No sir.

Q How much money did Vaughn have? A I don't think he had much.

Q How much did you have? A I had a hundred dollars or so.

Q You only drew a hundred dollars beforeyou started away?

A Yes. I had some money and I got $25. from Mr. Stearns.

Q Had that covered your expenses? A I don't know that I had quite a hundred dollars, but somewhere in that neighborhood.

Q You had paid out in the neighborhood of twenty or twenty-five dollars for railroad fares, hadn't you? A No, I had not paid $20. or $25.

Q You had gone to Canon City? A Yes sir.

Q And you had gone back to Denver? A Yes sir.

Q And then back to Canon City? A Yes sir.

Q And from there to Rocky Ford? A Yes sir.

Q That is in the neighborhood— A I think possibly ~~ht~~ I did pay about twenty dollars for railroad fare then.

Q The mileage was somewhere in the neighborhood of 600 miles that you had traveled, wasn't it? A I think so,-- possibly.

Q What was the railroad fare to Canon City? A The railroad fare to Canon City is about $5.

Q A little over $5. A A few cents maybe,-- not much.

Q And you made that trip three times? A Yes sir.

Q Had you used the sleeper? A No sir.

Q And how much-- you rode in one of the other coaches?

A Yes sir.

Q And how much was the fare from Canon City to Rocky Ford?

you?

A I think it is $5., or $6. possibly.

Q That would get it up to between twenty and twenty-five dollars wouldn't it? A Yes, possibly.

Q And you had board to pay? A Yes sir.

Q And room rent? A Yes sir.

Q And hotel bills to pay? A When I stopped at the hotel I did.

Q And bus fare to pay? A I don't think they charged bus fare there at that hotel.

Q And cigars? A I did not use cigars.

Q And drinks? A A few drinks, yes sir.

Q And alittle gambling? A No sir, I did not gamble at that time.

Q You did not gamble then? A No sir, not then.

Q You had reformed at that time? A No sir, not then.

Q Now, you went over to Rocky Ford, and finding that you could not make straight life insurance business pay you went into the hail insurance? A Yes sir.

Q And that was because you was busted? A No sir, it was not.

Q Why didn't you go back to Denver and get some other kind of a job? A I did not want to go back to Denver just then.

Q Hail insurance was not going to help you in Canon City? A Yes sir.

Q You did not go back there? A Yes sir.

Q You never went back there in your life? A Yes sir.

Q Well, to get your satchel? A Yes sir.

Q How long did you stay around Rocky Ford? A I think about two weeks, as near as I can remember.

Q And you wrote a good deal of hail insurance? A Yes sir.

Q You just filled out a blank and got the money for it; it was fake insurance? A Yes sir.

Q All those farmers down there jumped at it? A Well, they took it.

Q You showed a piece of paper signed by you and took the entire proceeds and put it in your pocket? A No sir, I did not.

Q You say it was fake insurance? A I found out afterwards that it was.

Q You got some money out of it? A Yes sir.

Q You did very well with that? A Yes sir, we did.

Q You commenced to make money from the day you started with it? A Yes sir.

Q And you and Vaughn solicited it together? A Yes sir, part of the time we did.

Q You rode around together and were partners? A Yes sir.

Q You saw at once that there was a big pocket of money in that? A We made good money at it.

Q And then you went over into the San Luis Valley, didn't you? A I was there afterwards.

Q These were farmers that you were faking with this insurance, weren't they? A Yes sir.

Q You did not solicit any insurance of anybody but farmers? A No sir, not that kind of insurance.

Q It was to insure their crops against hail? A Yes sir.

Q And you levied a tax on every one you could get to bite?

A We took the application and turned it over to the agent.

Q Well, where did you go then? A We went to Rocky Ford, or Las Animas.

Q And where did you go then? A We went to Denver.

Q How long did you remain there? A A few days.

Q How many days? A Weak or ten days, I think.

Q Did Vaughn stay there with you? A No sir, he went in on Saturday and left Monday.

Q Wheredid he go to? A He went down to San Luis Valley.

Q Did you follow him? A Yes sir.

Q How long afterwards? A I think about a week or ten days.

Q What wereyou doing there in Denver? A I was planting those bombs up there that I spoke of to get Judge Gabbert.

Q What time was that? A I think it was in May.

Q You think that was in May? A Yes sir, I aint sure.

Q You know that the talk you had with Moyer, Haywood and Pettibone was some time in April, don't you? A I think it was some time in April, yes sir.

Q You had been to Canon City and spent five or six days and returned to Denver and spent a few days, and returned to Canon City and spent a few days more and then down to Trinidad-- to Rocky Ford for two weeks? A I think we were there about two weeks altogether, I think.

Q Now, the first time you went to Canon City you stayed five or

993 six days, did you? A Something like that, I would not say

just how long.

Q Call it five days? A Three or four days.

Q It took you a day to go and a day to come? A It did not take a whole day.

Q How much of the day does it take? A I think about four or fivehours.

Q Well, say it took you a day or parts of two days to go and come, that would make a week, wouldn't it, that first trip?

A I don't think I was gone a week.

Q Have you got any reason for not allowing me to pin you down to a week? A The only reason is that I don't know.

Q You don't know? A No.

Q Do you think it was less or more than a week? A I think it was less than a week.

Q How much less do you think it was? A Possibly four or five days.

Q So you think you went and came and stayed down there in all not to exceed four or five days? A That is to the best of my recollection, yes.

Q But it might have been eight or nine days? A It was not that long.

Q Then you came back to Denver, and how long did you stay there that time to the best of your recollection? A Three days, I think.

Q That would add three more days; that was before you returned to Canon City? A Yes sir.

Q. Then how many days did you stay in Canon? A. I don't think I was there very long -- four or five days.

Q. That would make it in the neighborhood of fifteen days?

A. I don't think it would make fifteen days.

Q. What? A. Possibly it might be fifteen; I don't think it was that long.

Q. How long do you think it was? A. I think about twelve days, maybe.

Q. Then did you go back to Denver again? A. I went to Rocky Ford.

Q. How long did it take you to get over there? A. Five hours I guess.

Q. How many days did you stay in Rocky Ford? A. I did not stay there very many days; I think two, three or four days.

Q. Solicited insurance all around there? A. Yes sir, some.

Q. You got to making money very rapidly? A. We did not write any insurance around Rocky Ford.

Q. You stayed there four or five days soliciting insurance for the New York Mutual Life? A. We stayed there a day or two and then we seen this man representing the Hail Insurance company and we went to Las Animas from there.

Q. You stayed there four or five days? A. I don't know whether we were there that long or not; we were there a few days.

Q. Probably five days would be about right? A. I think three days

would be about right.

Q That would be 18 days then. Now how many days was it that you you had seen Moyer, Haywood and Pettibone before you started on the enterprise at all? A I seen them about the time I started.

Q Then there was no time elapsed before you started? A A little time; I don't know just how long.

Q A day or two before, you think? A I would not say,-- something like that

Q Now, you went down to Las Animas? A Yes sir.

Q And solicited insurance there? A Yes sir.

Q Now, how long did you solicit in that country? A I think about a week?

Q That would make about twenty-seven days? A The way you are counting it. I am not positive about this time.

Q I am letting you do it; haven't you kept count? You can do it any way you want to.

A You are counting it up yourself

Q Doesn't it amount to 27 days? A Some 25 or 27 days I think, that would be thebest of my recollection but I would not swear positive to that.

Q Haven't you been told never to allow me to pin you down to any date? A No sir, I have not.

Q Nor to any subject, nor to anything? A No sir.

 Q Or any subject? A No sir, I have been told nothing only to

tell the truth.

Q Nor any place? A Yes sir, or any place.

Q And who told you to tell mewhen I asked you that you were told to tell only the truth? A Mr. McParland, Mr. Hawley and Mr. Borah.

Q Why was it necessary for you to say to me that you are telling the truth? A Because you are trying to make out that I am not telling the truth.

Q You are under oath? A Yes sir.

Q You realize that? A Yes sir.

Q And you have a great dealof regard for that? A Yes sir, I have.

Q And twenty-five or twenty-seven days is not far out of the way? A No sir.

Q What are you finding fault with them? A I am not finding fault.

Q It may have been more than 27 days? A I could not say about that. I don't remember the exact time.

Q It is just as liable to have been a little more than 27 days as it was to be a little less? A I would not state the exact time.

Q Have you seen Mr. McParland since last night? A No sir, I have not.

Q Did you see him last night? A No sir.

Q Did you see him night before last? A No sir.

Q Did you see him yesterday noon? A No sir, I don't think I did.

Q Did you see him at any time since I asked you about seeing him the other day? A Yes sir, I saw him, I think, yesterday morning.

Q Did you see him again this morning? A No sir, I did not.

Q Is it so unimportant event when you see Mr. McFarland that you cannot remember whether you saw him or not? A No sir.

Q But you do think that you saw him yesterday morning? A Yes sir

Q But you are not sure whether you did or not? A I think I did.

Q Where abouts did you see him yesterday morning? A I think I saw him in Mr. Hawley's office.

Q That is the only place you could see him unless you saw him out at the jail, isn't it? A That is the only place I have seen him.

Q How many days were you in Denver before you went down to the San Luis Valley? A I think a week or ten days.

Q What did you go down there for? A To write insurance.

Q There wasn't anybody there that you wanted to kill or slay?

A No sir.

Q The only business you had there was the writing of insurance?

A Yes sir.

Q The first station in the San Luis Valley is Alamosa, isn't it?

A I think that is the first place after you cross the divide.

997 Q 250 miles from Denver, isn't it? A I think so, I don't know

the distance.

Q And you went to Monte Vista, didn't you? A Yes sir.

Q That is a very prosperous farming community? A Yes sir.

Q Surrounded by fertile farms all around there? A Yes sir.

Q And you were very prosperous down there amongst those farmers, weren't you? A Yes sir, we were.

Q Wrote nearly everybody? A We wrote a good many people.

Q That is a valley there that is subject to hail at any time of the year? A Yes sir, I believe it is.

Q And everybody was anxious to get hail insurance? A I think that they about all had hail insurance.

Q And you had nothing to do but tell a man that you was a hail insurance man and you got his money? A I don't know about that.

Q That valley there is about twenty miles wide and a hundred and sixty miles long? A I don't know how long it is, nor how wide.

Q How long did you work in that valley? A I think about a week.

Q What is that? A I think about a week, around Monte Vista.

Q How long were you in the San Luis Valley? A I think about two weeks altogether.

Q Did you go to Saguache? A No sir.

Q To Del Norte? A No sir.

Q To Alamosa? A I went through there.

Q To La Jara? A Yes sir.

Q To Conejos? A I don't remember that.

Q To Antonito? A No sir.

To Villa Grove? A No sir.

Q How many people in all did you write down there in the valley? A Possibly a hundred.

Q It took you about two weeks? A I think so.

Q And it was while you were writing insurance, and between the times that you were between Monte Vista and Las Animas that you had your experience with Judge Goddard? A Yes sir.

Q Where did you room while you were planting that bomb?

A At the Belmont hotel.

Q At the Belmont? A No, at the Virginia rooming house.

Q You had changed from the Belmont from the time you went down to Canon City, to the Virginia rooming house? A Yes sir.

Q Where was that Virginia rooming house? A On Stout street, between18th and 19th.

Q It was just a little ways beyond the Belmont? A Yes sir.

Q On the same street? A Yes sir, about a block.

Q On the same side of the street as the Belmont? A No sir, on the opposite side.

Q About a good stone's throw ~~away~~ from there, was it? A About a block away.

Q Did you know anybody there at the Virginia? A Yes sir.

Q Who? A Jack Hullivan.

Q What has become of him? A I think he is dead.

Q He lived at the Belmont when you were there then? A He did first, yes sir.

Q Did you live there with him? A Not at the Belmont, no sir.

Q Who told you that Jack Hullivan was dead? A Mr. McFarland.

Q That is the Mr. McFarland whom you have spoken of once or twice before? A Yes sir, it is.

Q You went there because Jack Hullivan was there? A Yes sir, I did.

Q He was a friend of yours? A I knew him, yes sir.

Q What was Jack's business? A I think he was working for the gas company.

Q What doing? A Collecting.

Q Was he a gambler too? A I don't know but that he gambled some; I don't know whether he did or not.

Q Never was out with Jack on any night trips? A No sir.

Q Going around the city? A I have been around the city a little with him.

Q Have you gambled with him? A No sir, never did.

Q Did you and he ever go any where to buck the tiger together? A No sir.

Q Did you know anybody else there besides Hullivan? A No sir, I don't think I did at that time.

Q Did not go there on Vaughn's account? A He went there too I think.

Q Was Lottie Day there? A I don't think so. I never saw her there.

Q You never saw her there? A No sir.

Q And the Guerin's had not moved over there, had they? A No sir.

Q Same different people kept this Virginia rooming house from the ones who kept the Belmont? A Yes sir.

Q How long did Vaughn stay with you and Jack Sullivan before Vaughn went down to the San Luis Valley? A Vaughn did not come— I don't think he came back there before he went to the San Luis valley. I think he went back down to Rocky Ford and from there to the San Luis valley.

Q Did Vaughn go up to Denver with you when you came to Denver from Las Animas? A Yes sir.

Q He did? A Yes sir.

Q And he returned to Las Animas and went to the San Luis valley? A I think he went to Rocky Ford.

Q How long did he stay in the city? A I think he came in on Saturday and we left Monday.

Q Who left Monday? A He did.

Q How long was it beforeyou joined Vaughn in the San Luis valley? A I think I was in Denver about a week or ten days.

Q Which was it? A week or ten days? A I think it was a week or ten days— somewhere about there, as near as I can remember.

Q Might have been three days or five? A No sir, I think it was a week or ten days.

Q Might have been three weeks? A No sir, it was not.

Q When was it you got back to Denver from Las Animas? Give us the date as near it as you can remember. A I could not tell you about the date. I think it was in May though, but I would not say positive,— the last of April or first or May.

Q The last of April or first of May that you got back? A I could not say positively when it was. It might have been later in May.

Q Later in May? A It might have been.

Q That is what I want to get at. How late in May was it?

A I don't remember just when it was.

Q Would your recollection be that you got back the first of May and stayed a week or ten days? A I would not say just when it was.

Q It may have been the 15th of May? A It might have been.

Q Or the latter part of May? A I don't think it was.

Q You haven't a clear idea of what the date was? A No sir, I have not, but it was about that time.

Q Haven't you had anything by which you could refresh your memory? A No sir.

Q Haven't you looked up any matter in reference to it in Mr. Stearns' office to tell you? A No sir.

Q Did you go to Mr. Stearns' office when you came back?

A I don't think I went to Stearns office until I came back from the San Luis valley. I went there then.

Q Did you pay him back his twenty-five dollars? A Yes sir, I did.

Q That is what you went there for? A No sir, I had sent him his twenty-five dollars before that.

Q When had you sent him that? A When I was at Monte Vista.

Q Well, we are a little ahead of our story. We have not got down to Monte Vista yet. A You asked me when I sent it back to him.

Q That is all right. Had you gone to see Mr. Stearns while you was there between the time you were at Las Animas and Monte Vista? A No sir.

Q Had you sent him back his blanks and things? A No sir.

Q You were still working for him? A I was supposed to be.

Q Now, we will take up this Goddard bomb? A Yes sir.

Q When did you talk with anybody, or conceive the idea of planting a bomb at Judge Goddard's gate? A I conceived it myself.

Q You had tried to shoot him through the winter? A Yes sir.

Q And had failed? A Yes sir.

Q And now you conceived the idea yourself of blowing up Goddard?

A You are speaking of Goddard?

Q I am? A Yes sir, I did.

Q You say you planted the Goddard bomb? A I planted that and the Gabbert bomb at the same time.

Q Which did you plant first? A The Gabbert bomb.

Q I don't care which one you take up first? A They were two or three days apart.

Q Well, we will say that the Gabbert bomb was first? A Yes sir.

Q You conceived that idea yourself? A No sir, not that one.

Q Where did the idea of the Gabbert bomb come from? A Mr. Pettibone and I talked about it.

Q Did you talk with Meyer or Haywood about that? A No sir.

Q Neither one of them? A No sir.

Q Never did? A No sir.

Q They knew nothing about your relations with the Gabbert bomb?

A No sir.

Q But you and Pettibone talked about it? A Yes sir.

Q Where did you talk about it? A At his store.

Q Who was present? A I don't think there was anybody present who heard us talk about it.

Q Who was present who did not hear you talk about it?

A I don't know. There may have been some of the employes around in the front part of the store.

Q You talked in the back part of the store about it? A Yes sir, or in the basement.

Q You went down into the basement, did you? A We used to go down there a good deal, yes sir.

Q It is a fact that that basement was a workshop for the repairing of wringers and carpet sweepers and things of that kind that had been sold? A Yes sir.

Q And Mr. Pettibone had a kit of carpenter's tools down there that were used for that purpose? A Yes sir.

Q And the agents themselves had to do some of that repair work, didn't they? A They may have done some of it. I think he did most of it himself.

Q He worked at the repairing of these things, but he had other employes working there besides himself? A Yes sir, he did.

Q Did he have a steady repair man there working all the time?

A No sir, I don't think he did. He had a man there in the store all the time.

Q And when that man was not in the store selling things it was his business to be down there repairing things? A No sir, I don't think so.

Q Did you ever see him down there? A I don't think I ever saw him down there doing repair work.

Q You have seen men down there doing repair work there, haven't you? A Yes sir.

Q There was nothing suspicious about what there was down there, was there, except what you took down? A I don't know about that. There was a tin box down there that did not look very good sometimes, I think.

Q Where was that? A Down in the basement.

Q What did it contain? A Some times there was dynamitein it, and sometimes this Pettibone dope or grecian fire.

Q The Pettibone dope, the Grecian fire and the dynamite were all in the tin can, was it? A Not all at the same time.

Q How large a tin can was it? A I think about eighteen inches maybe by a foot.

Q And that stood right around there where anybody could see it who wanted to? A It stood around there, but it was locked.

Q It was locked in what? A This can was locked.

Q The can was locked? A It was a sheet iron kind of box, not exactly square.

Q Looked something like a kerosine can-- a coal oil can?

A No sir, it wasnot that shape.

Q Was it like a tin box that you keep papers in? A You might; I don't know just what it was for.

Q Was it a box something like that grip (indicating small grip on the table)? A Probably about that wide and long, but a little thicker.

Q Did you have a key to it? A No sir.

Q Did Pettibone have a key to it? A Yes sir.

Q And you had seen the inside of that can? A I had seen him put things in there and take them out.

Q You had? A Yes sir.

Q And with the exception of that that was the only suspicious thing down there, you say? A I don't know of anything else at that time.

Q Nothing but the ordinary mechanic's tools that were down there?

A Some times he had some guns down there.

Q How many did he have there? A Afterward I saw some there.

Q When did you see guns there? A I saw five or six there at the time Haywood had his team brought down from Cripple Creek.

Q The team brought down some stuff from Cripple Creek?

A Yes sir, it brought down some guns.

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Q Was there anything else besides the guns that were suspicious in that basement-- and the tin can? A I don't know of anything else only what was in the tin can sometimes.

Q What is that? A I don't know of anything else only what was in the can sometimes.

Q Otherwise than that the basement looked just as you would expect in a store or basement where that kind of business is carried on? A Yes sir.

Q And where tools were used to repair those kind of things?

A Yes sir.

Q Was there anything to prevent the access of anybody to that basement who wanted to go there? A No sir.

Q No mysterious way of getting in there or getting out of there?

A There was a way to go through there to the back part where the heating apartment was there, of the building, but that was locked.

Q Everybody went down that wanted to, and came up that wanted to?

A As far as I know they did, yes sir.

Q And you saw a good many people going up and down from there?

A Yes sir.

Q There was nobody kept away from there? A No sir, not that I know of.

Q And with the exception of this tin box there was no secret down there? A Not that I know of.

1008 Q And that is where you made the Gabbert bomb? A Yes sir.

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Q What talk did you have with Pettibone about it? Give us the conversation? A He said he was going up to attend the Federation meeting and he wanted something pulled off, and said that Haywood wanted something pulled off beforehe went up there so that he would have something to show the Executive board for the money they had spent that winter.

Q Where was Haywood at that time? A At Salt Lake, I think.

Q But he said he wanted something pulled off? A Yes sir.

Q Andyet you went down in Trinidad and the San Luis valley writing hail insurance? A Yes sir.

Q When they wanted something done? A Yes sir, and when I came back he wanted to know what the chances were to get Peabody down at Canon City.

Q Who did? A Pettibone did. And I told him that I did not think it would be easy, that Vaughn had got on that I had something in my grip, and that he had heard the clock ticking and asked me what it was and I told him it was a bomb.

Q Did you ever show him the clock-- show Vaughn the clock ticking in the grip? A No sir, I did not.

Q Did you open that grip? A No sir.

Q Did you show him the bomb? A No sir.

Q But you told him it was a bomb? A Yes sir.

Q In a joking manner? A Yes sir.

Q And you joked with him about it-- said it to him in a joking way? A Yes sir, I did.

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That there was a bomb in there? A Yes sir.

Q And Vaughn took it as a joke? A No sir, he did not.

Q He never did know that there was a bomb in there? A Only what I told him.

Q You did not tell him who the bomb was for? A Yes sir, I told him I was going to put it under Mr. Peabody.

Q Was the clock running? A Yes sir.

Q What did you keep the clock running for? A To see if it would run.

Q And you kept it inside the case with the bomb? A No sir.

Q Where was the clock? A Fastened on the end of the bomb.

Q Where was the bomb? A In the suit case.

Q Thats what I meant. A You said inside the bomb.

Q Did I? A Yes sir.

Q You are sure of that? A Quite sure, yes sir.

Q It was on the bomb, was it? A Yes sir.

Q Fastened to it? A Yes sir.

Q And you kept the clock wound up all the time? A Yes sir.

Q Just so as to see that it would run? A Yes sir.

Q So that Vaughn could hear it and ask you about it? A He did hear it.

Q Was this suit case in the closet? A No sir.

Q Where did you keep the suit case? A Out in the room.

Q Got it out where Vaughn could hear the clock ticking on the bomb without any difficulty? A I don't think there was any closet in that room.

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Q And then you told Vaughn it was a bomb and that you was going to put it under Peabody? A Yes sir, if I got a chance.

Q If you got a good chance? A I told him it was a bomb and I was going to put it under Peabody.

Q Did Vaughn say anything about it? A Yes sir.

Q Did Vaughn take it as a joke? A No sir, he did not.

Q You and Vaughn had never done anything wrong together? A No sir.

Q And he was not in your confidence, was he? A No sir.

Q And was not then? A No sir.

Q And never had been? A No sir.

Q And yet here was a man, a perfectly honest man so far as you know, who would obey the law, and you told him that you had a bomb? A Yes sir, I did tell him in a joking way, yes sir.

Q And that you were going to put it under Peabody if you got a chance? A Yes sir.

Q Do you know where Vaughn is now? A I believe he is here.

Q Have you seen him? A Yes sir, I did see him,-- by sight.

Q Who told you he was here? A I think Mr. McParland told me that he was.

Q That is the same Mr. M'parland you have spoken about before? A Yes sir.

Q That is the only man you received visits from much, isn't it, nowadays? A No sir, others have told me that he is here besides him.

Q But he was the first one who told you about it? A I know he has told me.

Q What did Pettibone say to you about this business of blowing up Gabbert? Give us all of it now-- there in the back part of the store? A He wanted to know if we could not work up some scheme to get away with Gabbert or Goddard before he went up to the convention.

Q Making an inquiry of you as to what could be done before going to the convention? A Yes sir, he was after telling me about the Peabody proposition, and I told him about this vacant lot up there. I had noticed the winter before that Judge Gabbert was using it in going to the Capitol Building.

Q And you and Pettibone were alone at the time? A Yes sir.

Q You did not have any bomb for that purpose at that time, did you? A No sir.

Q You had one at Canon City? A Yes sir.

Q And one you did not expect to use on Peabody? A I did not think I would then, no sir.

Q Why didn't you go and get that bomb then? A Because it was easier to make another one.

Q You would rather leave it there in that lady's house? A I did leave it there.

Q How long did you leave it there? A I think until some time in August.

Q So she had that visitor there in her house from the latter

part of April until the latter part of August? A It was in her house, yes sir.

Q It never occurred to her that there was any danger to her from that? A I don't think there was any danger.

Q Did you make arrangements to have the clock wound before you left for Denver? A No sir.

Q For all you know the clock may have run down in the meantime?

A I think it did, very likely.

Q When you made this proposition to Pettibone about the vacant lot I supposehe fell right in with it? A Yes sir, he did.

Q And you started right in to make the bomb? A Yes sir.

Q And you went right up and placed it as you have related?

A Yes sir.

Q You say that Mr. Pettibone went up there with you when you placed the first bomb? A Yes sir.

Q He was on a wheel? A He had a wheel with him.

Q How long was it before you made the second bomb for that lot?

A Only two or three days,-- something like that.

Q In the meantime Pettibone had gone away? A Yes sir.

Q Now, was the bomb made by you alone after Pettibone had gone away-- the Goddard bomb? A Yes sir.

Q There was no suggestion or talk between you and Pettibone in regard to the Goddard bomb? A No sir.

Q Except as you had this general commission to get out and destroy anybody whom you saw fit? A Yes sir.

Q You never thought of going out by yourself to destroy anybody? A I never did go before I got in with these fellows.

Q But after you got in with these fellows you went out on your own account? A I did that time,-- only in a general way; we had had the talk before.

Q Where did you make the bomb that you were to destroy Goddard with? A In the basement of Pettibone's store.

Q Did you have a key to Pettibone's store while he was gone?

A Yes sir.

Q Who gave you that key? A I think Mr. Pettibone did.

Q Did he give any instructions to the men about there about your going in and out as you pleased? A I don't know whether he did or not.

Q Who was running the store while he was gone? A Jake Wolff.

Q Wasn't Mrs. Pettibone there also? A She might have been there part of the time.

Q Wasn't she in there? A I don't think so; she was only in and out.

Q Didn't Mrs. Pettibone always, when he was away, come down and run his store for him? A No sir.

Q Did not? A No sir.

Q And did not at that time? A No more than being in and out of there.

Q Did you see her in and out of there? A I think I saw her once or twice.

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Q That was Jake Wolff doing while you were manufacturing this bomb? A I don't know what he was doing. He was not there.

Q Wasn't he in the store? A No sir.

Q Was it in the night time that you ~~work in~~ manufactured this?

A No sir.

Q Was it on Sunday? A Yes sir.

Q When did you get the stuff to manufacture it with? A I got it down there in the basement.

Q You had it there? A Yes sir.

Q Had you put the stuff there? A No sir.

Q Had Pett Bone put it there? A I don't know who put it there.

Q Did you have a key to the tin box? A No sir.

Q The stuff was not in the tin box? A No sir.

Q Then you did see other suspicious stuff there besides in the tin box? A No sir.

Q Where did the stuff come from? A The boards were down in the cellar and the powder was buried over in Pettibone's lot.

Q You did not get the stuff then in the cellar to make the bomb of? A I found the boards there.

Q You did not call them a bomb? A I called them the case.

Q Well, you made it out of boards then? A Yes sir.

Q And you got them there in the cellar? A Yes sir.

Q When had you buried that stuff in the vacant lot? A Pettibone buried it there a few nights before.

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Q How do you know? A Because he told me so.

Q You don't know where he got the stuff? A Yes, I do.

Q Where? A He got it out of the cellar,-- the basement of his store.

Q And took it over to bury it a few nights beforeyou made the bomb? A Yes sir.

Q And you went over and unburied it and took it to the same place he had taken it from? A Yes sir.

Q How long had it been there before he buried it in his lot?

A I don't know how long it had been there. It was some powder we had there that I made the first bomb of.

Q Did you go and dig it up? A Yes sir, I did.

Q It was after he had gone to Salt Lake? A Yes sir.

Q It had been there three or four days? A Yes sir, at that time-- it was there from the time we made the first bomb. It perhaps had been there before; I think he had it buried there before, and we went and dug it up to make the first one and took it back again to bury it.

Q This stuff had two burials there then? A I think so, yes sir.

Q Was it buried in the same place both times? A Nearly so.

Q Was there a sod on that lot? A No sir, there was some weeds and stuff there.

Q You dug down in the weeds? A No sir.

Q What did you do? A I went and dug it up.

1015 Q What did you dig it out of? A I dug it out of the dirt.

Q It was buried in a wood patch ? A There was some weeds there.

Q How deep down was it buried? A Probably about a foot, I think.

Q Did you see the fresh dirt there when you went to get it, -- to dig it up-- so you knew where to dig? A I knew where to dig.

Q You always kept these bombs buried in the same place? A No sir, there was an old door thrown over this where it was buried.

Q How many times had you buried bombs in that vacant lot?

A I don't know as I ever buried any there myself.

Q How many had been buried there to your knowledge? A I don't know of any, only this powder.

Q How many times had it been buried? A Twice, I think, or three times.

Q You know of twice, do you? A I know that is where he said he buried it.

Q You dug it up twice? A I think only once.

Q Didn't you say that you and Pettibone dug it up once to make the first bomb with? A No sir, I did not say we went and dug it up to make the first bomb.

Q Who did dig it up? A I don't think anybody did.

Q Where did you get it? A Out to Max Malich's.

Q Was that some you brought in from that original stealing

there? A Yes sir.

Q And he took it over and buried it twice? A I think he took it and buried it twice.

Q You brought it in from Max Malich's to build the Peabody bomb with? A Yes sir.

Q And after that there was some left and he took it out and buried it, you think? A Yes sir, I think he did.

Q And then he brought it back, you think? A Yes sir.

Q All you know about that is what he told you? A Yes sir, it is.

Q And then you made the Gabbert bomb? A Yes sir.

Q And then the second Gabbert bomb? A Yes sir, I made the second Gabbert bomb.

Q Out of the balance of the powder-- you had none left? A Yes sir.

Q And then you went out and dug it up yourself and brought it in to make the Goddard bomb? A Yes sir.

Q And you made that on Sunday afternoon? A Yes sir.

Q When nobody was around? A Yes sir, there was nobody in the store.

Q What did you do with that when you got it made? A I took it over to Max Malich.

Q You took it over to Max Malich? A Yes sir.

Q How big was that? A I think there was ten pounds of powder in it.

Q What did you take it over there for? A I was going to get his rig to go and bury it, and I wanted a spade.

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Q It was twice as far from Max Malich's place to where you wanted to use it as from where you made it? A Yes sir.

Q Yet you carried it over there and left it? A I left it there over night, yes sir.

Q Was that because you wanted a partner in the crime you was contemplating? A I wanted a rig to go from there and put it in.

Q And that was the reason you took it out to Max Malich?

A Yes sir.

Q You told him what it was? A Yes sir.

Q And left it there in his possession? A I did over night, yes sir.

Q And he furnished you the spade? A Yes sir.

Q And the team? A A horse and buggy.

Q And a man to drive it? A Yes sir.

Q Did this man Kakash-- did he know what you were doing?

A Yes sir.

Q Who told him? A I told him.

Q Did he know beforeyou told him what you were going to do?

A I don't know whether he did or not.

Q He wasthe man who went with you? A Yes sir.

Q And you proceeded to go with him and you told him you had a bomb there? A I did, yes sir.

Q And you told him that you was going to plant that bomb at Judge Goddard's gate? A Yes sir.

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Q You had never seen this man before? A Yes sir, I had.

Q When had you seen him? A The winter before.

Q An innocent man so far as you knew? A As far as I knew he was.

Q A man who had never committed a crime? A Not that I knew of.

Q And who would probably go and tell on you if he knew you was going to commit a crime? A I think he would.

Q And yet you would go right in the buggy-- A Who do you mean?

Q This man Kakach? A No sir. I thought you meant Judge Goddard.

Q Well, we will go back to Nick Kakach. He was an innocent man? A So far as I knew.

You never had any acquaintance with the man? A I knew him; I had seen him there at Max Malich's.

Q Had he been working for Max Malich? A Yes sir.

Q For a long time? A I don't know how long.

Q He was, practically speaking, a stranger to you when you started on that ride? A I knew him for five or six months.

Q How well had you known him? A Not very well; only around Max Malich's, where he was working and we took some drinks together.

Q You drank with him? A Yes sir.

Q But so far as you knew he would not commit a crime? A I don't know about that.

Q He never had? A No sir.

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Q Not to your knowledge? A No sir.

Q In any event you got into the buggy and told him you had a bomb there and you was going to use it to kill a man with?

A Yes sir, I was.

Q And it made no impression upon him? A No sir.

Q And you were trying to keep things secret? A I was not telling any one I thought would tell it.

Q And yet you told this man who might reasonably go and tell somebody else? A I did not think he would.

Q But you proceededto tell him just the same? A I did tell him, yes sir.

Q When it was totally unnecessary for you to? A I don't think it was unnecessary.

Q Why did you think it was necessary? A A man would want to know what he was doing, going over there before daylight, in the morning, and I told him so he would know what we was going to do.

Q You told him rightout of your own accord? A I told him any way.

Q And you drove right along to Judge Goddard's gate? A No, not right to the gate.

Q How near did you drive to it? A Within about half a block.

Q And he stood there and waited until you planted the bomb?

A He stayed there until I dug the hole and then I went back and

1020 got the bomb.

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Q How far was he when you got the bomb? A About quarter of a block away.

Q I thought you said you made this Walley bomb in a two quart tin can? A Yes sir.

Q And you said you put in ten sticks of powder in it, didn't you? A I think I said I put in more than ten sticks.

Q What? A I think I said I put in more than ten sticks.

Q What size was this powder? A It was hand powder.

Q What do you mean by hand powder? A Powder that you used with hand steel.

Q Was it powder seven-eighths of an inch in diameter? A I think it is about seven-eights and about eight inches long.

Q Well, that is the measure of hand powder, isn't it-- about seven eighths of an inch in diameter and eight or ten inches long? A I think it is what they call seven-eights powder.

Q And eight inches long? A It may be; I amnot sure about the length.

Q And did you mash that down in this two quart bucket? A I did not take the paper off of it.

Q You just set it in the bucket, did you? A Yes sir.

Q And was the bucket big enough to hold them all? A It filled the bucket.

Q Fill it full? A Pretty near full.

Q Stick out any over the top of it? A No sir.

1021 Q The bucket was deeper than the powder was long, was it?

A I don't know just how it did fit.

Q Now, how long had it been beforeyou set the Goddard bomb that Pettibone had gone to Salt Lake? A I think it was-- I think it was three or four days.

Q That it was a few days? A I think it was a few days after he went.

Q How many days after he went before the Walley bomb went off?

A It was not long.

Q Well, how many days? A I think it was only three or four days, or two or three days,-- something like that:

Q After setting the Goddard bomb did you go down to the San Luis valley? A Yes sir.

Q How long did you stay down there? A I think about two weeks.

Q Did you go to Goddard's house beforeyou went down to the San Luis valley to see what had become of the bomb? A No sir.

Q Did you go there after you came back? A I did some time after.

Q How long did you stay in Denver afteryou went back? A I stayed in Denver until some time in August.

Q Didn't you go up toward Greeley to solicit insurance at all?

A I went as far as Brighton.

Q How long were you gone on that trip? A Three or four days.

Q That is 18 miles out of Denver, isn't it? A I think about that.

Q Is that all the soliciting of insurance you did around Denver?

A Yes sir.

Q Did you drive out with a wagon? A Yes sir.

Q Were Haywood and Moyer and Pettibone all in Salt Lake at that time? A No sir, I think Pettibone had got back.

Q Pettibone came back first did he? A I think he did. I seen him first.

Q How long did he come back before the others did? A I don't know just how long it was.

Q What time was it when Pettibone came back? A I cannot tell you. It was in June, I think.

Q You don't remember that? A No sir.

Q Were you doing anything at the time Pettibone came back?

A I don't think that I was.

Q Don't think you were? A No sir.

Q Just loafed around Denver, did you? A Yes sir.

Q Did you have any money to go on while Pettibone was gone?

A Yes sir.

Q You had made a lot of money out of the insurance business, hain't you? A I had made two or three hundred dollars.

Q And was still making it? A I made about forty dollars after I came back, I think.

Q Well, now what did you say to Pettibone when he came back, or what did he say to you? A He said it was hard luck we had had with then bombs.

Q That is all the business that was transacted there in Denver of every kind and character outside of the Sherman Bell matter,

was it? A That is all I remember of that character.

Q That had all been finished up before these people got back from the Salt Lake convention? A Yes sir.

Q Disposed of and out of the way entirely? A Yes sir.

Q Make any inquiries, did any of them, about the Goddard bomb?

A They did not know anything about it until I told them.

Q Did you tell them about it? A I told Pettibone about it.

Q Did you tell Moyer and Haywood about it? A Not at that time, I don't think.

Q Did you afterwards? A Yes sir.

Q What did you say to Pettibone about the Goddard bomb?

A I told him I planted it out there but had not heard anything from the matter.

Q You did not believe that bomb could be dug up by a person who did not know it was there? A I did not know what had become of it.

Q You thought it would be dangerous, didn't you? A Yes sir.

Q There were a great many children around there where Judge Goddard lived? A I suppose there was some.

Q And you planted this bomb right by the gate? A Yes sir.

Q Right at the outside of the gate? A Yes sir.

Q Right where children were passing within six inches of it?

A I don't know how close.

Q All the time? A Yes sir.

1024 Q Planted it right outside of the gate ~~in~~ itself? A Yes sir.

Q On the side nearest the street? A Yes sir.

Q And right close to the sidewalk? A It was some little distance from the sidewalk.

Q Where children were playing up and down the street all the time? A They may have been.

Q You know they were, don't you? A No sir, I don't know that they were.

Q You know that those houses around there are dwelling houses inhabited by married people and that there are children there in all reason? A I think there are, yes sir.

Q And so anxious were you of your own motion to get Judge Goddard that you planted this bomb where it might kill ten or a dozen children besides? A I planted it there, yes sir.

Q And then Pettibone said that it was hard luck that that bomb did not go off, did he? A Yes sir, something to that effect.

Q And that was all he said about it? A He talked about it in a general way, but that is the substance of what he said about it. We talked about somebody else getting it and how lucky Judge Goddard was not to get it.

Q Judge Gabbert did not get that bomb? A Well, we were talking about Judge Gabbert too.

Q Now, I asked you what he said? A He said it was hard luck--it was pretty hard luck, something to that effect.

Q He said just the same thing every time? A He said something to that effect. I don't know as it was just these words.

Q And he said it was hard luck that you didn't get Gebbert and Walley and Wesbody? A Yes sir. He said he guessed I was out of luck.

Q Was anything said about your going and getting that bomb?

A I think we might have talked about it. I told him I would not go and get it any way.

Q Had you been out to see Judge Goddard's place? A No sir.

Q You had been up to see the Walley place, where Walley was killed, hadn't you,-- where the hole was there? A I don't remember whether I went up there then or not; I don't think I did.

Q I thought you said a few days after you killed Walley you went up and saw a hole in the ground? A I did. I don't remember just when I went up for it was not a matter of any great importance anyway.

Q. But you did go around the Goddard place? A. Not then.

Q. When did you go up to see about the Goddard bomb? A. I think it was some time in August that I walked along there.

Q. In August of 1904? A. 1905.

Q. 1905, excuse me. 1906. A. Yes sir, I think it was about that time.

Q. And you saw as you walked along there a sod which you had cut out that was all dead? A. I seen a dead place there, yes sir, just the green.

Q. Just a square piece of sod? A. Where I put the bomb.

Q. And all around this dead sod it was green? A. Yes sir.

Q. And yet the sod had not been disturbed by anybody nor anything done with it? A. It didn't look as though it had.

Q. So far as you know nobody ever made any inquiries about that dead piece of sod there nor took it up nor attempted to plant any grass in its place? A. Not that I know of, no sir.

Q. And yet all around that was the green grass? A. It looked green all around it, yes sir.

Q. The place was kept nicely, wasn't it? A. I think so, yes sir.

Q. Grass inside the yard and on the outside of it? A. Yes sir.

Q. And nowhere around there did you see any dead grass except this one square place? A. I noticed it was dead over there where I put this bomb when I went along there.

Q. And which would have attracted the attention of anybody going along there? A. I don't know about that.

Q. Well, when did you talk with Haywood about it? A. I told Haywood about it when I seen him.

Q. Where did you see him? A. I think I seen him over at his residence or Pettibone's store.

Q. When did you see him? A. I am not sure whether it was when he came back from the convention from Salt Lake or when he came back from Chicago.

Q. Was it at Pettibone's store or was it at his residence?

A. I think it was at his residence or the store, I am not sure which. I might have talked to him a little out on the street. I used to go around with him some.

Q. I have asked you which place it was, not what place it might have been. A. I am not positive which place it was.

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

Q. And you don't know whether it might not have been on the street? A. I don't know but what we talked of it on the street, no sir.

Q. And you don't know when that was? A. Not exactly, no sir.

Q. And you don't know whether anybody else was present or not?

A. I am quite sure that Pettibone and he and I has talked about it up at the store or over at his residence or over at Pettibone's residence.

Q. And there might have been somebody else present, or wasn't there? A. I don't remember of anyone else being present when we talked about it.

Q. You never remember of anybody being present when you were holding this kind of conversation? A. None other than I have spoken of.

Q. What did you say to Haywood about it? A. I told him I had planted those things and that they had all failed.

1028 Q. What did he say? A. He told me the first time I talked to him about it that he guessed I was out of luck, I better lay off for a while.

Q. Your luck was bad? A. Yes sir.

Q. And therefore you better lay off for awhile until you got better luck? A. I remember his saying that, yes sir.

Q. Did you discuss the subject of your compensation?

A. I don't think I did at that time.

Q. Did he say anything about he thought you was working him or anything of that kind? A. No sir.

Q. Or find any fault with you? A. No sir, didn't find no fault with me.

Q. It was all right whether you blew these people up or whether you did not? A. Well, he didn't find any fault with me about it.

Q. If you did blow them up you were commended and if you didn't blow them up you were commended just the same? A. I don't know as I was particularly commended, there was no fault found with me.

Q. What were you doing after you did see Haywood? A. I didn't do anything in Denver for a good while, quite a while.

Q. When did you see Moyer? A. I am not quite sure when I did see Moyer. I seen him either after he came back from Salt Lake or when he came back from Chicago I am not sure which. I think I seen him when he came back from Chicago.

Q. Now do you know whether Moyer and Haywood came through Denver when they came back from Salt Lake? A. I am not quite sure whether they did or not; I think they did, though.

Q. Do you know how long they stopped there? A. I don't think they stopped long.

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Q. Do you know how long they stayed in Salt Lake? A. No sir, I

do not.

Q. They were both gone to Chicago, were they? A. I think they did, yes sir.

Q. They were both at Salt Lake, weren't they? A. I think so, yes sir.

Q. Do you know when the convention opened at Salt Lake?

A. No sir, I do not.

Q. And don't know when it closed? A. I don't know the exact time, no sir.

Q. Nor what they went to Chicago for nor how long they stayed?

A. I know what they told me they were going to Chicago for.

Q. What did they tell you about that? A. They told me they was going back there to form a new organization.

Q. Did you learn that between the time of the Salt Lake convention and the time of their going to Chicago? A. I learned that they were going back for that purpose long before that.

Q. Long before? A. Yes sir.

Q. But you don't know how long they were gone? A. I do not, no sir.

Q. Now then you laid around Denver, did you, for quite a while there that summer without doing anything? A. Yes sir, I did.

Q. Finally the subject of Sherman Bell was broached, was it?

A. Yes sir.

Q. Nothing had ever been said about Sherman Bell up to that time?

A. Yes, there had been lots said about him.

Q. Nothing had been said about killing him to you by any of these men? A. Nothing definite until this time.

1080 Q. Nothing definite? A. No sir.

Q. Of course Sherman Bell had attracted a great deal of attention while he was the adjutant general of Colorado?

A. Yes sir, he had.

Q. But he had ceased to be the adjutant general of Colorado in the month of April, had he not? A. I think he had, yes sir.

Q. Was out of office? A. Yes sir.

Q. And out of work at that time? A. I don't know. I don't think he was working.

Q. Don't know what he was doing, if anything? A. No sir, I do not.

Q. He was living out on Humboldt Street where he had lived while he was adjutant general? A. No sir, he wasn't living on Humboldt Street.

Q. Where was he living? A. He was living on 13th Avenue.

Q. Near 13th Avenue and Humboldt? A. I don't know whether it is near Humboldt, it is right by Congress Park.

Q. So you went up there to see if you could kill him, did you?

A. We did, yes sir.

Q. Who said anything to you about killing Sherman Bell, and what did he say? A. Pettibone and I talked about it first.

Q. That was the first talk? A. Yes sir.

Q. Originated with Pettibone? A. Yes sir.

Q. Took place in his store? A. His store or over at his residence I think.

Q. You was with him at his residence then, were you? A. Yes sir.

Q. Now as a matter of fact, Mr. Orchard, you were around the Belmont rooming house, weren't you? A. No sir, I was not around the Belmont rooming house. I might have been in and outt

Sherman Bell
Pettibone Arrested A

Shermer Bell

but I was not stopping there.

Q. I mean the Virginia rooming house. You were around there some until about the latter part of July or the first of August? A. I stopped there most of the time.

Q. Now you had been stopping there all of the time while you were doing this hail insurance, weren't you? A. When I was in Denver I think I was.

Q. Think you were? A. Yes sir.

Q. Now about that time Mrs. Pettibone went east on a visit, didn't she? A. She went away about I think the latter part of July or the first of August.

Q. And you went over to Pettibone's house to see him one Sunday didn't you? A. I went over to Pettibone's house and stopped with him after she went away.

Q. Didn't you go over to Pettibone's house to see him after she went away? A. I may have went over there on Sunday, yes sir.

Q. And didn't you stay there visiting with him until it got rather late at night? A. I may have stayed there. I stayed with there with him for a month.

Q. Well, I am going to get at that. I know about that and I am going to ask you about it. I want to find out how you came to do it. A. Pettibone asked me to come over and stay with him while she was away.

Q. Pettibone's wife had already gone away and you went over to talk with him on a Sunday, didn't you? A. I may have went over there on a Sunday.

Q. And you stayed there talking with Pettibone until meal time came, didn't you? A. I may have.

Q. Pettibone got up and got the meal, didn't he? A. Yes, he may have got a meal. He got several of them while I was there.

Q. And when night time came he told you you might just as well stay over there with him while she was gone as to go back to the rooming house? A. No, I don't know that it come up in that way.

Q. And you stayed over there without your grip being over there at all or without your having any conveniences at all for the night, didn't you? A. I don't know whether I had my grip over thereor ever had it over there after that until I took it over there --

Q. You went the next day and got some of your stuff and brought over there to stay while Mrs. Pettibone was gone, didn't you?

A. I took some stuff, what I had, over there, yes sir.

Q. And Mrs. Pettibone was gone on a visit to her folks somewhere in the east, in Michigan somewhere, to be gone for a month, wasn't she? A. I don't know she was in Michigan, but she had gone east for a visit.

Q. Well, wherever it was, don't make any difference, and so Pettibone invited you to come over there and stay at the house to save your room rent? A. He did, he come over and invited me to stay with him while she was gone, yes sir.

Q. Where did he come to invite you to come over there and stay with him while she was gone? A. I couldn't say where it was, possibly might have been his store.

Q. It didn't arise then by virtue of your going over there to call on him on a Sunday afternoon? A. I wouldn't say that it

didn't. It may have been over there.

Q. Well, I will be fair to you, I wouldn't say that it did. I don't know. A. I wouldn't say it didn't because I don't know.

Q. Very well, you don't remember then where or really how it happened that you came to go over there? A. I went over there at his invitation.

Q. Well, you stayed over there on his invitation anyway?

A. Yes sir, I did.

Q. And you did stay there during the month that Mrs. Pettibone was gone? A. I think I stayed there about a month, yes sir.

Q. Went down with Pettibone in the morning? A. Yes sir, usually.

Q. And you stayed around town during the day? A. Yes sir, usually.

Q. And then when night time came you went back to Pettibone's house and found him there, didn't you? A. Usually used to go back with him, sometimes I would go over there alone.

Q. Sometimes you would get there before he did? A. Yes sir.

Q. And sometimes he would get there before you did? A. I usually got there before he did.

Q. He gave you a latch key to the house so that you could go in if you wanted to go there any time he wasn't there, didn't he?

A. I knew where the key was, where he used to leave it outside.

Q. Kept it under the mat or something like that, did he?

A. Kept it around the porch.

Q. In any event there was nothing to prevent you from going any time you wanted to? A. No sir, there was not.

Q. And that was the occasion of your going there to stay at

Mr. Pettibone's house for a month, wasn't it? A. I went over there at that time at his invitation, yes sir.

Q. And you lived there about a month, didn't you? A. About a month.

Q. And you heard absolutely nothing of this sort of business while you were at Pettibone's house? A. I didn't until we went to work on what I have spoken of with Sherman Bell.

Q. I say you hadn't heard anything? A. It was during the time that I was at Pettibone's house we did that, yes sir.

Q. That you went to work on Sherman Bell? A. Yes sir.

Q. Did you have your team then, your horse and buggy? A. We got the team after I went over there, got the horse and buggy.

Q. Isn't it a fact that you didn't get that horse and buggy until after Mrs. Pettibone came backfrom the east? A. No sir, it isn't a fact.

Q. You got it before she came back from the east? A. Yes sir.

Q. And isn't it a fact that the day she came back from the east you went away? A. I think I went away about the day she come back or he expected her back.

Q. You wasn't there when she came back, was you? A. No sir, I wasn't.

Q. That was the day you started off on your western trip, wasn't it? A. He expected her back that day.

Q. I say that was the day you started off on your western trip?

A. Yes sir.

Q. That she came back or she was supposed to come back? A. That was the day he expected her back, yes sir.

Q. And you went away before she got back? A. I did, yes sir.

Q. Now when you started out on Sherman Bell you went up to locate him, did you? A. Yes sir.

Q. Alone? A. Yes sir.

Q. How many times did you go up there? A. I don't remember just how many times, I was at and his house a few times.

Q. No difficulty locating Sherman Bell when he was in Denver, was there? A. I knew where he lived.

Q. And you know Sherman Bell was in Denver in August of that year?

A. Yes sir, I do.

Q. If you stayed at Mr. Pettibone's four weeks and if you left Denver on August 20th then you were there practically during the month of August, weren't you? A. I think I was there about all the month of August, yes sir.

Q. You went there in the latter part of July? A. The latter part of July or the first of August.

Q. Now is there any doubt about it in your mind that that was the time that you was there? A. I think that was the time as near as I can recollect.

Q. Now do you say that Sherman Bell was in Denver at that time?

A. Yes sir, he was some of the time.

Q. Well, was he all of the time? A. I wouldn't say that he was there all of the time.

Q. What part of the time was he there? A. Well, he was there up to the time I think of about two weeks of the time that I left there.

Q. What was he doing there? A. He didn't appear to be doing anything.

Q. Just loafing around? A. I seen him around his house several times.

Q. No trouble to see him around on the street either, was it?

A. I don't think it was. I have seen him on the street.

Q. Just walking around Denver the same as you were, wasn't he?

A. I didn't see him doing any work.

Q. And you don't know what time you went out to his house nights?

A. I don't know. I have seen him at his house in the evening.

Q. Did you go out there and lay for him? A. I did a few times, yes sir.

Q. Why didn't you shoot him when you saw him there at his house in the evening? A. I didn't get a chance.

Q. Why not? A. Well, I used to try to get up close to his house and he had some little dogs there that used to come out and bark at us sometimes and made a commotion there and I didn't get up close to the house.

Q. Was Pettibone with you all of the time? A. Pettibone was with me when I went up at night to do them, yes sir.

Q. Every time? A. He was with me after I went to do it, yes sir.

Q. After you went to do it: Well, was he with you when you went to locate him? A. No sir, he wasn't, I don't think.

Q. What was the difference between going and locating the man and going and doing it the same time? You could do it just as well the first time as you could the fiftieth time, couldn't you, if you got the chance? A. I was going to try and learn his habits and see where he stayed and so forth.

Q. What prevented you from taking a gun along when you was going to arrive at his habits and then when he appeared let him have it? A. I didn't do it that way.

Q. Did you have to learn a man's habits in order to shoot him?

A. I did do it.

Q. You thought it was necessary that you go out and reconnoiter around and made yourself conspicuous so that people could see you or a good many people might see you and if anything happened they could say they saw a conspicuous character around there?

MR. HAWLEY: We object to it as argumentative, embracing a half a dozen questions, not for the purpose of eliciting information but simply to get an answer on one thing but that it might appear to be an answer upon another.

THE COURT: Objection overruled.

A. I don't think I looked suspicious when I looked around there or looked different from anybody else.

Q. Well, you knew, didn't you, that it would attract attention if you went around there without accomplishing anything?

A. I didn't think of that, no sir.

Q. And you thought it was necessary to know a man's habits before you could shoot him if you saw an opportunity to shoot him?

A. I used to walk around there and see if he was home, more than anything else to see where he stayed at night around the house.

Q. How many times did you walk around there alone? A. Three or four times.

Q. How many times did you walk around there with Pettibone?

A. I don't know just how many times we was up there. We was up there several times. We didn't walk around, we drove around when we was up there.

Q. Did Pettibone ever go with you when you walked?

Q. How many times did you ~~drive~~ walk before you got something to drive with? A. I was up there a few times. I don't just remember how many times.

Q. Now you say that a team was purchased for your use to shoot Sherman Bell? A. No sir, I don't say there was a team purchased

Q. Well, a team gotten? A. There was a team gotten first, yes sir.

Q. Now isn't it a fact that that team was a team which belonged to the Western Federation and which had been used to deliver groceries and supplies to the wives of the miners during the Cripple Creek strike? A. I think they were used for that purpose, yes sir.

Q. Isn't it a fact that the union stores at Cripple Creek were looted by the military and the Mine Owners' organization and therefore there was no further use for the team? A. I heard that they were looted, yes sir.

Q. And isn't it a fact that that team was brought down to Denver, not at any solicitation of yours or Pettibone's or anybody else's, but was brought down there to sell? A. No sir, it is not a fact.

Q. That is not a fact? A. No sir.

Q. Who did you talk with about bringing that team down there?

A. I talked with Mr. Haywood and Mr. Pettibone.

Q. They were not brought down until after the union stores were looted, were they? A. I think not.

Q. And they were not brought down until there was no further use for them in Cripple Creek, were they? A. I don't think they had any further use for them, no sir.

1089 Q. They were put into a corral down there that makes a business

of mes selling teams, weren't they? A. I think they were, yes sir.

Q. That is the very object and purpose that they were put there for, wasn't it? A. No sir, it was not.

Q. Is that a corral that keeps teams for private people?

A. I don't think they did much of a livery business that way, no sir.

Q. Don't you know that Mr. Roper, the keeper of that corral, went up to Cripple Creek to look at all of the rest of the horses and see if he could sell them also after this team had been brought down? A. Yes sir, I do.

Q. You do know about that? A. Yes sir.

Q. But still you say that this team was not brought down for that purpose? A. They were not, no sir, not when they were first brought down.

Q. Let me ask you this -- one of that team was a gray mare, wasn't it? A. Yes sir, one was a gray.

Q. And one was a brown? A. Or darkish, one pretty near black.

Q. And the grey mare was one that Pettibone took a great fancy to, wasn't it? A. I don't know that he did.

Q. Don't know that? A. No sir.

Q. Don't you know that he was trying to get that gray mare, buy that gray mare of Mr. Heywood? A. No sir, I don't.

Q. Don't you know he was trying to trade for her? A. I don't know that he was, no sir.

Q. Pettibone had had to have horses in his business, didn't he?

A. He had horses, yes sir.

Q. He had two or three single rigs, didn't he? A. He had two

horses when I know him.

Q. Two horses and two single rigs? A. Yes sir.

Q. What he used to deliver and make collections with? A. I think he used them to make collections.

Q. And his men used them to make deliveries with, didn't they?

A. They used them in their business, soliciting and carrying out goods, yes sir.

Q. And those horses were used pretty constantly, weren't they?

A. I think they were used every day.

Q. And Pettibone wanted another horse, didn't he? A. I never heard him say that he did.

Q. Now didn't he try to get from Mr. Haywood that gray mare and didn't Mr. Haywood refuse to let him have it? A. No sir, he did not.

Q. He did not? A. Not to my knowledge.

Q. You never heard of such a thing as that? A. No sir.

Q. Didn't Mr. Pettibone try to buy a horse and a buggy of some man named Vance? A. He did try to buy a horse, yes sir.

Q. Now Mr. Haywood didn't have anything to do with that, did he, that you know of? A. Yes sir, I do.

Q. What did he have to do with it? A. Well, he told us to buy a horse or to find one if we could after we told him that this team didn't suit us, that they wasn't fit to drive and the gray one wouldn't be so bad to drive but the only thing we didn't want a gray horse, it would look too conspicuous; we was going to get a horse that they couldn't tell the color of.

Q. You wanted a dark horse? A. Yes sir, wanted a dark horse.

Q. One of the teams was a dark horse? A. It was all used up so

that it wasn't fit to drive.

Q. That gray mare, was she all used up? A. Not so bad as the other one.

Q. Isn't it at that very time that you are talking about that a man named Joe O'Brien had offered Mr. Haywood $250 for this used up team that you describe? A. I don't remember the name of O'Brien. I remember Mr. Roper made him an offer for them.

Q. Was that $250? A. I don't remember just how much it was. It was something over $200, might have been $250.

Q. For a team that was all used up according to your statement?

A. For the team, wagon and harness, yes sir.

Q. And the team were all used up, were they? A. They were used up quite bad, yes sir.

Q. So bad you couldn't use them to go out and shoot Bell with?

A. They were not fit to drive, were not good drivers.

Q. And Mr. Haywood would not sell them to Mr. O'Brien because he wanted more money than $250, isn't that right? A. I don't just remember about Joe O'Brien. I remember about Roper making an offer.

Q. Well, he wouldn't sell them to Roper for $250, would he?

A. I don't think it was $250, I think it was somewhere about $200. It might have been $250, but I don't remember.

Q. But, however, what it was Haywood wouldn't sell them because the price wasn't enough? A. This man that brought them down there said he could get more at Cripple Creek.

Q. Told Mr. Haywood he could get more in Cripple Creek than you could in Denver? A. Yes sir.

Q. Still you think they were not brought down to Denver for the

purpose of being sold? A. No sir.

Q. And put into that corral? A. No sir, I don't think they were.

Q. If you wanted a horse to go out and shoot Sherman Bell with how do you explain that they brought down two horses?

A. Well, they brought the team down so that we could take one of them.

Q. In order that you get one horse to go out on your expedition against Bell they brought you two? AA. The rigs they had up there -- they started with three horses I think -- the rigs they had up there were all double rigs I think.

Q. That is the way you account for it? A. I am putting that construction on it myself.

Q. And notwithstanding the fact that one of these was a brown horse you wouldn't take that brown horse but you went out and bought another brown horse, is that the idea? A. We didn't want them horses because they was used up too bad.

Q. Now isn't it a fact that Mr. Pettibone bought this horse himself of Mr. Vance or the negro, and the wagon -- A. No sir, it is not a fact.

Q. And isn't it a fact that Mr. Pettibone paid for that horse and that rig -- A. No sir, it is not a fact.

Q. And isn't it a fact that he bought it for $110? A. No sir, it is not a fact. The price might have been $110, I don't think it was.

Q. How long had this rig been down there before that horse was bought? A. Some little time, possibly two or three weeks.

Q. Two or three weeks? A. I wouldn't say exactly.

Q. And you had asked the privilege of driving that team, had you?

A. Yes sir.

Q. Well, now, are you sure about that? A. Yes sir.

Q. Didn't you as a matter of fact, didn't you as a matter of fact, go down and get the team and drive it without anybody's having any knowledge of your doing so? A. No sir, I didn't.

Q. From Mr. Roper? A. No sir.

Q. Telling him you had authority to drive it? A. I didn't until after I had seen Mr. Haywood and he had given me authority to get them.

Q. How many times did you drive that team? A. I don't know, probably six, seven or eight times. I drove the time double I think only once, though. We used to drive the horse single.

Q. At the time that you were driving that team you were not doing anything on Sherman Bell? A. No sir.

Q. It was after you bought your other horse that you commenced on Sherman Bell, was it? A. Yes sir.

Q. When was it that you bought that other horse? A. I don't know just when it was. I think it was some time in August.

Q. You bought him for the express purpose of killing Sherman Bell, that is what you bought him for, and that was the only purpose and use you had for the horse? A. That is what we were going to use him for, yes sir.

Q. Going to kill Sherman Bell and then you were through with the horse and buggy? A. Yes sir.

Q. Don't you know that Pettibone used that horse and buggy every day in his business right straight along? A. I know he used it quite often.

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Q. In his business, didn't he? A. Yes sir.

Q. And that he bought it for that purpose? A. No sir, he didn't buy it for that purpose.

Q. Then you hitched it up nights and drove it, did you?

A. Yes sir.

Q. You was there to kill Sherman Bell and going to find a means to do it with and wanted to have a horse to do it with and yet you went away inside of two weeks after the horse was bought, didn't you? A. I don't know just how long, it was something like that.

Q. Just about two weeks after Pettibone had that horse before you went away and left the country? A. I couldn't just say how long a time it was.

Q. And you didn't kill Sherman Bell, did you? A. No sir, we did not.

Q. How many times did you go out there with that horse to kill him? A. I couldn't tell you just how many times, we went out there several times.

Q. Well, how many, about how many? A. Maybe a dozen times or more.

Q. Well, then, you rode out there with that horse and buggy every night after you bought him until you went away?

A. Went nearly every night, yes sir.

Q. Why didn't you go every night? A. I don't know exactly why we didn't.

Q. This was urgent business, wasn't it? A. Not so very I don't think.

Q. Right in your line, wasn't it? A. It was what I was doing.

1015 Q. A thing you was anxious to do, wasn't it? A. I was doing it.

Q. So every night for twelve nights or nearly every night for

twelve nights you hitched up that team and went out around Sherman Bell's house with it watching for a chance to shoot him? A. I went out there I don't know that it was just exactly twelve nights, somewheres about there.

Q. And you didn't get any opportunity to shoot him? A. I didn't get an opportunity to shoot him, no sir.

Q. How long did you stay out there? A. Not very long, possibly an hour or so.

Q. Sherman Bell's method of going home was to go out on a Colfax Avenue car, wasn't it? A. I never seen him come home at night.

Q. Always got home before night, did he? A. I always seen him there before night.

Q. Don't think that was because Sherman Bell was afraid of you, he says he isn't afraid of anything. A. I don't know anything about that.

Q. But notwithstanding you laid around there all of that time you never saw him after you got that horse? A. I saw him once or twice, yes sir.

Q. Where did you see him? A. I seen him on the front porch of his house.

Q. Why didn't you shoot him? A. Well, because it was dark where he was sitting and it was light where we would have to go up to do it.

Q. What made it light where you had to go up to do it?

A. An electric light on the corner.

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Q. That electric light was a permanent fixture there, had been

there all the time, hadn't it? A. Yes sir.

Q. You didn't calculate to kill him on his front porch, you calculated to kill him somewheres else? A. Calculated to get up between the two houses if I could.

Q. Was there anything to prevent you shooting him when you saw him out on the porch? A. I tried to get out there a few times and these little dogs that I speak of used to come up there and make a commotion, and a man came out of the back end of the house once; it was dark and I couldn't see who it was.

Q. It was the little dogs that saved him? A. Perhaps it was.

Q. Now did Pettibone sit out there in the buggy and wait for you? A. He was out in the buggy in the park, yes sir.

Q. He was would sit out in the park and wait for you while you would go and try to shoot Sherman Bell? A. I don't know as he stayed right there, he drove up and down some in the park.

Q. How far is that park from Sherman Bell's house?

A. It comes right up to his house on the back side of it.

Q. On 13th Avenue? A. Yes sir.

Q. And his house faces 13th Avenue and the rear end of the house is on the park? A. Right up to the park, yes sir, the yard is.

Q. Moyer got home from the Chicago convention about when?

A. I don't know just what time he did get home from the Chicago convention.

Q. When did you talk with Moyer? A. About this?

Q. No, about anything. A. Well, I talked with Moyer once or twice but not about this proposition.

Q. Did you talk with Moyer about killing Sherman Bell at all?

A. I didn't only the time I have spoken of.

Q. When was that? A. When he come from Los Angeles, California.

Q. Now after the Chicago convention Moyer had gone off on a trip of visiting the vr ious local lodges of the order, hadn't he?

A. I don't know just what he went for.

Q. Well, did he go to Los Angeles because he was in ill health?

A. That is what he said he was going f or.

Q. Because he was in ill health? A. Yes sir.

Q. Moyer had been in ill health from the time he had been let out of the military prison at Telluride, had he not? A. I think he had, yes sir.

Q. And was a very sick man at that time? A. He said he was sick, yes s ir.

Q. And the very first thing after he got home you had a conversation with him, did you? A. Soon after he got home, yes sir.

Q. Did you at once tell him you was trying to kill Bell at that time? A. Yes s ir, I did.

Q. Wasn't that before you started on Bell? A. No sir, it wasn't.

Q. You didn't start on Bell until August, did you? A. I think it was in August, yes sir.

Q. Think it was in August? A. Yes sir.

Q. You think Moyer hadn't gotten home until August then?

A. He didn't got home, I don't think, from California until August. I think it was in August.

Q. Had he gone from the Salt Lake convention to Chicago?

A. I think he went after he came back, went to Chicago from the Salt Lake convention, yes s ir.

Q. Had he stopped in Denver on his way? A. I think he had, yes sir.

Q. Had you seen him? A. I am not quite sure whether I had or not.

Q. Do you remember of anything, of saying anything to him at that time? A. I am not quite sure whether I seen Mr. Moyer or not.

Q. Did he come back to Denver after he was at the Chicago convention before he went to California? A. I think he did.

Q. Did you see him then? A. Well, I am not quite sure whether I did or not. I think I did.

Q. Did you hav eany talk with him? A. I talked with him if I seen him. I think I seen him and talked to him, but I am not positive whether it was then or not.

Q. Now think again and tell us what the conversation was.

A. Well, I am not sure that I seen him.

Q. Not sure that you talked with him? A. No sir, I am not.

Q. And of course if you didn't see him you didn't talk with him?

A. I don't think I did.

Q. If you did see and talk with him the subject was such that you have no remembrance of it at this time? A. I don't have any remembrance of it, no sir.

Q. And then he went to California and stayed there for some time and returned to Denver? A. Yes sir.

Q. And about that time you did work on Sherman Hall? A. Yes sir.

Q. And did you tell him about that? A. Yes sir, I did.

Q. You did? A. Yes sir.

Q. What did he say to that? A. Well, he said we would have to

1049 out that out here in Denver.

Q. He didn't say anything about the Peabody, about the Goddard or

the Gabbert matter? A. Well, I don't know that -- I rather think that I talked to Mr. Moyer about it, but I am not positive. I think I seen him and told him about it.

Q. Didn't you tell us in your direct examination that he told you to cut ut the Gabbert and the Goddard matter because he didn't want anything to happen? A. No sir, he didn't.

Q. He hadn't said to you that he was a sick man up to that time?

A. I don't remember that he had. He said he was sick, of course, the first time I seen him.

Q. You knew, of course, didn't you -- his appearance showed it?

A. Yes sir, it did.

Q. That he was a sick man? A. Yes sir, it did.

Q. From the time he came out of the bull pen at Telluride he had remained a sick man, had he not? A. He looked like a sick man to me and he said he was sick.

Q. And he had remained a sick man from that day to this, hasn't he?

A. He was sick the last time I seen him.

Q. And he was a good deal sicker that time than he is now, wasn't he? A. I couldn't tell you how he is now.

Q. Did he say the last time you saw him -- A. I don't know how he is now.

Q. Didn't he tell you? A. He looked worse the first time I seen him after he come from Telluride than he did when I left him in Telluride or he did when I left him in Ouray.

Q. But he was a very sick man all of the time, you would think, to look at him, wouldn't you? A. He didn't look well when I seen him, no sir.

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Q. So he told you you could cut out this Sherman Bell matter

because he didn't want anything to happen while he was there?

A. Yes sir, he did.

Q. And gave you as the reason that he was a sick man? A. Yes sir, he said he couldn't stand another time in jail like he had down at Telluride and if we did get Sherman Bell very likely they would come and arrest him.

Q. So that was the occasion of your ceasing on Sherman Bell, was it? A. Yes sir.

Q. You didn't do anything to him? A. I think Pettibone and I went out there one night, but I am not positive. I think we did.

Q. Well, now, was that the first talk that you had with Moyer that you remember of after the talk which you had had with him in March before he went into the military bull pen, before he was arrested? A. No sir, it wasn't the first talk.

Q. You had had some talk between the two times, had you?

A. Yes sir.

Q. One of them was a talk with reference to Peabody? A. Yes sir.

Q. But no talk with reference to Gubbert or Goddard? A. I don't think we had any talk, no sir. I am not sure. We might have talked about them.

Q. With the exception of the talk then about Peabody you had no talk with him up to this time? A. Well, I am not sure. I think I did talk to him. I think I talked to Mr. Moyer when he came back from Salt Lake or when he came back from Chicago, and possibly both times, but I don't remember positively.

Q. Wasn't Moyer just as sick when you talked with him about Peabody as he was when you talked with him about Sherman Bell?

A. I don't know, wasn't very well.

Q. Did he say anything about cutting it out as against Peabody for that reason? A. No sir, he did not. He said he didn't care if we went down there and blew up the whole town.

Q. Willing you should go down there and blow up the entire town of Canon City? A. Yes sir, as long as he was away from it.

Q. Yet when you was going to kill Sherman Bell he told you not to let that happen because it would be laid to him? A. He said he didn't want anything done in Denver like that while he was there.

Q. Because he was a sick man? A. He said he didn't want to get arrested again because he couldn't stand another jail siege like he had at Telluride.

Q. Because he was a sick man? A. Because he didn't want to get in trouble, and sick, too.

Q. Now that talk occurred where? A. We first spoke about that on the street.

Q. You met him on the street, did you? A. Yes sir.

Q. Whereabouts? A. I can't tell whereabouts. I think that we was into -- went into a restaurant to have dinner, I think the Albert restaurant.

Q. You and he together, did you? A. I think that is the time that we had the talk.

Q. Had you been to headquarters before that? A. Yes sir.

Q. Had you talked with him at headquarters? A. No sir.

Q. Was Haywood at Headquarters? A. Yes sir, sometimes.

Q. What? A. Some of the times he was there.

Q. No, I mean the time you are now talking about. A. Well, I don't know, I don't know that I had been there right then.

Q. Didn't you say in your direct examination that you had a general talk at headquarters with Moyer, Haywood and Pettibone?

A. Yes sir, I did.

Q. On the subject of your leaving Colorado? A. Yes sir.

Q. And on the subject of your leaving off as to Sherman Bell?

A. I don't say that we had that conversation at headquarters until after I had had this talk with Mr. Moyer.

Q. Very well then. The first thing that you knew about your leaving off on Sherman Bell was your talk with Moyer?

A. Yes sir.

Q. Now was there any talk about what else you were to do?

A. There was the next day.

Q. Did you ask Moyer for any money then? A. No sir.

. Or Haywood? A. No sir.

Q. Or Pettibone? A. No sir.

Q. Now the next day you had a meeting, did you, in the office?

A. Yes sir.

Q. All four of you were present at that meeting at the one time?

A. Yes sir, we were.

Q. And that was the first time that anything was mentioned about your having another job outside of Denver? A. It was the first time we mentioned that job.

Q. The first time you mentioned that job? A. We had talked about these things before but nothing definite.

. As to what you were going to do up here? A. I had heard that discussed, yes sir, that thing what I was going to do.

1053 Q. When had you heard it discussed, and where? A. I had heard Haywood often speak of wanting to get Mr. Steunenberg out of

way.

Q. You had heard Haywood speak of it often? A. Yes sir, I had.

Q. Had he ever said anything to you about doing it? A. No sir, nothing definite.

Q. How often had you heard him speak of it and where?

A. I couldn't tell you just where. It was during conversations that I had with him after I got acquainted with him that he spoke about he would like someone to get Steunenberg out of the way, that he had sent two or three men down here to put him out of the way and they hadn't accomplished it.

Q. When did he say that? A. Well, he said it in conversations; he told me one time when Pettibone and he and I were talking in his back yard about sending Steve Adams down here.

Q. That was on a Sunday afternoon? A. It was, yes sir.

Q. Well, was that the place where your trip to Idaho originated? Out there in that back yard? A. No sir, it was not.

Q. The place where it originated was in his office, was it?

A. It was in Mr. Moyer's office at headquarters, yes sir.

Q. That was a general meeting there of yourself and Pettibone and Haywood and Moyer? A. Yes sir, it was.

Q. Was there anybody else in the office? A. Nobody in the office we were into.

Q. Was there anybody in the entire office? A. Yes sir.

Q. How many people? A. I couldn't tell you just how many people. There were several of them there.

Q. Were any people coming in and going out while you was talking?

A. Not in those offices.

1054 Q. Anybody get up and look the door? A. Yes sir, the door was

Testimony of Orchard of Steunenberg

Highlighting
Summary

locked.

Q. Who locked it? A. I think Mr. Moyer did.

Q. You think he did? A. Yes sir.

Q. So you were all three assembled there together and he got up and locked the door and you had a private talk, did you?

A. He fastened the door of the room we were in, yes sir.

Q. How did you come to go there that day? A. At Mr. Moyer's request.

Q. Where did he make that request? A. I met him the night before.

Q. How did Mr. Pettibone come to go there? A. I told Mr. Pettibone about it. He wanted to come down there.

Q. Did Moyer tell you to bring Pettibone with you? A. Yes sir.

Q. How did Haywood happen to be there? A. Haywood was in the office, his own office.

Q. This was in the daytime, was it? A. Yes sir.

Q. Now when you got into that office, you four men together, who was the first one that said anything? A. Well, I think it was Mr. Moyer. Mr. Moyer said that he wanted this work out out in Denver and there was some outside work he wanted done and we might as well have it done then.

Q. He had already told you that he wanted the work out out in Denver, hadn't he, the night before? A. Yes sir, he had.

Q. Notwithstanding that fact you still ~~you~~ went up there that night to see if you couldn't get Sherman Bell? A. I think we went up there that night or the next night, I am not sure which.

Q. To see if you couldn't get Bell? A. Yes sir; it was the next night, it wasn't that night.

Q. So that even after he had told you that he wanted that work cut out in Denver you went up that night, did you?

A. He said he wanted it cut out while he was there, but the next night he went out, the next afternoon, a fishing up in the canon somewhere, and Pettibone wanted me to go out with him and try it once more.

Q. So you thought you might have another whack at him while he was out fishing? A. That is what we did anyway.

Q. But you didn't have any luck that time? A. No sir.

Q. Still down on your luck? A. Didn't have any opportunity to do it.

Q. Let us get to this matter -- you do say, do you, Moyer went fishing? A. Yes sir.

Q. Where did Moyer go fishing or where did he say he was going?

A. I think he went up Platte Canon somewhere. I am not positive just where.

Q. You know about that, do you? A. Moyer said he was going.

Q. Did he go alone to fish? A. I don't know. I don't think so. I don't know who went with him.

Q. Did he go so you could go that night and shoot Sherman Bell?

A. No sir.

Q. There was nothing said that night? A. No sir.

Q. Now Moyer said he didn't want anything brought off while he was there in Denver but there was some outside work which you should do? A. Yes sir.

Q. And the first thing he mentioned was about John Neville, was it?

A. Yes sir.

Q. He said John Neville knew too much about the Independence depot explosion? A. He said he knew too much, yes sir.

Q. And that John Neville had been up there to him and told him if he didn't give him $1200 he would peach on him? A. That is— yes sir, he would tell what he knew about it.

Q. Tell what he knew about it? A. Yes sir.

Q. Well, that was a statement which purported to have been made to Moyer by John Neville as you understood it, was it?

A. Yes sir, it had been made to Moyer.

Q. Where Neville had demanded the money, $1200? A. That is what they told me, yes sir.

Q. Now you know, don't you, as a matter of fact that Moyer was arrested on or about March 23rd of 1904 and that he was kept in a military bull pen until about July 10th of 1904, covering the entire period of the Cripple Creek explosion, the ~~Independence~~ Independence depot explosion? A. I believe it was somewheres about that time, I am not sure about it.

Q. And you know that Moyer did not, and in the very nature of things could not have known about the Independence explosion except what he had been told, didn't you? A. I don't think that he did only what he seen in the papers.

Q. Did it strike you as rather remarkable that Neville was going up there to get $1200 from Moyer when Moyer was in jail at the time this Independence explosion occurred? A. I don't know that it did.

Q. Didn't think about that, did you? A. I didn't think about it. I think Mr. Neville used to think that I got money from them.

Q. You think that Mr. Neville used to think that? A. I know that he thought I got money from them.

Q. You know that he did? A. Yes sir.

Q. And so he thought he could go up there and get money from Moyer, that is the way you explain that, is it?

A. He apparently did go.

Q. Although Moyer had had no part in the Independence depot explosion whatever? A. I don't think he had.

Q. And couldn't have had? A. No sir.

Q. Well, you think you know as much about the Independence explosion as anybody, don't you? A. I think I do.

Q. Well, you know, don't you, that Moyer didn't have anything to do with it in any way, shape or form? A. Yes sir, I do know.

Q. And yet John Neville, he told you, was up there to get $1200 from him on account of his participation in that matter?

A. Yes sir, on account of what he knew he went up there to try to get $1200. That is what they told me.

Q. And so Moyer, who could prove a clear alibi on the Independence depot explosion, wanted John Neville because he had been up there and demanded $1200 from him? A. Yes sir, he did.

Q. And deputed you to go and kill him? A. He wanted me to go, yes sir.

Q. And you went off and forgot all about it? A. Well, I didn't go to do it.

Q. Although you told him that you were going to do it? A. Yes sir, I did.

Q. Agreed with him that you would go and kill John Neville?

A. I told him I would go, yes sir.

Q. And you reported for awhile here after you commenced to make your confession, didn't you, that you had killed John Neville? A. Not after I made my confession, no sir.

Q. And so he thought he could go to Grove and get money from Moyer, that is the way you explain that, is it?

A. He apparently did so.

Q. Although Moyer had no part in the Independence depot explosion whatever? A. I don't think he had.

Q. And I didn't understand? A. No sir.

Q. Well, you didn't have to work about the Independence depot on anybody, don't you? A. I think I do.

Q. Well, you know, don't you, that Moyer didn't have anything to do with it in any way, shape or form? A. Yes sir, I do know.

Q. And yet John Neville, he told you, was to Grove to get $1000 from him on account of his participation in that matter?

A. Yes sir, on account of what he knew he went up there to try to get $1000. That is what they told me.

Q. But on Moyer, who could prove a alibi right on the Independence depot explosion, needed John Neville because he had been up there and demanded $1000 from him? A. Yes sir, he did.

Q. And induced you to go and kill him? A. He wanted me to go, yes sir.

Q. And you went out and fetched all alone by? A. Well, I didn't go to do it.

Q. Although you told him that you were going to do it? A. Yes sir, I did.

Q. Knowing that you would go and kill John Neville? A. Yes sir, I did.

Q. And you admitted yourself that Neville here after you commenced to see Moyer and Grove, didn't you, that you had killed John Neville? A. But not I made my confession, sir.

Q. Exam

Q. You didn't tell anybody that you had killed John Neville?

A. I told them before that I had killed him, yes, before I was arrested quite a while.

Q. You told somebody that you had killed John Neville? A. I told Mr. Pettibone, or wrote to him, and wrote to Mr. Meyer that I had.

Q. You did? A. Yes sir.

Q. And you had changed your story on that when you found as a matter of fact Mr. Neville died a natural death from a cause that was bound to have resulted in death? A. No sir, I didn't change my story on that account, I never changed my story after I made a confession.

Q. Didn't you make an investigation or didn't you ascertain that Mr. John Neville died of what was called carcinoma of the rectum, a disease that could not have resulted from poisoning at all? A. The way I knew John Neville died was a letter from Mr. Pettibone first.

Q. That is the way you knew it? A. Yes sir.

Q. And then you wrote back to Pettibone you had killed him?

A. I wrote back and told him I had sent a man down there to do the job.

Q. And that was not true? A. No sir, it was not true.

Q. And you hadn't done anything of the kind? A. I had not.

Q. When you told Meyer you would kill him you intended to do so, didn't you? A. No sir, I did not.

Q. Didn't expect to kill him at that time? A. No sir, I did not.

Q. Then you lied to Meyer, did you? A. Yes sir, I did.

1059 Q. Although he started you out on a trip by which you were to go

and kill him as well as another man? A. That is what I told him I would do.

Q. Now theonly object and purpose that Moyer had in that conversation, so far as he expressed it, was for you to go and get rid of Neville? A. That was part of it. He had some other object.

Q. So as to keep Neville from blackmailing him about the Independence depot explosion? A. He said he was afraid of Neville. He said he had been up there and boned him for $1200 and he didn't know how much he knew, he thought he knew too much, knew too much to be alive, he thought if they got him out of the way we would be pretty safe in what had been done up there during the trouble.

Q. Did you tell him what Neville knew? A. I told him he didn't know anything.

Q. So in order to conceal a crime which you knew all about and which Moyer knew nothing about you agreed to go out and kill Neville, did you? A. I told him I would, yes sir.

Q. Told him that you would? A. Yes sir.

Q. And you knew at the time that Neville knew nothing about it?

A. I knew that he knewonly what he surmised. I hadn't told him anything personally. I did tel him since that that I did blow up the Independence depot.

Q. And you told Moyer that Neville knew nothing about it at that very time, didn't you? A. Yes sir, I did.

Q. Did Haywood say anything about Neville? A. He talked about him, yes sir.

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Q. Haywood started off on some other man that he wanted killed,

didn't he? A. Yes sir, he did.

Q. Who was the man that you sent to kill Neville?

A. I didn't send anybody.

Q. You wrote Pettibone that you did? A. Yes sir.

Q. Did you tell him the name of the man? A. I think I did.

Q. What was the name of the man that you sent -- that you told him you had sent to kill Neville? A. I think his name was Shoddy or Wyatt. He went by both names.

Q. But the same man, was it? A. Yes sir.

Q. Sometimes you called him Shoddy and sometimes you called him Wyatt? A. The name I knew him by was Wyatt but he had went by the name of Shoddy.

Thereupon the court cautioned the jury and the jury were ordered to retire in the custody of sworn bailiffs.

The defendant and the witness were remanded to the custody of the sheriff, and an adjournment was hereupon taken until 1:30 P. M.

Boise, Idaho, Wednesday, June 12, 1907.

1:30 o'clock P.M.

Parties met pursuant to adjournment.

The clerk called the names of the jurors and announced all present./

WITNESS HARRY ORCHARD ON THE STAND.

CROSS EXAMINATION CONTINUED

BY MR. RICHARDSON:

Q. Have you told us all that Moyer said at that conference?

A. I don't know that I have. I don't know whether I have or not.

Q. Tell us all that Moyer said? A. I would like to know what I said last. I forgot the last question you asked me.

Q. You spoke about the killing of Neville, that Moyer spoke with regard to that. A. Yes sir.

Q. How did Moyer speak ~~in~~ with regard to Steunenberg?

A. He spoke about it afterwards, yes sir.

Q. I want -- in that conference now, that was the conference where you were starting out on a trip to do execution upon the bodies of two men? A. Yes sir.

Q. Neville and Steunenberg? A. Yes sir.

Q. Now I want to get all that Mr. Moyer said upon that subject at that meeting where you, Moyer, Haywood and Pettibone were present. A. Mr. Moyer said about Mr. Steunenberg that he thought that if we got away with him that it would have a good effect after letting him go some years or so long, and to send those letters from Paterson, New Jersey, he thought it

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would be laid to the Federation anyway, and on account of the opposition he had shown to these when he was governor --

Q. On your direct examination you said that Haywood made that statement about the letters from Paterson, New Jersey, didn't you? A. I said he did, yes sir. He spoke after Mr. Haywood had spoken.

Q. Oh, he did? A. Yes sir.

Q. Well, perhaps it would be better then if you give it to us in just the way it occurred, mentioning the name of each one who made a statement and what statement he made. A. I couldn't tell all the conversation; I can tel in effect what each one said or very nearly.

Q. This was the most important conference that you had ever had with these men, wasn't it? A. I don't know whether it was that way or not.

Q. This was the first time that there had ever been more than one person mentioned who was to be killed, wasn't it, by name?

A. No sir, it was not.

Q. At a single conversation? A. No sir, it was not.

Q. Well, then, this was an important conversation that you had?

A. I don't know how important it was.

Q. And it involves the subject which Mr. Haywood is on trial for here now? A. Yes sir.

Q. So I want to know all about it. You went in there and sat down. Who was the first one that spoke and what did he say?

A. Mr. Moyer spoke first after we all got in there and said that he wanted that thing cut out in Denver, that we had some outside work to do and we might as well do it now, that he didn't

[illegible] be laid on our Senior [illegible], in the account of the
[illegible] condition in [illegible] which [illegible] --

Q. On your direct examination you said that it [illegible]
statement about the 1 [illegible] from [illegible]. The Journal, [illegible]
[illegible] A. I [illegible] it, yes sir. He [illegible] other [illegible] Dayton
[illegible] room.

Q. Oh, [illegible]? A. Yes sir.

Q. [illegible]

A. [illegible] any if [illegible], [illegible]
made a statement and [illegible] Q. [illegible] said it
[illegible] all the conversation; I [illegible] statement that [illegible]
said or very nearly.

Q. This was the most important conversation that you [illegible]
with Dayton, wasn't it? A. I don't know whether it was
that way or not.

Q. [illegible] a great [illegible] and [illegible]
[illegible]

A. No sir, it was not.

Q. At a [illegible] conversation? A. No sir, it was not.

Q. Well, then, this was an important conversation that you had?

A. I don't know how important it was.

Q. And it involves the subject-matter Mr. Hayward is on trial
for here now? A. Yes sir.

Q. He wants to know all about it. You want to have our [illegible]
[illegible] Q. [illegible] and what did he say?
A. [illegible] Q. [illegible] Denver, [illegible]
[illegible] do [illegible] it [illegible] A. [illegible]

Summary for Hayward

want anything pulled off in Denver while he was there.

Q. What did anybody else say when he said that, if anything?

A. After he spoke about Mr. Neville and so on Haywood said he wanted -- he would like to get Mr. Steunenberg out of the way too; that was some outside work he wanted done.

Q. Then Moyer didn't speak about Steunenberg at all? A. Not first he didn't.

Q. He spoke about Neville? A. Yes sir.

Q. Then Haywood took it up and commenced to talk about Steunenberg?

A. Yes sir.

Q. Now what did Haywood say about Steunenberg? A. Haywood said that he had always wanted to get him out of the way. He said he had sent three or four men down there, and said that Mr. Boyce wanted it done too, and he wanted to put him out of the way so that if anything happened that he got out of office he would have that done anyway. He said afterward we had done that we would go back to Paterson, New Jersey, and write some letters from there to these other men, to Mr. Peabody, to Bell, he spoke of Judge Gabbert, Judge Goddard and some of the mine owners, and he said that he didn't know what would be worse than that, it would be like a living death to know that some man was on their trail and didn't know who it was, and tell them that the only way that they would avoid getting what Steunenberg got was to die.

Q. So there was to be no further attempt directly upon Gabbert, Goddard and Bell? A. No sir, not then.

Q. But Steunenberg was to be killed and then you were to go back to Paterson, New Jersey and write these letters? A. I don't

Sergeant v. Steunenberg

know that it was said I would go, said "we were to go".

Q. Who was to go back to Paterson, New Jersey? A. I don't think there was anyone mentioned who was to go.

Q. Don't think so? A. No sir.

Q. Don't know who was to go back to Paterson, New Jersey, except that somebody was to go? A. No sir, that was all.

Q. That Steunenberg should be killed? A. Yes sir.

Q. And Haywood said that all the same time, did he, when he spoke about killing Steunenberg? A. Yes sir, he said it in effect.

Q. I suppose he mentioned the names of all the different men whom he had sent up here to kill Steunenberg, didn't he?

A. He mentioned the names of some of them, yes. I don't know that he mentioned the names right there who he had sent. He had told me before that.

Q. Did he mention the names of anybody who Ed. Boyce had sent up to kill Steunenberg? A. No sir, I don't think he did.

Q. Did he say Ed. Boyce had sent anybody here to kill Steunenberg?

A. No sir, he did not.

Q. All he said about that was that Ed. Boyce had always wanted to get rid of Steunenberg? A. Yes sir, he did.

Q. Was that the language that he used "to get rid of Steunenberg"?

A. I don't know that that was the exact words. He said that in effect.

Q. Did he say Boyce wanted Steunenberg killed? A. He said he wanted him out of the way or killed.

Q. He had wanted that ever since 1899? A. I don't know as he said at the time only he wanted it done.

Q. You knew Boyce had ceased to be president of the Western

Federation as early as 1899, didn't you? A. I think it was about that time.

Q. Been more than four years before that that Boyce had ceased to be the president of the Federation? A. I don't think it would be four years. I don't know just the time that he had ceased to be president.

Q. Well, over three then? A. I think about that.

Q. Did he say where Boyce was? A. I don't know as he said then, no sir.

Q. Or what Boyce had done toward getting rid of Steunenberg?

A. He didn't say that he had done anything that I remember of.

Q. What did he say that he had done? A. Who?

Q. Haywood. What did he say he, Haywood, had done?

A. He said he had sent two or three men -- three different men I think he said down here to get him and that they had all failed.

Q. Who were the men? A. One of the names was McCarthy, one was Easton and one was Ed. Kinster and another was Steve Adams.

Q. Well, that was four men, wasn't it? A. Yes sir.

Q. You said he had sent two or three men down here. A. Well, he said three or four men. He mentioned these names to me before that.

Q. He mentioned four men? A. He mentioned those names, yes sir.

Q. Did you know McCarthy? A. No sir.

Q. Do you know him now? A. No sir.

Q. Had you ever heard of him before? A. Nothing only what Haywood told me about him.

Q. Did Cap. McParland tell you anything about him? A. No sir.

Q. Don't know anything about McCarthy? A. Except from that statement, that is all.

Q. Was that Mr. Minster the same Ed. Minster you have mentioned before? A. Yes sir.

Q. And Art Baston the same Art Baston you have mentioned before? A. Yes sir.

Q. And Steve Adams of course is the same one? A. Yes sir.

Q. Did he say when he had sent them? A. He told me about the time he sent Steve Adams or I knew about the time he told me he had sent him.

Q. Did he say anything about it at that time? A. I don't know that he did about the time, no sir; I don't think he did.

Q. So all that he said about that was that he had sent those four men down here to kill Steunenberg and they had failed to do so? A. He told me about how the country was down here and where -- where Steunenberg lived, and he had understood that he got into a buckboard and drove out into the mountains tending to his sheep, and so forth, and he didn't think it would be hard to get him.

Q. Didn't think so? A. Yes sir.

Q. And you were to come down and get Steunenberg? A. Yes sir.

Q. Or you were first to go and get this man Neville, were you? A. Wasn't stated which way I would go first. Moyer wanted me to go that way first and I told him I would go the other way first.

Q. You did tell him you would go the other way first? You are sure about that? A. I told him I was going to, yes sir.

Q. Was that all that Haywood said? A. I don't know that that was all he said.

Q. Was that the substance of all he said? A. That is the substance of all he said.

Q. Is that the substance of all Moyer said? A. I think it is about the substance. I am not quite sure.

Q. What did Pettibone say? A. Pettibone said he thought it would be a hard proposition down here in a little town like that.

Q. That was after Moyer and Haywood had gotten through talking?

A. I don't know it was after, it was during the time they were talking.

Q. Did Pettibone know about the ~~case~~ town? A. I don't think he did. I know it was in a little country town.

Q. You know it was in a little country town? A. That is what Haywood said about it.

Q. Was that all that Pettibone knew about it so far as you know?

A. So far as I know, it was.

Q. Was that the substance of all that Pettibone said, it was a little country town and he thought it would be a hard proposition? A. I don't know -- he said more than that. I don't remember just what more he did say about it, he said he would like to get some more of them folks at home too before he went away.

Q. He didn't think it was a hard proposition to get Sherman Bell in a populous city? A. No sir.

Q. Nor Gabbert? A. No sir.

Q. Nor Goddard? A. No sir.

Q. Nor Peabody? A. Well, he didn't say.

Q. Nor Peabody in a little country town? A. Well, he didn't say about that.

Pettibone doubt Kansas
Hope Bloomington
Excel

Q. Canon City is a comparatively small country town, isn't it?

A. Not very large.

Q. And yet this is the first time that Pettibone had ever balked at anything? A. Pettibone said that; he said he thought it would be a hard proposition down here in a little country town.

Q. That is the first time you had ever found Pettibone reluctant about any murder or crime of any kind that had been suggested, is it not? A. I don't know as he was reluctant about this.

Q. But thought it was a pretty hard thing? A. Yes sir.

Q. To get a man who was in a country where he got on a buckboard and went into the mountains, in the hills, to see sheep?

A. That is what he said.

Q. All by himself. Well, did you discuss ways and means?

A. Yes sir.

Q. What did you say about that? A. Spoke about taking that bomb I had made.

Q. That you had already made for Peabody? A. Yes sir.

Q. Where was that? A. Buried over by the barn where we kept the horse.

Q. Now you had gotten it from Canon City then in order to bury, hadn't you? A. Yes sir, I had.

Q. When had you gone to Canon City for it? A. I had gotten it a few days before that or a little while before.

Q. How did you come to go and get it? A. Because I wanted to get it away from there.

Q. Well, why did you want to get it away from there? A. Well, so that it wouldn't be found there.

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Q. You took it down there for the express purpose of killing

Peabody, didn't you? A. Yes sir, I did.

Q. It had been there during May, June, July and part of August, hadn't it? A. It had been there some little time. I don't know that it was in May -- I think it was in May I took it down there, or in April rather.

Q. Then I didn't misrepresent you any, did I? A. I think it was in April I took it down there.

Q. It had been there in May, June, July and part of August, had it not? A. I think it was in August I went after it, yes sir.

Q. When it suddenly occurred to you you better go down there and get it because it might be found? A. I had been thinking of getting it all of the time, and I concluded I would have to get it anyway, I couldn't get anyone else to bring it up home.

Q. Had you tried to get anyone else to bring it up home?

A. Yes sir.

Q. Who? A. Marion Moore.

Q. When? A. Some time before that, a month or so.

Q. Why didn't you succeed? A. I think the letter miscarried that I sent him. He was in Leadville and I sent him a letter to ask him if he wouldn't come back by Canon City and get that.

Q. How do you know the letter miscarried? A. Well, he got it afterwards.

Q. He did? A. Yes sir.

Q. You talked with him about it, did you? A. I had afterwards.

Q. You asked him to stop and get your grip there, did you, and bring it to Denver? A. Yes sir, in the letter.

Marion Moore
Behind a pel Bank

Q. Did you tell him what was in the grip? A. I don't think I did, no sir.

Q. Didn't let him know anything about it? A. I think not. I told him afterwards.

Q. So you were willing to kill Marion Moore if necessary, was you? A. No sir, I wasn't trying to kill Marion Moore.

Q. Did you think a man could get through with that amount of dynamite that didn't know anything about and could handle it on a train of cars and there wasn't any danger to him?

A. I didn't think there was any particular danger.

Q. Wasn't any danger of that dynamite exploding since the clock had run down? A. No more dangerous than it was to carry dynamite other ways.

Q. Well, you didn't get this bomb then from Canon City at the solicitation of either Mayer, Haywood or Pettibone, you went down and got it on your own motion? A. Haywood and Pettibone know I was going after it.

Q. Well, had they asked you to go after it? A. I don't know that they had particularly asked me.

Q. Had you had a conference with them about going after it?

A. Yes sir, talked about it.

Q. Did they say it was a good thing to do? A. I told them I was leary of going after it for fear somebody had discovered it or something, but supposed I would have to go and get it anyhow.

Q. You hadn't heard anything from Canon City? A. No sir, I had not.

1071 Q. Nor had any trouble about that? A. No sir.

Q. And so far as you know the bomb hadn't gone off? A. I didn't

think it had gone off.

Q. If it had you would have heard about it, wouldn't you?

A. I think so.

Q. So in any event you went down to Canon City and got it and brought it up and buried it in Pettibone's back yard, did you?

A. No sir, I didn't.

Q. What did you do with it? A. I took it over to his residence and put it in the cellar when I first got back, it was there a day or so and then I took it and buried it by the barn.

Q. Was Mrs. Pettibone there when you came back? A. No sir.

Q. You had gone down during the time you were living there?

A. Yes sir.

Q. How long did it stay in Pettibone's cellar? A. Not very long, a day or so I think it was, before I took it over there.

Q. Then you took it out and buried it in the backyard, did you?

A. No sir, I did not.

Q. What did you do with it? A. I took it over and buried it by the barn where we kept the horse.

Q. Is the barn in the backyard? A. No sir.

Q. Where is the barn? A. It is over about the middle of the block, about the middle of the next block from where Pettibone's residence is and up off of the street.

Q. You were not referring to a barn that was anywhere near Pettibone's house? A. About a block and a half from his house.

Q. How long had it stayed buried over there? A. I don't know just how long it was there before I got it out.

Q. Still have the clock attached to it? A. It was when I got it.

Q. Well, did you detach the clock before you buried it by the barn?

A. I think I took the clock off, yes sir.

Q. What did you do with the clock? A. I fetched it with me when I come away down here.

Q. You did? A. Yes sir.

Q. For the purpose of setting off that bomb? A. If I wanted to use it for that I did.

Q. And if you didn't want to use it for that you could use it for something else? A. I could if I wanted to, yes sir.

Q. How was you going to set off the bomb with the clock?

A. Going to wind the alarm up and have a little bottle of acid with a cork into it and a string connected and wound around the alarm and when the alarm went off it would pull the cork out of the bottle.

Q. You were going to wind it around the alarm, were you?

A. Going to wind it around the standard that they wind the alarm with.

Q. That was your method of handling it, was it? A. Yes sir.

Q. Had you ever experimented with that clock to see whether it would do that or not? A. Yes sir.

Q. Where had you done that? A. Done it down at Canon City.

Q. Pettibone help you to conduct these experiments? A. I don't know as he did that one. He helped me conduct other similar ones like that.

Q. You had tried other bombs with clocks, had you? A. I don't know that we tried other bombs. We tried a clock to see if it would work that way.

Q. Now of all of the bombs that you ever made up to that time you hadn't got but one of them to go off, had you?

A. I made some when I was in Denver, we did, and throwed them and had them go off.

Q. You did? A. Yes sir.

Q. When did you make bombs in Denver and throw them and have them go off? A. Made some during the winter Adams and I was in Denver when we lived over near Globeville.

Q. And where did you throw them? A. Took them out back on the prairie there, a couple of them, and tried them.

Q. All by yourselves? A. No sir.

Q. Who was with you? A. Mr. Adams, Ed. Mohalich and myself.

Q. You manufactured bombs and went out on the prairie and threw them around, did you? A. We did a ~~[illegible]~~ couple, yes sir.

Q. And exploded them? A. Yes sir.

Q. No clock attached to those? A. No sir.

Q. Of all the bombs you had made up to that time you had only gotten one to go off, that was the Walley bomb, wasn't it?

A. No, I had gotten more than that.

Q. What other one had you ever gotten off? A. The one at the Independence depot.

Q. Was that a bomb that you set off at the Independence depot?

A. You might call it a bomb, it wasn't made in the shape of a bomb.

Q. That is what I thought. I was talking about those bombs. You had had two explosions in all, the one at the Independence depot and one that blew up Walley? A. One at the Vindicator mine.

Q. One of them was a bomb and the other one was a mine, wasn't it?

A. I don't know what you would call it.

Q. Well, the one at the Independence depot, you called that a bomb too, did you? A. I don't know; it was called a bomb sometimes.

Q. You didn't mention it as a bomb, did you, here in your testimony

A. It wasn't made in the shape of a bomb.

Q. Let us not have any trouble about it then. The only bomb that you made that went off that killed anybody was the Walley bomb, wasn't it? A. If you want to make it that way, yes sir.

Q. So that all the experimenting you had done with clocks had come to naught so far as bombs were concerned? A. We never tried to set one off with a clock before.

Q. But you had practiced with the clock, had you, to see if you could set them off? A. Yes sir.

Q. Pettibone and you together? A. Pettibone and I had, yes sir.

Q. Where did you practice that? A. In his store.

Q. In the basement or in the main store? A. In the back part of the store when he was on Stout Street.

Q. Back part of the store on Stout Street? A. Yes sir.

Q. And customers coming in and going out? A. There was sometimes.

Q. Solicitors there? A. There was solicitors there, yes sir.

Q. And people who rented desk room? A. I think they were, some, yes sir.

Q. And you and he were monkeying with these alarm clocks and reeling off wires with them? A. Monkeying with them some; we had a frame made and a clock back there that we could fasten a bottle to the alarm clock to see if we could pull the cork.

Q. The alarm had to go off, did it? A. Yes sir.

Q. Did anybody ever come back to see what you were doing there?

A. I don't remember of anybody coming while we were doing ~~it~~ it.

Q. Was there any discussion as to how much money you should have for putting Neville out of commission and killing Steunenberg?

A. Moyer told me to get what I wanted from Haywood and he asked me how much I wanted and I told him $300.

Q. You fixed the price, did you, for killing Steunenberg at $300? A. No sir, I wanted $300 to start with.

Q. To go on the trip with? A. Yes sir.

Q. To kill Neville, kill Steunenberg and get back to Denver?

A. I told him I thought $300, maybe I could make the trip on it; if I didn't I would send for more.

Q. All you had got to do was to telegraph him for more after you committed these murders, if you needed any more it would be sent to you? A. I got it anyway, they did send it to me.

Q. There was no provision made for your having more money so that there would be no occasion for your having any communication with headquarters? A. I was not to communicate with headquarters.

Q. You were not to communicate with headquarters? A. No sir.

Q. But if you got out of money you were to send in some communication and get more money? A. If I needed it I was to send for it, yes sir.

Q. What was said about that? A. Well, I was to send to Pettibone after it if I wanted any money.

Q. Who said that? A. I don't know exactly who said it. There had been an arrangement made long ago that that was the way I was to send for money if I wanted it when I was away, or send any other communications that I needed to.

Q. There was nothing then said about it at that time and at that place? A. I wouldn't say that there was exactly.

Q. So that you told them you would like $800 to go on that trip with? A. I told them I wanted that much anyway.

Q. Did Haywood hand it to you? A. He handed me $240 after that.

Q. Why did you say "that much anyway"? You could have all you wanted, couldn't you? A. Well, I told them I thought that wouldde me.

Q. When you told him you wanted $300, after that he handed you $240, did he? A. Yes sir, he did.

Q. Where did you get the other sixty, if you did get it?

A. I had got $20 from him three different times just a little while before that.

Q. That was before the talk? A. Yes sir.

Q. $20 from Haywood on three different occasions? A. Yes sir.

Q. Where had you gotten that, when Haywood paid you the $20 each time? A. I think I got it from Pettibone a couple of times and I got $20 from him once.

Q. From Haywood once? A. Yes sir.

Q. Where was Haywood when he paid you the $20? A. I am not sure where he was. I am not sure whether he was over at Pettibone's residence, or perhaps in his office. I have forgotten just where it was. Perhaps at his residence, but I don't say it was there.

Q. You remember the event of getting $20 but you can't tell me when you got it or where you got it? A. I remember of getting it three times just before that a little while, and he asked me at that time to say to Moyer that he had given me $300 and he

wanted to include that in, that $30.

Q. Who was present when you got it? A. There was no one present when I got the last money.

Q. Why should you say that to Moyer, if you knew? A. Well, I don't know. He asked me to say that to him.

Q. You don't know? A. No sir.

Q. He wasn't holding out any $60 on you, on the price?

A. I don't know what he was doing. He asked me to say that to him.

Q. You had gotten $60, hadn't you? A. Yes sir.

Q. And now you were getting $240 more? A. I did, yes sir.

Q. Which made the full $300 you had asked for? A. Yes sir.

Q. And then he told you to say to Moyer, Haywood did, that you had gotten $30 three different times and the $240 made the $300? A. No sir, he didn't tell me to say that. He wanted me to say to Moyer that I had got $300 from him then.

Q. You had gotten $300 from him but not then, is that the idea?

A. Not all of it then, no sir.

Q. Why did you allow Haywood to discount $60 for moneys already advanced? A. I didn't say anything about it, I didn't make any objection.

Q. You weren't keeping count, were you? A. Not particularly, no sir.

Q. You wasn't getting any set price? A. No sir.

Q. It didn't make any difference how much you asked forp you were entitled to it, weren't you? A. I thought there was no good of me taking too much, I might get to gambling and go broke.

Q. You was afraid you would get to gambling? A. I might get to gambling, yes sir.

Q. And go broke? A. I didn't want too much anyway.

Q. Had you gone broke at that time? A. I didn't have very much money then I don't think.

Q. Did not? A. No sir.

Q. Well, you got $300 and you had a little besides, did you?

A. I had a little besides the $240 that I got.

Q. But of the $60 that you had already got you had part of it left? A. I had a little left.

Q. So you started off to kill Johnny Neville, who lived in Goldfield, Nevada, and to kill Steunenberg, who lived in Caldwell, Idaho, with less than $300 in your pocket? A. I started off with less than $300, yes sir.

Q. And out of that you had to buy your railroad ticket, did you not? A. I did, yes sir.

Q. How much did that cost you? A. It cost me $40 for a round trip ticket.

Q. So that left you with about $200 or a little over? A. Yes sir.

Q. In all? A. Yes sir.

Q. Where did your round trip ticket read to for $40?

A. Good to go to Portland, return by Seattle and Spokane back to Denver.

Q. You hadn't started to go to Portland, Seattle and Spokane, had you? A. I intended to go around that way, to go to Seattle.

Q. And you had bought your entire round trip ticket for $40, had you? A. Yes sir, I did.

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Q. Was there a special excursion on at that time? A. Yes sir.

Q. That was after the Portland fair? A. Yes sir.

Q. And when you started from Denver you started to go to the Portland fair, didn't you, and intended to go there?

A. I thought I might go there before I come back, thought I could get that kind of a ticket cheaper than I could get any other kind of a ticket.

Q. You intended to go there too, didn't you? A. I don't know that I did; when I started I think I intended to stop off there for a couple or three days.

Q. What did you want to go to Seattle for? A. I wanted to go up there to see about a ranch.

Q. There had been some talk about that? A. Yes sir, there had.

Q. Did that talk occur at that meeting? A. I think we did talk something about a ranch at that meeting.

Q. What was said about the ranch and who said it? A. Pettibone said more about it than anybody else, and I told him that if I finished up that job it was about time I quit this business and have money enough to buy a ranch.

Q. You were getting about tired of it, were you, at that time?

A. Yes sir, I was.

Q. Was that the first time that you had ever expressed the idea that you were tired of it? A. I don't know that I expressed any idea. I didn't care very much what did become of me about that time.

Q. What had Pettibone said about the ranch? A. He said he would like to have a ranch somewhere up there, he thought that would be a good place to have one up on Puget Sound somewhere.

Ranch

Q. You had already talked about getting one in California?

A. We had talked about it a long while before that, yes sir.

Q. Now when you were up at Pettibone's house there there was quite a little talk of some friend of Pettibone's who lived up there in that country who had bought a ranch and who was living on a ranch, wasn't there? A. There was some, yes sir.

Q. There was some friend of his whom he knew up in the Coeur D'Alenes who had left the Coeur d'Alenes and bought a ranch up there? A. I don't think he had left the Coeur d'Alenes. It was a man we knew in Cripple Creek.

Q. Who was it? A. I can't call his name. It was one of the men who was tried down to Castle Rock before that. Perhaps you remember his name.

Q. Well, I don't know. There were so many of them I have forgotten what their names were. There was fourteen of them tried there and I can't remember their names. A. There was only two in this bunch. I can't call his name just now. I may think of it.

Q. Well, whoever it was then, he had gone up into that country and had bought himself a small farm there, hadn't he?

A. Yes sir.

Q. A ten acre farm, was it? A. I have forgotten just how much it was.

Q. And while you were there at Pettibone's house he got a long letter from this man, didn't he? A. He got a letter from him about that time, yes sir.

Q. And Pettibone read the letter to you, didn't he? A. I think he did, yes sir.

Pettibone read the letter

Q. And it was a very interesting letter, wasn't it?

A. I don't know how interesting it was.

Q. Well, he told how easy a life he was living out there, didn't he? A. No, he didn't say he lived a very easy life.

Q. Did he say something about clams in his front door yard?

A. He said something about clams.

Q. About raising chickens in the back yard, and so forth?

A. I don't know as he said anything about raising chickens in the back yard.

Q. Don't you remember about having a discussion with Pettibone about that letter which had been received from this man, that he could go to sleep in his house and when the tide came in it brought in the clams and when it was low that it left the clams on the beach and the chickens could go there and eat the clams and all he had to do was to kill the chickens?

A. Pettibone used to say a good many things, perhaps he mentioned something like that too.

Q. Wasn't that the discussion about that letter? A. Pettibone spoke about -- something about clams. I don't remember much about chickens.

Q. Pettibone said that if you was going up into that country if you would look it over and see if you could get one of those small ranches, he thought it would be a pretty good thing?

A. He wanted to get a ranch somewhere out near the British line, and wanted me to go up there and look at it.

Q. The man's name was Arthur Parker, was it? A. Yes sir.

Q. There was another man named Al. Jones; Was it him? A. No sir, it wasn't him. It was Parker.

Q. And another man named William Beard? A. I don't remember him.

Q. Those are the men who were tried there at Castle Rock. You think Arthur Parker was the man? A. Parker was the man the letter was from.

Q. But there was something in it, as I have said, about the clams on the front door step and the chickens in the back yard? A. I don't know that that was in the letter. I think that was a construction that Pettibone put on it.

MR. BORAH: If that letter is in your possession that is the best evidence.

MR. RICHARDSON: We haven't got that letter.

MR. BORAH: No, I suppose not.

MR. RICHARDSON: I am asking him about the conversation after reading the letter.

MR. BORAH: The letter is presumed to be in Mr. Pettibone's possession, and that is the best evidence.

MR. RICHARDSON: I am not asking him, if your Honor please, as to the contents of the letter at all. I am asking him about his conversation after reading the letter.

THE COURT: Go on, Mr. Richardson.

Q. Well, in any event, you had such a talk with Pettibone about it, didn't you? A. There was talk about that ranch, yes sir.

Q. And you were going up there to see if you could get a ranch that was similar to that one or to look the country over?

A. I don't know as I was going to get a ranch similar to that one. I was going to see if I could get a ranch up somewheres near the British line on Puget sound.

Q. Did he mention that at least two of the others who had been

tried at Castle Rock were up there in that country?

A. I think he mentioned two, but I am not sure. I didn't remember only Parker.

Q. Well, did he say anything about that Parker had stated that these other gentlemen were up there? A. I am not sure that he did. I think he spoke something about the other man Jensen. That is the only man I remember.

Q. Jenks? A. Jenks. I am not sure what he said about him.

Q. Well, that was the way the ranch story started, was it, at that time? A. That started at that time.

Q. You had already talked before that about buying Neville's ranch down in California as you have stated? A. ~~[illegible]~~

A. Talked some about it, yes sir.

Q. Well, did you start out on your trip the next day? A. I started soon after that. I think it was the next day or the day after.

Q. A couple of days after you think? A. Possibly it was; I am not sure about that.

Q. After you had this talk with Moyer, Haywood and Pettibone inthe office. A. I think I went the next evening. I wouldn't be positive.

Q. Where was your trunk? A. In Pettibone's store, the basement of his store.

Q. How long had it been there? A. It had been at his store ever since the time that -- some time when Johnny Neville brought it back from Wyoming.

Q. You had -- A. No, excuse me, I beg your pardon. It had been at his store from the time I fetched it away from Adams' house out there where we lived at Globeville.

Q. Some time in the month of April, 1905? A. March or April.

Q. Been there then April, May and June? A. I think it was in March.

Q. Well, been there four or five months then? A. Been where?

Q. At Pettibone's store? A. It had been there I think from March until I left in August.

Q. Was your trunk packed in that store? A. It had some things in it.

Q. Where was your grip? A. My grip was over at the house I think, at Pettibone's house.

Q. I mean did you pack your trunk in the store for this trip on the day that you started? A. Yes sir, I packed it down in the basement.

Q. And you put this bomb in, did you? A. I did, yes sir.

Q. At that time? A. When I packed my trunk I did.

Q. Wrapped it up and put it in the center of the trunk, did you?

A. Put it in the center of the trunk around my blanket.

Q. How large a bomb was it? A. I couldn't say just how much it weighed.

Q. What do you think? A. Probably thirty-five pounds, something like that.

Q. How much powder did you have in it? You know how many pounds of powder you had, don't you? A. I wouldn't say just how much powder. I think there was possibly twenty-five pounds in it, of powder.

Q. Do you know how much the lead weighed that made the case?

A. No sir, I don't know how much it weighed. It was pretty heavy.

Q. Somewhere between 25 and 50 pounds in this bomb? A. I think there was somewheres about 25 pounds of powder in it, I am not sure about it.

Q. Well, the whole weight of the bomb you would say was about 35 pounds? A. I should think it was 35 or 40 pounds.

Q. Might have been more and might have been a little less?

A. Yes sir, might have been.

Q. And you put that bomb in your trunk and shipped your trunk by the ordinary baggage check? A. Yes sir.

Q. Over the railroad? A. Yes sir, I did.

Q. Where did you check it to first? A. I checked it to Nampa.

Q. You checked it to Nampa? A. Idaho.

Q. What road did you come by? A. I came over the Rio Grande.

Q. Had you not, in speaking of going to the northwest with Mr. Pettibone, told him you were going over the Burlington by way of Billings, Montana? A. No sir, I had not.

Q. And when you went down to the train that night didn't Mr. Pettibone go down to meet an incoming train upon which he expected his wife? A. I am not sure that he expected a train then or not. He might have expected it that night. He went to the depot with me.

Q. Didn't he go for that purpose, to meet Mrs. Pettibone?

A. No sir, he went down with me.

Q. What time were you going out? A. I think it was 9:30, I won't say, I am not sure.

Q. And Mrs. Pettibone was expected in at fifteen minutes to ten, was she not? A. I wouldn't say positive about that. I think he expected her in that night; I am not sure.

Q. On the train that came from Chicago? A. It came from the East I believe.

Q. And that train was due just fifteen minutes after your train went, wasn't it? A. I wouldn't say about that. I am not sure that he went to meet her at that time.

Q. Now isn't it true that the Burlington train at that time which went by the way at Billings went out at about one or two o'clock in the morning but that you could get into the sleeper at nine o'clock at night if you wanted to? A. I don't know about that.

Q. You don't know. A. No sir. I never went out on the Burlington.

Q. Isn't it true that when you went down there Pettibone expected you were going out on the Burlington or you would go about when his wife came in? A. No sir, Pettibone knew that I had a round trip ticket and it was over the Rio Grande to Salt Lake.

Q. Do you say that he bought that ticket? A. No sir, I bought it.

Q. You bought it? A. Yes sir.

Q. He didn't buy it at all? A. No sir.

Q. Had nothing to do with the ticket? A. No sir.

Q. But yet you know that he knew it was over the Rio Grande road?

A. I know that I told him. I knew he was there and helped me check out my trunk.

Q. And when you took your ticket out to check the trunk didn't he say to you then that he thought you was going over the Burlington? A. No sir, he did not.

1087 Q. He did not? A. No sir.

Q. The Burlington and the Rio Grande go out of the same depot

don't they, in Denver? A. I think they do.

Q. And the Chicago train comes into the same depot?

A. I think so.

Q. There was but one depot there at that time outside of the Moffat road, which don't count? A. I think that was the Union depot.

Q. That was the Union depot? A. Yes sir.

Q. So that whatever road you were going on you would check your trunk at the same baggage room? A. I think I would. I don't know whether they all have the same baggage room or not.

Q. And go out of the same depot? A. Go out of the same depot I think.

Q. How you say that Pettibone didn't express any surprise because you were going over the Rio Grande road? A. No sir, not a word.

Q. Did not? A. No sir.

Q. Helped you to check your trunk? A. Yes sir.

Q. What was there necessary to do, what did he do to help you check your trunk? A. Stood there until I got it checked. They had to weigh it and there was some excess baggage on to pay.

Q. That is what you mean by saying that he helped you, he stayed around there while you was getting it checked? A. I don't know as he helped me do anything. He stayed there until I got it checked, yes sir.

Q. And you got it checked and paid your excess baggage? A. Yes sir.

 Q. Do you remember how much excess baggage you had? A. I don't

remember just how much, there was two dollars and something excess I had to pay.

Q. Of course I don't suppose you told them the reason that trunk weighed so much was because there was a bomb in there with 25 or 30 pounds of nitro-glycerine in it? A. No sir, I did not.

Q. Didn't consider ~~it~~ there was any danger to the ~~lives~~ lives of the people on the train at all or to yourself? A. I don't know as I was considering that very much.

Q. Did not? A. No sir.

Q. You got onto the same train all right with the bomb so far as you know? A. Yes sir.

Q. As far as Salt Lake? A. Yes sir, as far as Salt Lake.

Q. You stopped at Salt Lake? A. I did.

Q. What did you stop there for? A. To stop off to see the place, I had been there quite a little before, and to see some of the folks I knew.

Q. Stopped for a little visit, did you? A. Yes sir.

Q. Like you would when you was travelling without business?

A. Well, I stopped there.

Q. Meet any of your friends in Salt Lake? A. I met some of them, yes sir.

Q. Who did you meet? A. I met Charley Shoddy or Wyatt as they call him.

Q. Charley Shoddy or Wyatt. He was the man you wrote to Pettibone that you had sent down to kill Neville? I

1089 A. Yes sir. I met Louis Cutler.

Q. Was Charley Shoddy anybody that Pettibone knew? A. No sir, I

don't think so.

Q. Never had heard of him except as you wrote him that letter, had he? A. I don't think so.

Q. So far as you know? A. So far as I know he hadn't.

Q. You met Charley Shoddy? A. Yes sir.

Q. Did you telegraph him to meet you there? A. No sir.

Q. Just met after you got there? A. Yes sir.

Q. Who was he and what was he doing? A. He was a miner. I had know him from the Coeur d'Alenes, been with him, worked with him down in Arizona, around in Utah with him from the time I left the Coeur d'Alenes, until I went to Colorado, some.

Q. Was he a dynamiter? A. He talked about dynamiting some.

Q. Ever been associated with you in any crime? A. Nothing other than being to Wardner at the time the mill was blown up.

Q. He was there at Wardner at the time the mill was blown up, was he? A. Yes sir.

Q. And knew of your being there? A. Yes sir.

Q. Did he light one of the fuses? A. I don't know as he did.

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

Q. But he knew that you knew he was there? A. He knew from me telling him.

Q. After you had been in it together? A. Yes sir.

Q. Had you looked up Charley Shoddy? A. I didn't look him up. I run across him.

Q. What name was he going by at the time, Shoddy or Wyatt?

A. I think he was going by the name of Wyatt. I am not sure about that.

Q. What was his real name, Shoddy or Wyatt? A. Shoddy was the

name I knew him by. I think that was his real name.

Q. Think it was? A. Yes sir.

Q. And the name he was going by at that time in Salt Lake, was it?

A. I am not sure; he went by the name of Shoddy or Wyatt.

Q. How long had he lived in Salt Lake? A. He had lived around there ever since the time we came from the Coeur d'Alenes. He came from the Coeur d'Alenes with me when I came to Salt Lake first and went to Denver.

Q. Did you stay with him all of the time you stayed in Salt Lake? A. I stayed with him a good deal of the time.

Q. You did? A. Yes sir.

Q. Did you room at the same place that he did? A. Yes sir.

Q. You did? A. Yes sir.

Q. Did you have your room before he came to it? A. I am not sure whether I did. I think that-- I aint sure but what I had a room somewheres else before I met him one night and then I moved over there.

Q. Then you gave up your room and went with him, did you?

A. I aint sure about that, whether I did have a room one night before I seen him or not, or whether I met him and went over there where he was rooming.

Q. How many days did you stay in Salt Lake? A. Not very many.

Q. What were you doing while you was there? A. Just knocking around, I was out at Saltair two or three times in bathing.

Q. Out taking the salt baths, were you? A. I was out there, yes sir.

1091 Q. Anything the matter with your health at that time? A. No sir.

Q. You don't know how many days you stayed there but you think

it was two or three? A. Two or three or four days, something like that.

Q. Did you try to get anybody to go on with you on that trip?

A. No sir.

Q. Did you tell them where you were going? A. I don't know. I think I told Charley I was going to the fair or something like that.

Q. Told him you were going up to the Portland fair? A. I think I told him that. I aint sure just what I did tell him.

Q. And that is all he knew about your trip? A. I didn't tell him anything much about the trip, not at that time. But he asked me what I had been doing all of this time. He said I looked kind of prosperous. He said he had been working pretty hard. And I told him I hadn't been working much the last two or three years or the last year or so, I had found a way to make a living a little easier than work, or something like that.

Q. Did he ask you what kind of work you were doing that was easier than a miner's work, or did you tell him? A. I didn't tell him out plain.

Q. You did not? A. No sir.

Q. Intimated to him that you had found the way to do work that netted you more money than working with your hands? A. Work that was easier or something, that I didn't work much.

Q. Did you tell him you was playing cards for a living?

A. No sir, I did not.

Q. Didn't state to him that you went around the country as a card sharp? A. No sir.

Q. Didn't say anything about that? A. I didn't tell him anything about being a card sharp.

Q. That language may not be what you might have used, but did you say anything to him about your gambling propensities, whatever langunge you used? A. I might have said something to him about gambling.

Q. Didn't you tell Mr. Shoddy that the way you was making your living was by gambling? A. No sir, I did not.

Q. Either in substance or effect? A. Either in substance or effect, no sir.

Q. Didn't you tell him that you was going up into this northwest country because the fair was on there and there was a good chance for a man to make a little money at a shell game or cards? A. No sir, I did not.

Q. Said nothing of that kind to him nor to anybody else?

A. Nor to him or anybody else.

Q. Who were these other people that you met there? A. I met Louis Cutler.

Q. Who was he? A. A man that used to live in Salt Lake.

Q. You knew him, did you? A. Yes sir.

Q. A mining man? A. Used to mine some I think.

Q. Worked with you in the mines? A. No sir, never worked with me.

Q. What was he doing when you knew him? A. He had been mining some. I know him around Salt Lake.

Q. You knew him around Salt Lake when you were there mining?

A. Yes sir.

Q. And he was mining? A. I think he was mining some. He had some prospects.

Q. Was he mining in the same way you were, go out and mine awhile and then come back to Salt Lake and spend his money?

A. He used to spend his money about the same as I did.

Q. That is the kind of a miner he was. He was not a capitalist?

A. No sir, he was not.

Q. Who else did you meet besides him? A. I don't know that I met anyone that I remember of now particularly.

Q. Did you tell them anything, Louis Cutler or anybody else, anything about your mission? A. No sir, I didn't tell anything more than I have spoke of.

Q. Now you knew that Moyer expected you to go down and kill Johnny Neville? A. Expected me to, yes sir.

Q. And you stayed around Salt Lake three or four days?

A. Something like that.

Q. Was it there that you wrote to Pettibone? A. No sir, not that time.

Q. You didn't write to any of them, you didn't write to Pettibone this letter about sending a man to kill Johnny Neville until after you redd in the paper that Johnny Neville was dead? A. Not until after I got a letter from Pettibone.

Q. Stating Neville was dead? A. Yes sir, he did.

Q. You got a letter from him about that, did you? A. I did.

Q. Where were you when you got that letter? ~~xxxxxxxxxxxxxx~~

A. Salt Lake.

Q. At that time? A. No sir.

Q. That was some other time you were in Salt Lake? A. Yes sir, later than that.

Q. ~~You~~ We will probably get that when we get to it then.

Is that about all that there is of interest that occurred while you were in Salt Lake? A. I don't know of anything more.

Q. Where did you go to from Salt Lake? A. I came to Nampa.

Q. Came on to Nampa? A. Yes sir.

Q. And how long did you stay in Nampa? A. I stayed in Nampa two or three days I think.

Q. Two or three days? A. Yes sir.

Q. The first thing that you did in Nampa almost was to call up Bill Easterly, wasn't it, on the telephone? A. No sir, not then.

Q. You knew that Bill Easterly was in Silver City, didn't you? A. Not then.

Q. Didn't know? A. No sir.

Q. When did you call up Bill Easterly on the telephone? A. I called him up on the telephone from Boise when I came up through from California after Jack Simpkins went home.

Q. Well, all right. You didn't know then where Bill Easterly was? A. Yes sir, I knew then.

Q. You knew when you were at Nampa? A. I didn't know the first time I was at Nampa, no sir.

Q. You did not? A. No sir.

Q. Didn't you write a letter to Bill Easterly when you first came up into this country? A. No sir, I didn't write a letter to Bill Easterly until I came back with Simpkins.

Q. Didn't you write two letters to Bill Easterly while you were up here in this country? A. I think I did, yes sir.

Q. And didn't you call him up once and talk to him over the telephone? A. I called him up over the phone, yes sir.

Q. More than once? A. Just once I think.

Q. Now in your letters to Bill Easterly and in your calling him up over the phone you wanted Bill to come over and join you in writing hail insurance, didn't you?

MR. BORAH: We object to that. We ask for the letters as the best evidence.

Q. Of course you don't know what became of the letters that you wrote to Easterly? A. No sir, I do not.

Q. But you do know what their contents were? A. I know pretty near. I couldn't tell exactly what they were.

Q. Well, you called Bill Easterly up over the telephone, didn't you? A. I did once, yes sir.

Q. You tried to get Bill Easterly to go to Nampa or Caldwell, didn't you? A. I asked him if he wanted to come over and take part in the contract I had over here.

Q. And you told him what you was doing, was writing hail insurance, didn't you? A. No ~~sir~~ sir, I didn't.

Q. Over the telephone? A. No sir.

Q. Nor in any other way? A. No sir, I didn't tell him anything about hail insurance then.

Q. You did not? A. No sir.

Q. When did you tell him anything about hail insurance at all?

A. I told him something about hail insurance in Pueblo once when I seen him there.

Q. You didn't tell Bill Easterly what the nature of your business was then.

MR. BORAH: Are you calling for the telephone conversation?

MR. RICHARDSON: Yes.

A. Not any more than that.

Q. Not any more than that? A. No sir.

Q. Asked him if he wanted to go in with you or help you on a contract? A. Yes. He knew what I was over here for.

Q. He did know that? A. Yes sir.

Q. He told you he had a good job where he was, didn't he?

A. He told me he couldn't leave there just then.

Q. Now you didn't talk with Bill Easterly when you first got to Nampa? A. No sir.

Q. Did not? A. No sir.

Q. What did you day in Nampa two or three days for?

A. Well, I was just trying to find out if I could about Mr. Steunenberg in an off-hand way. I had met a man there that I got a little acquainted with, we used to talk quite a little about the country around here and talked some about Mr. Steunenberg, and I thought maybe he would drop something that I could pick up and learn Mr. Steunenberg's habits or where he was.

Q. You didn't get acquainted with him until after you got here, did you? A. No sir, I did not.

Q. You knew when you started that Steunenberg lived at Caldwell?

A. Yes sir, I did.

Q. And you knew that Caldwell was a small town? A. Yes sir.

Q. So that there wouldn't be the slightest difficulty about your finding out about Steunenberg if you went right to Caldwell?

A. There wouldn't be any trouble about finding out about him, no sir.

Q. And you knew the less people knew about you the better it would be for you, didn't you? A. I didn't want to go right down there until I learned something about him, so I stopped off at Kempa first.

Q. So as to let everybody know, did you, what you was here for?

A. I think I told some of them what I was here for, yes sir.

Q. So that people would generally become acquainted with you?

A. I didn't tell them the truth of what I was here for, though.

Q. No, I don't suppose so. You wasn't dealing much in the truth those days? A. Not very much, no sir.

Q. Who was this man you met? A. His name was Wilcox.

Q. Was he the only one that you talked with? A. I spoke to others, I talked to others some.

Q. So you started in with him and with others inquiring about Governor Steunenberg? A. No sir, I didn't inquire about him only in an off-hand way.

Q. What do you mean by an off-hand way? A. Well, Mr. Wilcox was speaking about the country around here and about the trouble in Colorado and he said that he had been talking to Mr. Steunenberg just a couple of days before and told me what Steunenberg had said about Governor Peabody down there, that he hadn't acted quick enough in that trouble.

Q. Hadn't anything happened to Peabody, had there? A. No sir.

Q. What day did you reach Kempa? A. I couldn't tell you just what day.

Q. Where did you stay while you were in Kempa? A. Commercial hotel.

Q. And all that you did in Kempa these two or three days was

simply to stand or and and talk with people and lead them up to talk of Steunenberg? A. I talked with Wilcox a good deal and played cards with him some.

Q. And put in your time in that way? A. Yes sir.

Q. Then you went from Nampa to Caldwell, the place that you had originally started for? A. Yes sir.

Q. What did you do with your trunk? A. Left it at Nampa.

Q. Did you know whether it had gotten there or not? A. I think I did. I have forgotten whether I did or not. I didn't take it out.

Q. You didn't open it? A. No sir.

Q. Nor present your check? A. No sir, I don't think I did.

Q. Then you really don't know whether the trunk was there or not?

A. I think I seen it there but I am not positive about it.

Q. After staying there two or three days you went on to Caldwell?

A. Yes sir.

Q. And registered at the Pacific hotel? A. Yes sir.

Q. Now Simmkins wasn't with you at that time? A. No sir.

Q. With you on that trip? A. No sir.

Q. How long did you stay in Caldwell? A. I think I stayed there a couple of days.

Q. A couple of days? A. I think so.

Q. And it took you two days to find out that Steunenberg was over here to Boise, did it? A. Well, I didn't find it out until that or about that time.

Q. Was it from Caldwell that you phoned to Easterly? A. I didn't phone to Easterly then.

 Q. Did not? A. No sir.

Q. Well, you didn't do anything then the two days that you stayed in Caldwell except to loaf around town? A. No sir, I did not.

Q. Make any inquiries about Steunenberg? A. I did in an off-hand way, yes sir.

Q. Led people up to talk about him, did you? A. Mr. Dempsey talked to me some about him.

Q. And you found out about Steunenberg's habits, method of living and so forth? A. I found out he wasn't home very much, that he was over to Boise or up at Mountainhome, that is what Mr. Dempsey told me, most of the time.

Q. Mountainhome was where he had some sheep, wasn't it?

A. I think he did.

Q. You think he did? A. That is what that Mr. Dempsey said, he was in the sheep business, and between Boise and Mountainhome, that is what he told me.

Q. So you knew you could catch him at his sheep camp near Mountainhome or on the road between Mountainhome and Boise, did you?

A. I didn't know exactly. I came to Boise from there anyway.

Q. Well, you think you stayed there a couple of days?

A. I think it was about a couple of days.

Q. You didn't talk particularly with anybody except Dempsey?

A. No sir.

Q. You showed yourself openly around Nampa? A. Yes sir.

Q. A little country town? A. Yes sir.

Q. And you were a stranger in it? A. Yes sir.

Q. Did you walk freely and circulate around freely among the inhabitants of that town? A. I did, yes sir.

1100 Q. For two or three days? A. I think about two days.

Q. Then you came over here to Boise? A. Yes sir.

Q. Were you doing anything with explosives at that time?

A. No sir.

Q. Were you experimenting with them at all? A. No sir.

Q. Did you go to anybody here and offer to sell them a high explosive that you had invented? A. No sir.

Q. Did you do that at any time? A. No sir.

Q. Did not? A. No sir.

Q. Haywood had told you, had he not, that you could get Steunenberg while he was out on a trip to some of his sheep camps?

A. He told me about him going out there and he said that he had went out that way.

Q. Haywood told you that he went out in a buckboard? A. That is what he said.

Q. To his sheep camp? A. He said he understood he got on a buckboard and road out into the mountains to his sheep camp.

Q. And the way for you to do, he suggested that it would be easy to get him because he did that, isn't that it? A. I took it that way. I don't know as he spoke particularly about that.

Q. The way for you to do was to kill him out on the buckboard or get him on the buckboard. That suggested the idea to you that the proper way for you to do was to kill him going out or coming in from the mountains, wasn't it? A. I don't know that it did particularly. It may have.

Q. Why didn't you do it? A. Because I never found that Mr. Steunenberg did do that.

Q. Did you watch him for that purpose, to see whether he did or not? A. No sir, I did not.

Q. You never to this day have found out whether he was in the habit of doing what Hayweed said he was in the habit of doing?

A. No sir, I have not.

Q. Well, you came over to Boise? A. Yes sir.

Q. Went to the Pacific hotel and registered? A. Pacific or Capitol, I think it was the Capitol.

Q. You had registered at Nampa as Thomas Hogan of Denver?

A. I think I did.

Q. You had registered at Caldwell as Thomas Hogan of Denver?

A. I think I did.

Q. You registered over here at the Capitol hotel as Thomas Hogan of Denver? A. I think I did to the best of my redollection.

Q. Haven't any doubt about it, have you? A. I think that is the name I used.

Q. And you circulated around this town freely, didn't you?

A. I went around some while I was here, yes sir.

Q. Went to the Idanha hotel? A. Yes sir.

Q. And saw there Governor Steunenberg in that hotel?

A. I don't know that I saw him in the hotel. I saw him outside of it.

Q. Didn't you see him sitting in the lobby of the hotel talking with somebody? A. I seen him standing outside talking, I don't know that I seen him sitting in the lobby talking.

Q. You didn't have to find anybody to point out Steunenberg to you, did you? A. I did have somebody point him out. I didn't know him.

Q. Didn't know him? A. No sir.

Q. Hadn't you seen his pictures during the Coeur d'Alenes trouble? A. I may have seen it. If I did I didn't remember

Q. Steunenberg was a man that you wouldn't forget if you once saw him? A. You wouldn't if you saw him, no sir, I don't think so.

Q. You know, didn't you, before you saw him that he was a monstrous large man? A. Haywood told me he was a large man.

Q. And that he wore a smooth face? A. Yes sir.

Q. And that one of his characteristics was that he never wore a necktie? A. That is what he told me, yes sir.

Q. And you knew that before you came here? A. Yes sir.

Q. And yet you had to havesomebody point at to you this man Steunenberg? A. I don't know as I had to. There was a man pointed him out to me.

Q. Who was it? A. A man named Johnson.

Q. Did you know Johnson before you came here? A. No sir.

Q. It wasn't Jean Johnson, was it, you have met him? A. No sir, it was not.

Q. Some other Johnson? A. Yes sir.

Q. When did you get acquainted with this man Johnson? A. After I came up to Boise.

Q. Who introduced you? A. A man that was in the stock business somewheres I think from Wyoming, I think from Laramie, but I am not sure.

Q. How did you come to be introduced ? A. I saw him at the Idanha and talked to this man and he asked me what my business was and I told him I had stopped off here to see if -- there was a party from Colorado wanted me to see what the chance was to buy some lambs to feed up here.

Q. That was the man you got in with, this stock man, was it?

A. Yes sir, he said that was his business, too, and that lambs were pretty scarce here, but he said there was a commission man across the street that had some to sell, he said he was no hog or something like that, and he said he would take me over and introduce me to him if I wanted him to.

Q. And he took you over and introduced you to Johnson, did he?

A. Yes sir.

Q. Then did you open up a conversation with Johnson about Steunenberg? A. No sir, did not, talked about sheep, and I knew several men, sheep men down in Colorado that bought sheep up through here, and he spoke of some that he had shipped sheep to, and I says, I don't know, it seems that I heard this fellow say that he had bought some sheep from a man named Steunenberg.

Q. That is the way you brought it up? A. Yes sir. He says that is the governor, I think, or Governor Steunenberg, that is him right across the street there now, and I looked and there he was in front of the Idahha hotel.

Q. Were you in Johnson's office? A. Yes sir.

Q. That is upstairs opposite the hotel? A. Yes sir.

Q. So you looked out of the window and saw Steunenberg? A. Yes sir.

Q. That was the first time you had ever seen him?

A. Yes sir, the first time to know him.

Q. You knew Steunenberg was in Boise? A. I knew he was after I come here.

Q. Hadn't you heard he was in Boise? A. Between Boise and Mountainhome.

Q. Didn't you say that you had heard the Governor had appointed him onsome commission or something and that he was over in Boise? A. I did later, I didn't at this time.

Q. Hadn't heard it at that time? A. No sir.

Q. You just came over here on a chance that you would see him somewhere between here and Mountainhome? A. I came up here to see if I could see him around here. I had a ticket to come by here anyway.

Q. So you calculated at that time to shoot him or kill him while you were here? A. I did, yes sir, I thought of it.

Q. You didn't intend to do it, though, unless youcould get some Federation man along with you, did you? A. I intended to do it if I got a chance.

Q. You did intend to do it if you got a chance? A. I thought of it, yes sir.

Q. All alone by yourself? A. Yes sir.

Q. You never did kill a man under those circumstances, did you, alone by yourself? A. No sir, I don't think I ever did.

Q. You always had somebody with you? A. Yes sir.

Q. Well, were you looking for anybody here at that time?

A. No sir, I was not.

Q. You didn't really intend to kill him then when you came here that time, did you? A. I wanted to see him. I thought I would if I got a chance.

Q. You calculated to inveigle Bill Easterly or some other union man before you killed him, didn't you? A. No sir, I did not.

1105 Q. Sure about that, are you? A. Yes sir, I am quite sure.

Q. And then when you saw this man standing out there across the

street you abandoned all attempt to kill him as quick as you saw who he was? A. No sir, I did not.

Q. What did you do towards killing him? A. I went back over to the hotel, I knew before where his room was, I thought that I would go to it.

Q. Now how did you know where his room was? A. I seen his name on the hotel register and found the number of his room.

Q. Over at the Idanha? A. Yes sir, and I did walk around there and I had a room on the same floor the the had.

Q. In the Idanha hotel? A. Yes sir.

Q. Did you stop at the Idanha at that time? A. I went over to the Idanha the next morning after I had stopped up at the Capitol; when I found out about him I went over and looked in the register at the Idanha, found his name there and went over and engaged a room.

Q. And you happened to get it on the same floor with the governor's room, did you? A. I happened to get it there.

Q. It just happened that way? A. Yes sir.

Q. Or did you plan for it? A. No sir, it just happened that way.

Q. Right next to the governor? A. No sir, it was around in another wing of the hotel.

Q. Then you went around to locate the governor's room, did you?

A. I did.

Q. Did you attempt to get in there? A. Yes sir, I opened the door of his room.

Q. It was unlocked, was it? A. I had a skeleton key and opened it.

Q. You opened it with a skeleton key? A. Yes sir.

Q. No chambermaid nor bell boy nor anybody else around there?

A. There wasn't anybody that seen me open it. I opened it when they went down at noon.

Q. Did you think the governor was in there? A. No sir, I knew he wasn't.

Q. You didn't want to -- didn't ~~intend~~ intend to kill him in his room then? A. I didn't right there.

Q. What did you go in his room for? A. I wanted to open the door to see if I could open it with this key.

Q. And intended to kill him that night when he went to bed, I suppose? A. I was thinking of setting a bomb at his door.

Q. You were? A. Yes sir.

Q. And then you went back to your ~~xxxxx~~ bed, did you? A. No sir, I did not.

Q. You wasn't thinking of setting that bomb that you brought with you at this time? A. I was thinking about setting that one, yes sir.

Q. And that was over at Kampa in the middle of the trunk?

A. Yes sir.

Q. You didn't expect to set it there that night? A. Well, I did expect to set it there that night.

Q. Did you send for your trunk? A. No sir.

Q. If that bomb had been put at Governor Steunenberg's door it would have blown the hotel all to pieces, wouldn't it?

A. I think it would.

Q. And you calculated to do that, did you? A. I was thinking of it, yes sir.

Delete the Hatred

Q. And kill not only the governor but everybody else who was in the hotel? A. I didn't think much about that.

Q. That was your intention at that time, to kill the governor and anybody else who happened to be in the way? A. Possibly it was what I was thinking about.

Q. You was just going to hang that on the governor's door, was you; and have it so when he opened the door it would go off?

A. I was going to put it in there or put it under the bed and to set it off with a clock.

Q. That is what you calculated to do? A. I was thinking of it, yes sir.

Q. Did you send over to Nampa and get your trunk? A. No sir, I did not.

Q. Was you expecting to stay in the hotel the night you set it off? A. No sir.

Q. You didn't expect to do that? A. No sir.

Q. You was going to kill the rest of them but you didn't propose to kill yourself? A. I didn't propose to, no sir.

Q. You didn't send to Nampa for your trunk? A. No sir.

Q. When you made this arrangement then or looked for this information it immediately became of no use to you because you immediately went off and left the whole scheme? A. I did go off and leave it, yes sir.

Q. And went that very day, didn't you? A. Yes sir.

Q. Went over to Nampa? A. I went to Nampa, yes sir.

Q. Did you stop at Nampa that time? A. No sir.

Q. Went right on through to Caldwell? A. I stopped awhile there when I was going to Nampa, I made up my mind that I couldn't do

that then, I would go to Portland and come back again.

Q. Did you stop at Nampa except as they were changing trains over there? A. That is it.

Q. That takes about two hours usually, don't it? A. I don't know just how long, it was some little time.

Q. You didn't go to any hotel? A. I didn't stop at any hotel.

Q. Nor register? A. I don't think I did, no sir.

Q. Nor wait any longer than until the train came along to take you on to Portland? A. That is all.

Q. So having discovered Steunenberg and having gotten his room open and discovering where you could place a bomb and how you could kill him, immediately you abandoned the whole proposition and started off to Portland?

A. I thought that if I would go up there and put the bomb there, just go in there like that and go out again and if I was to put it at the door I might not get away very far on the train, I might be suspected, I thought if I left it there and went away on the train I would be suspected; any way I was a stranger and I abandoned the proposition.

Q. Why didn't you tell us about this in your narrative?

A. I wasn't asked about it.

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Q Why didn't you tell us about that? A I abandoned the proposition.

Q Why didn't you tell us about that in your narrative? A I was not asked about it.

Q You was asked to state in narrative form. A I don't know what you call a narrative form.

Q Well, you got on the train, did you, and went to Portland?

A Yes sir.

Q And at Portland you took in the fair? A Yes sir.

Q You left your trunk at Nampa with the bomb in it? A No sir.

Q You took your trunk out of the baggage room at Nampa and it went on with you, did it? A Yes sir.

Q With the bunch of dynamite still in the middle of it?

A Yes sir.

Q And you stayed at the fair there in Portland two or three days having a good time? A Yes sir.

Q There was nobody you wanted to kill there? A No sir.

Q You visited the Fair and saw it? A Yes sir.

Q Anybody that you knew there, did you meet? A I don't remember of meeting anybody that I knew.

Q Don't remember? A No sir.

Q Just took in the fair and had a good time? A Yes sir.

Q And then went on to Seattle? A Yes sir.

Q Going to look up this ranch that you was going to have as the reward for your labors? A Yes sir.

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Q How long did you stay in Seattle? A About a week.

Q Did you find any of these people that you have spoken of?

A Those that you have mentioned?

Q Yes sir, did you meet any of them? A No sir.

Q Did you look for them? A No sir.

Q Did you see any of them? A I saw Arthur Parker.

Q Did you look him up? A No sir, I did not want to see him.

Q You did not want to see them? A No sir.

Q But you did look up this ranch you were thirsty for? A I looked it up, yes sir.

Q Who did you see about the ranch? A I don't remember their names.

Q Did you go out of Seattle at all? A Yes sir.

Q How far out did you go? A I don't know how far; I went up on the Hood Canal.

Q Were you looking for a tidewat r ranch? A I was looking up close to the British line.

Q How far up did you go to look at that ranch? A I don't know how far it is. I went up on the boat and was gone all day.

Q What town did you go to up there? A I don't remember the towns.

Q Got on the boat in the morning and rode all day? A I rode up until about eleven or twelve o'clock I think it was, and got off at a place and looked around there and got the boat

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when it came back.

Q Do you know the name of the place? A No sir.

Q Did you go with any real estate man? A No sir.

Q Did you let anybody know that you wanted to buy a ranch?

A Yes sir.

Q Who, a real estate man? A Yes sir.

Q Who was he? A I don't remember his name; he showed me what he had around there in several places, but I did not like the country around there anyway and I did not go looking at any more ranches.

Q You did not do any more than talk with this real estate agent?

A I went up on the boat and went in and saw this real estate agent, but I didn't come to any conclusion.

Q Did you go up the Sound before you saw the real estate agent?

A I went up afterwards.

Q He did not have any property up the sound, did he? A I don't know whether he did or not. I went up to see the country.

Q He did not recommend you to go up on this boat, did he?

A I think he told me about it, that I could go up and look at the country around that canal.

Q So you were going up to look for farms on a steamer? A I went to see the country, to see what it was like.

Q How long was the boat gone from this town you got off at?

A A couple hours or something like that.

1112 Q Was this town called Watcomb? A It was not much of a town.

Q Belle Haven? A I would not remember the name.

Q Everett? A I don't remember the name.

Q Fairhaven? A I don't remember the name.

Q You don't know how close to the British line you got?

A I don't think it was close to the British line.

Q It is pretty near a night's ride, isn't it, to go up to the British line? A I don't know how long it is. I did not go up there.

Q When you got off at this little town did you go out to look at any ranch? A I went out a little bit. There wasn't any ranches there.

Q You did not go outsat all? A I looked at one or two a little, yes sir.

Q Were they ranches that were for sale? A They were not cleared up much.

Q Were they ranches that were for sale? A I don't know as they were.

Q You mean that you got off at this little station and walked around a little bit and saw what there was to see there?

A Yes sir, I did.

Q And got on the boat and went back to Seattle? A Yes sir.

Q And that ended your search for a ranch? A I looked a little more.

Q And you went in and saw the real estate agent? A Yes sir, and got the prices of some of them.

Q What did you want to bother with prices for? You could have all the money you wanted? A I could have enough to get a ranch, I guess.

Q It did not make any difference what the price was did it?

A It might have made a difference.

Q It might have made a difference,-- why? A I don't suppose they would put up forty or fifty thousand dollars for a ranch.

Q You thought they had plenty of money? A Yes sir.

Q And you thought you could get all they had, did you? A I thought I couldget five or six thousand dollars.

Q You thought so? A Yes sir.

Q After staying at Seattle you went on to Spokane? A Yes sir.

Q And you saw a ranch or two on the way to Spokane? A I saw some on the railroad.

Q When was it you left Portland? A It was some time in September.

Q Can you tell me just when you left Seattle? A No sir, I cannot.

Q Did you go to Spokane in the daytime or night time? A Part of the daytime and part night.

Q Could you see any ranch that suited you? A I was not looking for any there.

Q Didn't want one? A I was not looking for any there.

Q Which part of the trip did you have in the daytime and which in the night time between Seattle and Spokane? A I think I

left Seattle in the morning and got into Spokane some time that night, about midnight.

Q And you was not looking for any ranch at all? A Not after I left Seattle.

Q What were you doing? A Riding on the train.

Q When you got to Spokane what did you do there? A Stayed there that night.

Q What did you go to Spokane for? A I went there because I wanted to go up to the Coeur d'Alenes.

Q What didyou want to go there for? A To see Jack Simpkins and Dave Coates.

Q What did you want to see Jack Simpkins for? A I wanted to ask him about a proposition Dave Coates had spoken to me about.

Q You had abandoned the plan of murdering Steunenberg?

A Temporarily.

Q You was not sent to see Jack Simpkins? A No sir.

Q Nor Dave Coates? A No sir, but I told Pettibone I was going up there.

Q You had told him that? A Yes sir.

Q And he knew that becauseyou bought a ticket that way, I suppose? A He knew it from me telling him too.

Q Neither Moyer nor Haywood had sent you to the Coeur d'Alenes?

A No sir.

Q Nor had any expectations that you were going there? A I told

Moyer and Haywood too, that I was going up there.

Q They did know that you was going to the Coeur d'Alenes?

A Perhaps not at that time.

Q But they did know that you were going to the Coeur d'Alenes?

A I spoke to them about it.

Q Although neither had sent you there? A No sir.

Q I see now that you had had a talk in Denver with Dave Coates about a proposition he made to you? A Yes sir, he did.

Q Do you mean the man that was at one time Lieutenant Governor of the State of Colorado? A Yes sir.

Q When did you talk with Dave Coates about this proposition?

A When he came back from Chicago when they organized the Industrial Workers of the World.

Q How long had you known Dave Coates at that time? A I never knew him before that time.

Q The first visit you made,-- the first time you met him he made a proposition to you? A I think it was the first time I met him, or it might have been the second time.

Q Where did you talk with him? A In Pettibone's store and out on the street.

Q In whose presence? A Pettibone's.

Q Did you talk with him in the presence of anybody else?

A No sir, not about that.

MR. RICHARDSON: Stand up, Mr. Coates.

Mr. Coates arose in the court room.

Q Is that the Dave Coates you refer to? A Yes sir, that is the man.

Q Now, tell the jury what the proposition was that Governor Coates made to you? A Governor Coates?

Q Yes, Governor Coates. You knew that he was Lieutenant Governor of the State of Colorado? A Yes sir.

Q Under Orman? A Yes sir. We were talking about old times in the Coeur d'Alenes and he was telling me about how much money my old partners had up there and that Paulson had more than he knew what to do with, and he said that it would be an easy matter to go up there and kidnap one or both of Paulson's kids and we could get fifty or sixty thousand dollars.

Q That is the proposition he made to you the first time he saw you? A Yes sir.

Q You was going to take fifty or sixty thousand dollars from the man who had been your partner in a mine which you had lost?

A No sir.

Q He was an equal partner with you, wasn't he? A No sir, he was not.

Q He was a very wealthy man? A Yes sir.

Q You were still a pauper, although you-- A I could get money.

Q You could get all the money you wanted? A I could get money enough to keepme going.

Q And you were going up there to join Dave Coates in a proposi-

that Dave Coates had made to you to kidnap Paulson's child? A That is what I went up there for.

Q Did Coates give you the method by which you were to kidnap the child? A He said-- I asked him what part he would take in it, and he said he would take the money.

Q You at once accepted his proposition? A I asked Pettibone what he thought of Coates and he said he thought he was all right.

Q And you at once accepted Coates' proposition on Pettibone's guarantee that Coates was all right? A Yes sir, I did.

Q And you then just had it in abeyance all the time?

A I don't know that I told him-- I told him I would be up there I think.

Q And when you got up there you would pull it off? A I told him I would see about it.

Q All anybody had to do was to suggest the commission of a crime and you was ready for it? A Not anybody.

Q Anybody that was guaranteed by the Western Federation of Miners? A Pettibone guaranteed him.

Q Did anybody ever suggest to you a crime that you did not commit? A They talked about it. There has been a good many crimes talked of by those parties, Haywood, Pettibone and Meyer.

Q And Governor Coates? A That was theonly one he talked of.

Q That was the only one he talked of at that time? A I don't remember any other.

Q That was all the time he had, wasn't it,-- a few minutes conversation? A No sir, we were together quite a while.

Q How many days were you with Dave Coates? A Part of two or three days.

Q Temporarily you had forgotten about the Steunenberg proposition and had gone up to help Coates out with a crime? A I had not forgotten it.

Q You was going to commit the crime and give Coates part of the money? A He said he would take part in it, and we asked him if could have them leave the money with him and he said he would do that part of it.

Q You asked him what part of the crime he would commit and he said he would take the money? A That is what he said.

Q How long did you stay in Spokane? A Just one night.

Q You took your trunk with the bomb in it on up to Wallace?

A I checked my trunk to Wallace and rechecked it there.

Q You had to re-check it at Spokane, didn't you? A Yes sir, I did.

Q And when you got to Wallace you went to some hotel to stop, didn't you? A I think I did, yes sir.

Q What hotel was it? A I think we stopped at Bob Bradley's the first time, the Bi-Metallic.

Q The Bi-Metallic hotel? A Yes sir.

Q And you registered there as a guest? A Yes sir.

Q Under the name of Thomas Hogan? A I think I registered under the name of Orchard.

Q Was that your Coeur d'Alene name? A Yes sir.

Q And Hogan was your Denver name? A Yes sir.

Q And Jack Dempsey was your Cripple Creek name? A No sir, I went by the na eof Orchard in Cripple Creek.

Q You went by the name of Orchard in Cripple Creek? A Yes sir.

Q You never had used the name of Little or Dempsey or Hogan up in the Coeur d'Alene country? A No sir, I don't think I did.

Q Or Green? A No sir, I did not.

Q When you got back to Coeur d'Alene you resumed your old name?

A Yes sir.

Q Did you meet anybody there that you knew? A Yes sir.

Q Who? A Some people around Wallace that I knew.

Q Who were they-- I mean at the hotel? A I don't just know who I did meet at the hotel who I knew.

Q You got acquainted with some people there that you met?

A Some, yes sir.

Q You spoke of a man named Cunningham? A Yes sir.

Q Did you get acquainted with him at that hotel? A I don't know as I did right there.

Q Was he rooming there at the hotel? A Not then, I think.

Q Did he come there to room while you were there? A I think he came there.

Q Did you arrive at that hotel as early as the month of September? A I think it was September when I got there.

1120 Q In the fore part of September, wasn't it? A What is that?

Q That was in the fore part of September? A I should think it would be somewheres in the fore part of September.

Q You think it was the fore part of September? A I think so; I am not sure, but I think it would be somewhere about maybe the 15th or 20th of September.

Q Somewhere about the 15th or 20th of September? A Yes sir; I would not say exactly.

Q And you remained in the Coeur d'Alene country, in and around that country there, until some time in the month of November didn't you? A No sir, I don't think it was as late as November.

Q What time was it? A I think it was some time in October.

Q The principal part of that time you spent in Wallace?

A A part in Wallace and part in Burke.

Q You unloaded your bomb there in the hotel, didn't you?

A No sir.

Q Didn't you leave it in your room at the hotel? A No sir.

Q What did you do with it? A I left it in my trunk.

Q Did anybody discover it in your trunk? A No sir, I don't think so.

Q Don't think they did? A No sir.

Q Were you engaged in the manufacture of any other explosives while you were there in the hotel? A No sir.

Q You were put out of the hotel finally, weren't you? A No sir, I was not.

Q Didn't Bradley order you out of the hotel? A No sir, he did not.

Q He did not? A No sir.

Q How long did you stay there? A I think a week or two,-- I think two weeks.

Q What did you do with your bomb in the meantime? A Left it in my trunk.

Q You had taken this bomb from Canon City to Denver and from Denver to Caldwell and from Caldwell to Wallace? A Yes sir.

Q Did you take it over to Bob Bradley's place? A I never had it there.

Q Where was it? A In my trunk.

Q Where? A At the depot.

Q Did you ever get that bomb out of your trunk? A Yes sir.

Q When and where? A At that little rooming house near the O. R. & N. depot.

Q You stopped at the Bi-Metallic awhile and then went to this little rooming house? A Yes sir.

Q And you got the trunk out there? A I got it over there,

Q Whose place was that? A I don't remember the name of the lady that run it.

Q How did you spend your time in Wallace? A Loafing around.

Q Did you at once report to Coates on that proposition of stealing the Paulson child? A I went there when-- Simpkins and I went up and Simpkins spoke to him about it.

Q Did you and Coates talk over this proposition of kidnaping the child? A We did afterwards.

Q You saw Coates the first thing after you got there, didn't you? A I saw him soon after I got to Wallace.

Q He has his office right on the main street, don't he? A I don't think it is on the main street.

Q It was near this hotel where you stopped, wasn't it? A No sir.

Q It was near the rooming house, wasn't it? A No sir.

Q It is not hard to find anybody there in Wallace, is it?

A No sir,

Q It is not a big place? A No sir, it is not a very big city.

Q You can walk the whole length of the time in five minutes and across it in two? A If you walk fast enough.

Q You did not have any trouble in finding Coates? A No sir.

Q You saw him as soon as you went there? A I saw him that evening.

Q Did you discuss ways and means then in regard to the kidnaping of the child? A We did in a general way; nothing definite.

Q Did you tell him that you had come in response to his invitation to kidnap the child? A Jack Simpkins and I went up there and Jack Simpkins went up to see Coates at his house when I first got there, and he told him--

Q Now, were you present? A No sir.

1123 Q Then I would a little rather that you would not tell that.

A I was not right there, no sir.

Q Then tell us what you know about it. Did you stop at Wardner on y our way up? A Yes sir.

Q How long did you stay there? A From the time the train got there up until that evening.

Q A part of one day? A Yes sir.

Q And that is where you saw Jack Simpkins and got him to go in with you? A Yes sir. That is where I saw Jack Simpkins and he went on with me.

Q Had you and Coates made any arrangement to take Jack Simpkins in on the kidnaping event? A No sir.

Q Did you tell Simpkins anything about it? A Yes sir, when I got to Wardner.

Q And beforeyou went to see Coates about it? A Yes sir.

Q Then, when you saw Coates did you tell him you had a new partner in the enterprise? A He spoke to Coates first about it.

Q Jack, of course, fell right in with the proposition about stealing the child, didn't he?

MR. HAWLEY: We object to this method of examination for this reason: While this is not a matter that we have examined in regard to at all-- this Paulson matter and Coates matter--

THE COURT: I think you brought that out on your direct examination, Mr. Hawley.

MR. HAWLEY: If there was anything of that kind brought out there was no reference to it, and my recollection is it was not brought out at all.

THE COURT: The court will overrule the objection.

MR. HAWLEY: Was there anything in regard to the Paulson business?

MR. RICHARDSON: Yes sir.

THE COURT: The court has no doubt about it.

MR. HAWLEY: I will withdraw the objection if that is the fact.

Q Read the last question please.

The last question was read to the witness.

A Simpkins said he would go right up with me and see about it.

Q So, the very same day you and Simpkins started off on the child stealing proposition? A We went to Wallace the same day, yes sir.

Q And Simpkins went over and saw Coates? A Yes sir.

Q And came back and made a report to you, and you went and saw Coates? A I saw Coates that evening at his office.

Q And there you perfected all arrangements about the kidnaping of this child? A No sir.

Q There was sort of a general talk there that evening? A Yes sir

Q You did not abandon the enterprise? A No sir.

Q You intended at that time, and all of you intended to kidnap that child? A We would if we could figure out some feasible plan.

Q The child was not very old, was it? A I don't know how old it was.

Q A little girl? A A couple or three years old.

Q A little girl? A No sir.

Q A little boy? A I think so.

Q Not a little girl? A I don't know.

Q There were two children, weren't there? A Yes sir.

Q You were going to steal both of them? A We did not come to any conclusion.

Q What were the ages of the two children? A I think one was two and the other three or four, something like that.

Q You found your old friend Paulson also, didn't you, there in town? A Yes sir.

Q And you met him? A Yes sir.

Q And he knew you? A Yes sir.

Q And he was glad to see you? A I don't know whether he was or not?

Q He acted that way? A Yes sir.

Q And he invited you down to his house? A Yes sir.

Q And you went down to his house? A Yessir.

Q And you sat at the table with Mr. Paulson in his house? A I had dinner with him once, yes sir.

Q Had dinner with him? A Yes sir.

Q A Sunday dinner? A I don't think it was Sunday.

Q His ~~xx~~ children were at the table? A No sir.

Q But his wife was there at the table? A Yes sir.

Q And his house is right there near the center of the town?

A Yes sir.

Q A nice beautiful little place? A Yes sir.

Q You accepted his hospitality? A Yes sir.

Q And all the while you were figuring on stealing one or both of his children? A I was thinking of it, yes sir.

Q That was the reason you accepted his hospitality, so you could better stealthe children,-- get onto their habits, etc?

A I would have accepted it anyway.

Q You would? A Yes sir.

Q Paulson was very friendly with you? A Yes sir. He did not--

Q And your condition was not of the best while you was there?

A I don't know what you mean.

Q Did Paulson ask you to call again? A I have forgotten whether he did or not.

Q You were not behaving yourself the best in the world,-- that is what I mean by your condition there in town,-- were you? A I don't know as I was.

Q You was renewing old acquaintances? A Yes sir.

Q Visiting the saloons? A I went around the saloons some.

Q Drinking some? A Yes sir .

Q Playing cards a little? A Yes sir.

Q Having a pretty good time? A I was trying to put in the time.

Q What was you putting in the time for? A Putting in the time that I was staying there.

Q Were your fingers itching to get hold of this fifty or sixty thousand dollars? A I don't know about that. We were working on that proposition.

Q And all the while you were around town and spending a little money everyday? A Yes sir.

Q And it was not but a little time before you got busted? A Not very long.

Q And was Jack Simpkins there and Dave Coates there? A Yes sir.

Q And you went to your friend Paulson to borrow some money, didn't you? A No then, no sir.

Q You did not? A No sir.

Q You did not have much money? A I had some at that time.

Q But you were still discussing stealing these children of Paulson's? A Yes sir.

Q And Jack Simpkins and Coates were in with you? A Yes sir.

Q And still ready for it? A Yes sir, they said they were.

Q Don't you know that you made a suggestion to Mr. Dave Coates about kidnaping Paulson's child to get some money, making the statement that he had got rich out of the Hercules mine while you was still poor, and he told you that you could not do anything of that kind in that town? A No sir, that is not true.

1128 Q And didn't he go and tell Jack Simpkins about it, and Jack

Simpkins went and cautioned Paulson about it? A No sir, that is not true.

Q Didn't Coates say to you that he would denounce you? A No, sir, he said nothing of the kind.

Q And you say that Simpkins did not go to Paulson and tell Paulson that there was a scheme on to kidnap his, Paulson's, children and to look out for them? A No sir, he did not.

Q He did not? A No sir, he did not.

Q You know that, do you? A I know he did not do it, yes sir.

Q Positively? A Yes sir.

Q And you were figuring all the while upon stealing these children? A Yes sir, for a time.

Q Your bomb was still there in the trunk in the depot? A Yes sir.

Q During all this time? A I don't know whether I had moved it over to the room then or not.

Q What caused you to abandon the stealing of Paulson's child? A Because it began to snow and got bad weather.

Q All that saved the theft of Paulson's child was the fact that the weather got bad? A That was one reason.

Q That interfered with your scheme? A Yes sir.

Q And so you abandoned it? A Yes sir.

Q You got down to such a point there in Wallace that you had to pawn some of your personal effects, didn't you? A I did do it.

Wallace

Q You did do it? A Yes sir.

Q Was that because you was busted? A I was out of money, yes sir.

Q How much did you get? A I think twenty-five or thirty dollars.

Q And after you had obtained it you spent it? A Yes sir.

Q And then you were busted again, weren't you? A I was for a time, but I got some more money pretty soon.

Q And in the meantime you got acquainted with a man named Cunningham? A Yes sir.

Q And a man named McCloskey? A Yes sir.

Q And you tried to induce them to take your bomb up and put it in the Tiger and Poorman's mine? A No sir, he wanted the bomb to do that with.

Q They found out that you had a bomb? A Yes sir.

Q Didn't you try to get them to do that? A I never told McCloskey anything about it, and he never seen the bomb.

Q Did you tell Cunningham about it? A I went to take it out and throw it in the creek one night and he wanted to know what it was and I told him it was a bomb and he wanted it; he said he would take it up to the Tiger and Poorman's boarding house and kill them scabs, and I said, "You won't do that, but you will take it and hide it;" and he said no, "If I don't do that I will throw it away."

Q Didn't you want him to take it up there and didn't he tell

Brought for T. A. Cunningham hearing

Jerome M. Tilson
Personal Journal

you that there were at least a hundred union men working up there in that mine,-- men who were union men? A No sir.

Q He didn't tell you anything about that? A No sir.

Q Who was this man Cunningham? A I don't know. He was a man that St. John introduced to Simpkins.

Q And Simpkins had introduced him to you? A Yes sir, he did introduce me to him afterwards.

Q And he wanted to get your bomb and take it up there and you would not let him have it? A I did let him have it.

Q You told him he would not take it and use it for that purpose?

A I was afraid he would let some one see it.

Q You was afraid he would? A I was at first. I was afraid that he might leave it around.

Q What was there you were afraid of? A He used to get drunk a good deal.

Q You drank yourself? A I did not get drunk, if I did drink.

Q When you came to the conclusion that he was going to blow up the mine, or the boarding house in the Tiger and Poorman's mine you let him have your bomb? A I let him have it.

Q Notwithstanding the fact that he was drinking? A He was not very drunk then.

Q You did not think that if you just loaned him the bomb you would get into any trouble? A I did not think anything about it unless he got drunk and let some one see it. St. John said that Cunningham had done some work for him once or twice

Q That was one of the things you had saved up for me, wasn't it, this St. John matter? A I don't know as it was.

Q You talked with St. John about this, didn't you? A Yes sir.

Q You got your information from St. John? A Yes sir.

Q Can you tell us what the work was that he did for St. John?

A No sir.

Q There was not any trouble-- not a particle of trouble in the Coeur d'Alenes district while St. John was there? A Not that I know of.

Q He had been there for two or three years without any trouble there, hadn't he? A I had not heard of any trouble.

Q And yet you say that St. John had told you that Cunningham had done some work for him? A Yes sir.

Q And you proceeded to give him your bomb? A Yes sir.

Q You had ~~xxxx~~ intended to throw it into the river? A I was going to throw it away, for it was getting old.

Q It was thrown into the river? A I don't know where it was thrown away or not into the river.

Q You just gave it to Cunningham and did not ask him to account for it? A I told him that if he did not use it to throw it away and be careful of it.

Q And notwithstanding the fact that it was dangerous you had it sent clear up there to Wallace in a truck? A Yes sir.

Q It was not any more dangerous than it was when it was in the trunk? A It was getting older.

Q You did not want a dangerous explosive? A I was getting afraid of it myself.

Q Do you know anything about Cunningham's antecedents? A No sir, only what St. John told me.

Q Did you know how long he had been in that country? A He had just come in there.

Q He had just come in there? A Not long.

Q Did you know where he had come from? A I think he said he came from somewhere over in Washington.

Q He was a comparative stranger there in that camp? A As far as I was concerned.

Q Did you get acquainted with McCloskey? A I got acquainted with him afterwards, yes sir.

Q You had nothing to do with him? A No sir, no more than I went over and got some stuff he stole out of my grip once.

Q He was a thief too, was he? A He stole some stuff out of my grip.

Q You did not know where he came from? A No sir.

Q Have you had Captain McParland look up your friend Cunningham? A I don't know whether they have located him or not.

Q Do you know where he is? A No sir.

Q Give me a description, the best you can, of Cunningham and McCloskey? A Cunningham was a medium sized man, I should think five feet seven, or something like that, a big heavy

1133 black moustache, a dark complexion and a little pock marked,

and about 35 years old; McCloskey was a smaller man with quite a heavy ~~mk~~ red moustache, red complexion, about 5 feet six, probably would weigh 150 or 160.

Q Did they leave the district before you did? A I think they left before I did.

Q They left? A I think so.

Q You understood that they were new men in there, did you,-- at least that Cunningham was? A I am not quite sure whether Cunningham toldme he had been there before or not.

Q How about McCloskey? A He said he had been around there some time.

Q But both left the district before you did? A Yes sir, I think so.

Q And you don't know whether those were their real names or not? A I understood that Cunningham was not his name.

Q You would not know where to find him now? A No sir.

Q Or give us any other information of him than you have given us? A No sir.

Q Well, what time was it that you abandoned the enterprise of stealing Paulson's children? A Some time in October, I think; I am not sure of the time.

Q By that time your money was all gone? A About the time I left there I did not have much money right there.

Q You had pawned everything you had of any value? A I had pawned a watch, watch chain, a gun and a pair of glasses.

Q And that money was all gone? A Practically so.

Q And in your distress for money you went to Paulson to borrow some? A I went to Paulson to borrow some when I came away from there.

Q You could not get away from there because you did not have money enough to get away on without Paulson would let you have some? A I could get money to get away on.

Q You did not have any money to get away on? A I did not have much there, no sir.

Q And you did borrow money of Paulson on which to get away?

A Yes sir.

Q And you borrowed three hundred dollars? A Yes sir.

Q And it was paid to you in twenty dollar bills? A I think most of it was.

Q And they were new, weren't they? A Most of them were new.

Q You borrowed other money from Paulson, didn't you? A I borrowed $5. from Dave Coates once.

Q You borrowed other money, didn't you? A Yes sir, I borrowed some money of Farrell once.

Q How much did you borrow of Farrell? A I think I borrowed $5. once and $2. another time.

Q And how much from other people? A I think I borrowed $5. from Frank Murphy once.

Q How much from others? A I don't remember any others now.

1185 Q You were in a chronic condition of bust while you was up

Borrowed Paulson

there, wasn't you? A I was busted quite often.

Q You committed burglary while you was up there too, didn't you? A I don't know just what you call burglary.

Q I call burglary breaking into the C. R. & N. depot. A Yes sir, I have done that-- helped do that.

Q Were there any other crimes you committed while you were up there? I am not asking you what you contemplated now, but what you did? A I took some money out of a safe one night, or out of a cash register up at Burke.

Q How much was that? A Between thirty-five and forty dollars.

Q Is there anything else you have not told us about? A I don't know of anything except taking that trunk out of the depot.

Q And robbed the trunk afteryou took it out, didn't you? A I did not rob it, no sir.

Q Did you steal any jewelry at Mullen? A No sir, I did not.

Q Were you arrested for that while you were up there? A No sir.

Q Were not? A No sir, no.

Q Did you get any merchandise out of any store while you were up there? A No sir.

Q When you burglarized the depot what were you burglarizing it for? A I was looking for a trunk of jewelry.

Q Instead of that you got a trunk of left-handed boots? A A trunk of shoes.

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Q All for the left foot, weren't they? A I did not look to see.

Q A trunk of drummer's samples? A I think so, I think they were.

Q They were of no use to you? A No sir.

Q You got hold of the wrong trunk? A Yes sir

Q Yes,-- well, have you covered pretty well your experiences up there in Wallace while you were there? A I have covered all my wrongdoing while I was there.

Q Did Jack Simpkins stay there with you while you was there?

A Yes sir, he did.

Q All the time? A Yes sir, he went to Spokane once or twice but came back again.

Q Was Jack in with you on these burglaries, etc.? A He was in with me on taking the trunk out of the depot.

Q He helped you did he? A Yes sir, he did.

Q Did you wire or write for any money to Denver at that time?

A I wrote for some money; I wrote to Mr. Moyer at Butte.

Q You wrote to Mr. Moyer for some money at Butte? A Yes sir.

Q For money? A Yes sir.

Q Did you wire for any? A I did not wire for any.

Q Why didn't you step into a telegraph office and send to Denver for money? A I did send to Mr. Moyer for money.

Q Did you send to Pettibone for any? A No sir, not while I was there.

Q Did you send to Mr. Haywood for any money? A No sir.

Q You had an arrangement which was emphasized over and over again that at any time you wanted money touch Pettibone for it?

A I got a hundred dollars while I was there, and I knew I was not up there for what they had sent me for and I thought I would wait until I got back to Caldwell before I sent for any more.

Q Well, why didn't you at this place or any other place go to the telegraph office and wire Pettibone for Money? A I didn't need to.

Q If you had sent a wire to Pettibone for money, you would have gotten money, wouldn't you? A I think I would.

Q And the telegraph office was open? A Yes sir.

Q And you had money enough to send a telegram? A Yes sir, I did.

Q And yet at no place or time did you wire in for money? A Not while I was there.

Q Nor from any other place? A Not while I was there.

Q Nor any place? A I don't know but I wired once in San Francisco, but I am not sure.

Q And notwithstanding your condition there at Wallace it never occurred to you to wire to Pettibone to send you money? A I did not wire for no money, no sir.

Q When you went to your friend Paulson for some money how much did you touch him for? A $300.

Q Is that all you asked for? A Yes sir.

Just wire for money

Q Did you suggest to him that you wanted him to go into an ice plant with you at Salt Lake? A Not at that time.

Q Was that afterwards? A No sir, it was before.

Q You tried to get him to go into some ice storage plant at Salt Lake or Goldfield, or somewhere? A No sir.

Q You tried to borrow six or seven thousand dollars of him to go in alone? A I tried to borrow five thousand dollars.

Q Was that at the time you was there? A No sir, it was not.

Q It was beforeyou borrowed the $300? A Yes sir.

Q When was that? A It was when I was in Denver.

Q When you was in Denver? A Yes sir.

Q When you tried to borrow this money did you talk with Paulsen about the fact that he had gotten rich out of the Hercules?

A No sir, I did not.

Q Didn't say anything about your chances having been lost?

A I don't know whether I referred to it or not.

Q Didn't you say to him that if you had remained in the Coeur d'Alenes the chances were that you would have been as rich as he was? A No sir, I did not.

Q Didn't you cuss Steunenberg to him? A No sir, I did not.

Q Did you say anything about Steunenberg? A No sir.

Q Did you say if it had not been for Steunenberg there you would have gotten rich too? A No sir.

Q Said nothing about it at all? A Nothing of the kind.

Q And didn't you say it was pretty hard on you that you should be so poor? A No sir.

Q And that the rest should be so rich? A No sir.

Q Didn't mention that fact at all? A No sir.

Q But you did touch him for $300? A Yes sir.

Q Your experience had shown to you that money would not last long there? A It did not last me long there, no sir.

Q And you had been there about how many weeks in that vicinity?

A I think three or four-- three or four weeks, I don't know just exactly the time.

Q Say about a month, you think? A Possibly about a month.

Q During all that time you had been seeing Paulson and the nice house he was living in? A Yes sir.

Q And saw Markwell? A Yes sir.

Q And Al Hutton? A Yes sir.

Q He had gotten rich too? A Yes sir.

Q And had seen Reeves? A Yes sir.

Q He was rich? A Yes sir.

Q And Ed. Boyce? A I don't think I saw Ed. Boyce.

Q You knew about him? A I knew about him.

Q You saw Samuels, didn't you? A No sir.

Q

Q You knew he had gotten rich? A I heard so.

Q And these things had no effect on you whatever? A No sir, not then.

Q Wasn't it then and there that you resolved to get some money and go down and kill Steunenberg? A If I could I was going to get it from Paulson, and if I could not I was going to send to Haywood or Pettibone.

Q And you took Paulson's money to pay your expenses while you went down to kill Steunenberg? A Yes sir, I did.

Q Yes. Now, when was it you had consulted with Paulson about $5,000. for the ice plant? A The summer before, while I was in Denver.

Q That was in the summer of 1904? A 1905.

Q 1905? A I think it was the same.

Q Oh, the same summer? A I think so.

Q The summer of which this was the fall? A Yes sir.

Q Now, during the summer while you were engaged in the assassination, or the proposed assassination of Governor Peabody, Judge Goddard and Judge Gabbert, and Sherman Bell, you had written up to Paulson to see if you could get $5,000. out of him to start an ice plant? A Yes sir.

Q At the same time you was trying to get a ranch that you thought you had earned? A I don't know as I was trying to get a ranch.

Q You knew you was going to get a ranch in consideration of all these murders which you had committed? A I knew I could get one.

Q Had the arrangement all madefor it that you were to have it?

A Yes sir.

Q The agreement was all out for it? A It was in a general way.

Q And yet here you was writing to Paulson to get $5,000. with which to get an ice plant? A I wrote to him, and Pettibone suggested it to me, and wanted me to do it; he thought it would be an easy way to get some money.

Q Oh, Pettibone was responsible for it? A Yes sir, and he told me to give his name.

Q And Pettibone put you up to borrow the three hundred, did he?

A No sir.

Q That is one thing then that he is not responsible for?

A No sir, he is not responsible for that.

Q But you did write that summer to Paulson at Pettibone's suggestion to get $5,000? A Yes sir, to put in an ice plant.

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Q Did you have an idea at that time what ice plant you was going to buy? A Dettibone said that he had looked over some.

Q And yet, you had all the money you wanted from the Federation?

A I had enough to keep me going.

Q You said you could get five or six thousand dollars to buy a ranch with? A I expected that much.

Q And yet you wrote up to Paulson to see if you could get $5,000? A Yes sir, I did.

Q I see. Well, when you got this $300. from Paulson you were a little bit astonished, weren't you? A How is that?

Q You was a little bit astonished, weren't you? A I did not know whether he would let me have it or not.

Q He had turned you down for the $5,000? A Yes sir. He said he did not have any money to loan.

Q So you went back and had a talk with Dave Coates about that, didn't you? A About which?

Q About the $300? A I told him I got it. I was on the way from Paulson's house and I met him, and I showed him the check.

Q You was on your way to the bank at that time to get it cashed, weren't you? A Yes sir.

Q And you met Dave Coates? A Yes sir.

Q And you said to him, "I got three hundred from Paulson and I was a dam/fool that I did not strike him for five hundred"?

A No sir, I did not say anything of the kind.

1143 Q What did he ~~said~~ you say? A I told him that he had better go

on for I told Paulson that I was going down to Los Angeles to sell some mining stock, and Coates was going to furnish the stock and I was going to sell it on commission.

Q And you was afraid that Paulson would say something to Coates about it? A I told him what to tell him if he said anything about it afterwards.

Q Did you tell Dave Coates that you were going down to kill Steunenberg? A No sir.

Q You was not afraid of him, were you? A No sir.

Q You had the cinch on him, didn't you? A I don't know that I had.

Q He had entered into this agreement to steal Paulson's child? A He started in with it.

Q You regarded him as a safe man? A I knew what Pettibone said about him.

Q You had Pettibone's recommendation? A Yes sir.

Q In the meantime had you gone any place-- gone over into the St. Joe country? A Not until I left there.

Q You did not go back there at all after you went into the St. Joe country, did you? A No sir.

Q Simpkins was going down into southern Idaho after going into the St. Joe country to visit the local at Silver City, as it is called? A He did go down.

Q He was intending to go at that time? A He spoke of going at that time.

Q You knew he had to visit the local? A No sir, he did not say that he had to.

Q You knew that that was a part of his business to visit the locals within his jurisdiction? A I knew that he did visit some.

Q And you knew it was the business of every man connected with the executive board to visit and look after the locals in their jurisdictions? A That was part of their business, yes sir.

Q And among other things they had to go and visit these locals once a year? A I don't know whether they had to go at all or not.

Q Didn't you find that he was talking about going down to visit the local at Silver City? A He was not talking about it until he agreed to go down and help me get away with Mr. Steunenberg and that that would be an excuse and he would get his expenses.

Q But you told him that you had been there to kill Steunenberg? and had failed and was going back to kill him? A I told him all about my trip, yes sir.

Q Didn't you go up there to find out when it would be that he would visit Silver City? A No sir.

Q And didn't you plan to be down here at that time? A No sir.

Q Did not? A No sir.

MR. RICHARDSON: Now, if your Honor please, I am going

into the St. Joe country and I cannot more than get started on it before it will be time to adjourn.

THE COURT: How long will it take you to get through?

MR. RICHARDSON: I should think I can get through tomorrow; maybe early in the day.

THE COURT: It is so near the adjournment hour that we will stop here then.

Thereupon the court gave the jury the statutory admonition, the defendant and witness were remanded to custody, the bailiffs were sworn and the jury retired in the custody of the bailiffs, and an adjournment was taken until 9:30 A. M. Thursday, June 13th.

Boise, Idaho, Thursday, June 13th, 1907.

9:30 o'clock A. M.

Parties met pursuant to adjournment.

The clerk called the names of the jurors and announced all were present.

WITNESS HARRY ORCHARD ON THE STAND

CROSS EXAMINATION CONTINUED

BY MR. RICHARDSON.

Q Have you had your usual talk with Mr. McParland this morning at half past eight? A I seen him a few minutes this morning about half past eight.

Q Did you see him last night after you went off the stand?

A No sir, I did not.

Q Had a visit with him this morning at half past eight until the time you came to the court house? A No sir, I saw him about five minutes.

Q Did not meet him by appointment? A No sir, I did not.

Q That is, by your appointment with him, I mean? A I did not.

Q Not as far as you personally know? A No sir.

Q You talked about the case I suppose? A It was spoken of. I would not swear just what was spoken of about it.

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Q You don't remember now what was said to you by Mr. McParland

at half past eight this morning? A He said he was very sick and hardly able to be out of bed.

Q That was the substance of your conversation? A And spoke-- I don't know just what he did say about the case.

Q He was very sick and hardly able to be out of bed and yet he met you at half past eight this morning? A I think it was fully nine o'clock when he met me-- I think it was.

Q The place where you met was Mr. Hawley's office? A Yes sir.

Q You met him there? A Yes sir.

Q You were about to start on your trip to St. Joe last night in your testimony when we adjourned: Prior to your leaving Denver you had some talk with Mr. Haywood about sending some money to the Gordon postoffice for the use of Steve Adams or Jack Simpkins? A I had some talk with him a good while before I left Denver.

Q And Haywood had inquired of you if you knew where the Gordon postoffice was? A Yes sir.

Q He did not have any trouble in remembering the name at all of the Gordon postoffice? A Yes sir, he asked me if I knew where the Gordon postoffice was; I think he said in northern Idaho-- I think he said in Shoshone County.

Q And because you did not know where it was-- you told him you did not know where it was? A Yes sir.

Q And because you did not know where it was and because he did not know where the Gordon postoffice was, therefore the money

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could not be sent by mail and therefore it was sent to Ed. Boyce? A I understood afterwards that it was sent to Ed. Boyce.

Q That was the reason, wasn't it, because you did not know where the Gordon postoffice and because he did not know where the Gordon postoffice was? A I think it was; I am not sure that is the reason.

Q It never occurred to you that the United States authorities who handle the mails would know where the Gordon postoffice was and that a letter to that address would be forwarded?

A I told Mr. Haywood very likely if they told him to send the money to Gordon postoffice they would very likely know where it was and would get it.

Q It was not the reason, was it, that you did not know where it was? A No sir,— I could not say whether it was or not.

Q But that was the inquiry in regard to it? A That is what they asked me, yes sir.

Q About the time you started to Gordon postoffice had you had any talk with a man named Jack Moffat about what you were going to do and where you were going? A I talked with Jack Moffat.

Q Who was Jack Moffat? A He was tending bar in a saloon in Wallace.

Q Did you talk with him more than once? A Yes sir.

Q What did you tell him you were going to do and where you were going? A I think I told him I was going on a hunting trip

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up on the St. Joe River.

Q Did you tell him that, or did you tell him that you was going over on Puget Sound to smuggle opium into the country?

A No sir, I did not.

Q Did you have any talk about that? A No sir, not about smuggling opium into the country.

Q Well, about smuggling morphine or any other drug? A No sir, not morphine or any other drug.

Q Were you going over there on a smuggling expedition?

A No sir, I don't think I was.

Q What did you say to Moffat about it?

MR. HAWLEY: We object to that. If it is asked for the purpose of laying grounds of impeachment let him fix the time and place of the conversation. This is not cross examination, or upon a matter to which I have called attention and it must be introduced for only one purpose.

THE COURT: What does the record show is your objection?

MR. HAWLEY: On the ground that it is incompetent, immaterial and irrelevant, and that it is not proper cross examination.

MR. RICHARDSON: They have asked about this expedition and we are entitled to go into the full history of the expedition with this kind of a witness, who is claimed to be an accomplice. We are entitled to a very wide latitude and we want to know all about this and not part of it.

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MR. HAWLEY: We don't object to going into these matters, ut we do object to bringing in matters that in novise pertain, unless they are done in an orderly and proper manner; in other worls matters that do not pertain to the case, but incidents to a conversation that have not been inquired into must be brought into the case for a particular purpose.

THE COURT: Is this question asked for the purpose of laying grounds for impeachment?

MR. RICHARDSON: I am not asking the question for impeachment at present, for I am not at all certain that I can find Mr. Moffat and get him here, and the reason I do not ask the impeaching question is because I don't know whether I can get him here yet.

THE COURT: I will permit you at this time to answer the question but I will not pass on its materiality.

Q Go ahead, Mr. Orchard. A You will have to ask the question again.

Q Read the question.

The question was read to the witness.

A About the--

Q About where you were going and what you were going to do?

A At that time you were speaking of I told him I was going on a hunting trip with Jack Simpkins, I think.

Q Shortly before that had you told him about the nature of an expedition that I have asked you about? A We were talking

about a ranch over on the Sound, and Moffat knew Mr. Pettibone up in the Coeur d'Alenes and had been mixed up with him in a number of things and we were talking over old times and he was telling me about his association with Pettibone and I told him about a ranch over there and I might have told him something about smuggling, for Pettibone wanted me to go and see this ranch and it was close to the British line and he said that if we wanted to do any smuggling we could do it.

Q And it was because of a suggestion of Pettibone? A I told him some things about Pettibone like that.

Q So you told Moffat at that time that you were going over on the Sound to locate a ranch and the object was to carry on smuggling? A No sir.

Q Did you tell him you wanted a couple of good fellows to go with you? A No sir, I did not.

Q Did you tell him you had a scheme fixed up for smuggling?

A No sir.

Q Did he say to you that if you went into anything of that kind you would probably wind up in the penitentiary? A No sir, he did not.

Q And did you tell him that you had a scheme worked out that they never would catch you and put you in the penitentiary?

A No sir.

Q You did not have any conversation like that in substance or effect? A No sir.

Q Neither in that saloon nor any other place? A No sir, nor at any other place. I am not sure just what this conversation was about this smuggling proposition, but I don't think I said anything about that. I talked to Mr. Moffat a good deal about these things and he told me of a good many things he had been mixed up with Pettibone in.

Q You have told us that before, and I am asking you what you said about it? A I am not sure I said that.

Q You think likely you did tell him about the smuggling? A I think possibly I did.

Q Was Simpkins with you when you started for the St. Joe country? A Yes sir.

Q Had he been with you in Wallace during all the time you were there? A He had with the exception when he went to Spokane once or twice, a day or two, and I think he went over to Murray once.

Q What did he go to Murray for? A I think he said he went over to visit the union.

Q What did he go to Spokane for, if you know? A I think he went to see his wife, and once to get some money.

Q He got some money down to Spokane, did he? A Yes sir.

Q You spoke about a letter which you wrote to Moyer at Butte; I don't know whether you told us all about that or not. Did you get some money in response to that letter? A Yes sir.

1153 Q Who did you get it from? A Mr. Simpkins.

Q Moyer didn't send you any that you know of? A Mr. Haywood sent it to Simpkins at Moyer's direction.

Q You got no answer to the letter from Moyer? A I am not positive whether I did or not.

Q You wrote him the letter to Butte and got no answer to it?

A There was some word came with it, I think, to Mr. Simpkins, with the money; I think he had instructed Mr. Haywood to wire or send him a hundred dollars.

Q That is, Simpkins said that Moyer had instructed Haywood to wire him a hundred dollars? A Yes sir, for me.

Q You got no answer from Moyer and no letter from Haywood?

A No sir.

Q But one day Mr. Simpkins handed you a hundred dollars, did he?

A I only got an answer through Mr. Simpkins.

Q And one day Mr. Simpkins handed you a hundred dollars?

A Yes sir.

Q And with the statement that that was frm Haywood to Moyer?

A No sir, he did not make that statement.

Q What did he say? A He handed me the hundred dollars and said, "Here is that hundred dollars that fellow sent you for that stock."

Q He said "Here is that hundred dollars that fellow sent you for that stock"? A Yes sir.

Q What fellow was that and what stock was he talking about?

1154 A I understood it was for another man, but he handed it to me.

Q. That was all said to you? A. It was at that time.

Q. You don't know where that hundred dollar check came from except as you drew an inference from it? A. He told me where it came from, yes sir.

Q. Did you see any telegrams or letters to Simpkins from Haywood or Mayer? A. I am not sure that I did.

Q. Well, in any event you got $100, did you? A. Yes sir.

Q. Where were you when you got it? A. I was in Burke in the Mike Macher's saloon.

Q. How long was that before you started for the St. Joe country? A. I don't know just how long it was, possibly a week or so or two weeks.

Q. Mike Macher saw you get the money, did he? A. No sir, I don't think he did.

Q. Where was he? A. I don't know just where he was. He might have been in the saloon; I don't remember if he wasor not.

Q. Was he a man who had a bartender in his saloon? A. Yes sir.

Q. Was there a bartender there? A. Yes sir.

Q. What was his name? A. I don't remember just who was tending bar there.

Q. Didn't Mike Macher tend bar himself? A. I don't think he did, not much.

Q. He had more than one bartender? A. I think he had two.

Q. Can you give us the name of the bartender who was present when the money was given to you? A. I don't know that I could, no sir.

Q. Don't know that you could? A. No sir.

Q. Could you give us the name of any other person who was present?

A. Yes sir, there was a man by the name of Scott present that I was talking to when he handed me the money.

Q. What was his first name? A. I think it was George but I am not positive.

Q. Where does he live? A. I don't know that I could tell you just where he lived. I think he lived somewheres in Minnesota.

Q. Was that the drummer who was selling jewelry whose trunk you tried to steal? A. Yes sir.

Q. You had borrowed $5 of Scott the very day of the night of the day that you stole his trunk, hadn't you? A. No sir, I don't think I ever borrowed any money from Scott.

Q. Don't think you did? A. No sir.

Q. Did you steal any money out of a saloon or store that was owned by a man named Murphy? A. I took some money, yes sir.

Q. Did you borrow $5 of him on the day of the night that you stole the money? A. I borrowed $5 from him at one time. I don't remember just when it was.

Q. Wasn't that the very day before you stole this money or the very night before? A. No sir, it was not.

Q. You borrowed $5 of him and then turned around and robbed him?

A. I borrowed $5 of him at one time -- I borrowed money from him lots of times.

Q. And then stole from him besides? A. I took this money. I had gambled in his place and went broke and I seen him put the money in the cash register and I came down and get into the cash register and got it.

Q. Thought that was getting even? A. I don't know as I thought that exactly.

Bertie Murray
Murphy

Q. No wrong involved in it? A. I thought it looked easy to get it and I took it.

Q. Simpkins and you left Wallace together, did you, for the St. Joe country? A. We left Wallace together for Spokane.

Q. For Spokane? A. Yes sir.

Q. Did you go into the St. Joe country from Spokane? A. Yes sir.

Q. What did you go to Spokane for? A. Simpkins wanted to go down home and get ready to go up there over on his ranch.

Q. There wasn't any reason why you should go over on his ranch, was there? A. I wanted to go up there to hunt for a week or so with him.

Q. You had been deputed to kill Steunenberg all by yourself, hadn't you? A. I had when I started away, yes sir.

Q. You hadn't been told to take Simpkins into your confidence, had you? A. No sir, not by anyone, no sir.

Q. Nor told to have any conversation with him upon the subject? A. I don't know that I was told to, no sir.

Q. Nor to have anything to do with him? A. I wasn't told to, no sir.

Q. And so far as you know it wasn't expected that you would have anything to do with Simpkins when you were sent out to kill Steunenberg? A. I don't know that it was. I told Simpkins that I was going up there before I left.

Q. That is, before you came backyou mean? A. Yes sir.

Q. You told him before you left that you would go up into the Coeur d'Alene country before you came back? A. Yes sir, I did.

1157 Q. How long a ticket did you have, what was the duration of it?

A. Ninety days.

Q. Ninety days? A. Yes sir.

Q. You went down to Spokane: How long did you stay there?

A. I stayed there three or four days.

Q. Who did you stay with? A. I stayed at the Spokane hotel a couple of nights and I stayed at Simpkins' place the rest of the time.

Q. And what were you doing while you were in Spokane?

A. I wasn't doing nothing only getting ready to go up on a hunting trip. I was waiting two or three days for my trunk or looking for it.

Q. Did you buy any dynamite on that trip? A. I didn't buy any then.

Q. Buy anything else except something to go on your hunting expeditionwith? A. I think nothing but I bought some shoes or some clothes; I think I bought some shoes. I think that is all.

Q. You didn't stay at Simpkins' house? A. I did part of the time, yes sir.

Q. And you were there three or four days? A. I think about that time.

Q. Then you went up into the St. Joe country, did you? A. Yes sir.

Q. How did you get up in there? A. Went up on the electric road to Coeur d'Alene City and crossed the lake on a boat to Harrison and on up the St. Joe river to the head of navigation.

1158 Q. How long did you stay there? A. I think we were gone about a week.

Q. Was it then that you learned that Steve Adams had been up there the fall before or the summer before? A. No sir, I had learned it long before that.

Q. And you went up and went over the same ground, didn't you?

A. I don't know that we went over the same ground, went in at about the same place I think.

Q. And stayed at Simpkins' cabin, didn't you? A. We did part of the time, yes sir.

Q. And hunted and fished while you were in there? A. Didn't fish any, I hunted some.

Q. How long were you in there in the St. Joe country? A. I think that we were gone about a week as near as I can remember.

Q. Don't you know that Simpkins was supposed to stay on his claim there six months out of the year? A. I think he was but I don't think he did.

Q. Well, I say wasn't he supposed to and didn't he talk with you about that? A. He talked to me about some time he was supposed to stay there.

Q. And didn't he tell you that when the season closed up so that it wouldn't be convenient to stay there any longer then he was going out to see these lodges, these locals as they are called? A. No sir, he didn't.

Q. Didn't say anything about that? A. No sir, he didn't.

Q. He did say it sometime, didn't he, that he could make an excuse to go to southern Idaho to go down and see the local at Silver City? A. He said when we started to go down there that he could make that excuse to go down and see the local unions

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and charge the Federation with his expenses.

Q. He hadn't made any statement with respect to that then until the time that you started down? A. He had spoke of it before, yes sir.

Q. So he came down on his own account to assist you to kill Steunenberg, he was going to make a visit to the local in order that he might be able to draw the expenses of the trip for himself? A. That, and for an excuse to come down here.

Q. Well, he gave that as his reason, didn't he, according to your station? A. He gave both reasons, said he could make that as an excuse and he could get his expenses too.

Q. Then he wanted an excuse, according to his statement, in order to cover his expenses on the trip? A. He wanted an excuse so that if he was caught down here he would have some excuse for being here.

Q. Didn't say that he had made any arrangement with headquarters to come down here and assist you in the killing of Steunenberg?

A. No sir, he did not.

Q. No talk of that kind between you or by either of you on the subject? A. No sir, he didn't say that he had made any arrangements.

Q. When was it that you and Simpkins came out of the St. Joe country? A. I can't tell just exactly when it was. I think it was possibly somewhere in the last of October or the first of November. I am not sure which, I think in October.

Q. Wasn't it while you were in the St. Joe country that you learned about the killing of Tyler and Haley? A. No sir, it wasn't when I first learned of it.

Q. Did you go to visit the place where they were said to have been killed? A. I was right close to the place where Simpkins said that Boley was killed.

Q. You were right close to that place? A. Yes sir.

Q. Went in over that trail, did you? A. Yes sir.

Q. What way did you go in? A. I went up over a train in from the head of navigation over on a place they call Marble Creek.

Q. And on your way in you went by the place where Boley was killed, did you? A. No sir, I did not.

Q. Didn't? A. No sir.

Q. I thought you said you went over the trail in going in where Boley was killed? A. I didn't say I went over the ~~tm~~ trail in going in, Boley was killed on beyond where Simpkins' cabin was at that time.

Q. You went over the trail after you got in, is that the idea?

A. We went over to that place once after that, yes sir.

Q. And Simpkins told you that that was the place where Boley was killed? A. Yes sir.

Q. And told you about the killing, did he? A. No sir.

Q. Gave you all of the circumstances and the details of it?

A. He did the most of them I think.

Q. Then did he show you where Tyler was killed? A. He told me about -- I didn't go over to where Tyler was killed, no sir.

Q. Did not? A. No sir.

Q. Was the place pointed out to you? A. No sir, not only just in the direction.

Q. When you came out did you come out the same way you went in,

by the St. Joe river? A. Yes sir.

Q. Didn't come out by the Santa trail? A. I don't know what trail they call it, I came out the same trail I went in.

Q. Do you know that the trail Boley was killed on was called the Santa trail? A. I know the place where he told me Boley was killed was right by his cabin, an old cabin that he had previous to building the one that he was in then, at another place on his claim.

Q. Well, there was nothing of any interest that happened in there except you went on your hunting expedition, was there?

A. No sir.

Q. You had your plans all matured, did you, for the killing of Steunenberg? A. I don't know that we had them matured until we came down here.

Q. You had them matured before you went up there, didn't you?

A. No sir, I don't think I did.

Q. Well, in any event, you came out of there after having been in there a week or ten days. A. About a week I think. I think we were gone about a week from Spokane. I am not positive, I think we did.

Q. Then did you go back to Spokane again? A. Yes sir.

Q. How long didyou stay at Spokane at that time? A. We stayed there a day or two.

Q. And then came on down, did you, to Caldwell? A. Yes sir.

Q. By way of Pendleton? A. Yes sir, I think so.

Q. What day was it that you got to Caldwell? A. I don't remember what day it was.

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Q. Neither the day of the week nor the day of the month?

A. No sir, I do not.

Q. But you have been shown a hotel register here that gave you the day, didn't it? A. I have, but I didn't notice the day of it. If I did, I don't recall the day now.

Q. You said before you looked at the register you couldn't tell what name you signed to it, didn't you, for yourself?

A. No sir, I don't think I did.

Q. Don't think you did? A. No sir.

Q. You knew all of the time what name you signed for yourself, didn't you? A. I think I did, yes sir.

Q. And it was Thomas of Hogan of Denver, was it? A. I am not sure about the Denver part; it was Thomas Hogan I think.

Q. You say you wrote the name of "J. Simmons"? A. I did the first time, yes sir.

Q. On that register? A. Yes sir.

Q. Well, didn't either you or Simpkins write any on that register after that, did you? A. I don't think we did; I am not sure.

Q. The other two names that you saw on there, or the other two places where your names appear were written by the hotel proprietor, weren't they, by Mr. Dempsey? A. I think they were.

Q. You wrote yours simply once? A. Well, I just wrote it once at that time. I think I had registered there before when I was at the Pacific hotel.

Q. Now you had been called Orchard up in the Coeur d'Alenes?

A. Yes sir.

Q. And you changed it back to Hogan from Denver when you got down to Caldwell? A I changed to Hogan when I got to the hotel I am not sure whether I registered from Denver or not.

Q. Where did you register Simmons from, did you notice? A. I didn't notice where I did register him from.

Q. But you yourself did write the name of J. Simmons?

A. Yes sir, I did.

Q. How long did you stay in Caldwell that time? A. I think I stayed there about somewheres in the neighborhood of three weeks, between two and three weeks.

Q. Constantly? A. Well, I was away to Nampa a couple of times during that time.

Q. Over here to Boise at all? A. No sir, not then.

Q. Where did Simpkins go? A. I came to Boise when I left there but not during this time, not during the time that I was in Caldwell. When I left there I came to Boise.

Q. Where did Simpkins go? A. Well, after he left Caldwell I think he went over to Silver City and up to Hailey.

Q. Up to Hailey, Idaho? A. I think so.

Q. At both places there were locals of the Western Federation, were there not? A. I don't know whether there is a local at Hailey or not. I don't think there is.

Q. How long did he remain at Caldwell before going down to Silver City? A. I don't know just how long he did remain, four or five days I think, possibly a week.

Q. Was it during the time that you and he were there that you called up Easterly? A. No sir.

Q. Didn't call up Easterly when Simpkins was with you? A. No sir.

Q. Did not? A. No sir.

1161 Q. You think he remained there four or five days you say?

A. Possibly a week. I wouldn't say just how long.

Q. And you and he were walking around the streets publicly during that time? A. Walked around the streets some.

Q. Strangers in the town? A. Yes sir, I was a stranger practically.

Q. A small town? A. Yes sir.

Q. Made no attempt to conceal yourselves? A. Well, we didn't go down -- or Simpkins didn't go down ~~[illegible]~~ through the front streets much at that time.

Q. Not much; how often? A. We went into the back way when we went to a restaurant that we eat at and crossed the street below the central part of the city or the town.

Q. And went in the back way to the restaurant? A. No sir.

Q. How did you get in the restaurant? A. Went in the front way off the street.

Q. Where is the restaurant? A. It is in the same block that the Saratoga hotel is in only down in the other end of the block; I think it is in the same block.

Q. That is right on the ~~[illegible]~~ principal street of the town.?

A. Yes sir, only it is down to the end of the business part of the street.

Q. Just a little ways beyond the Saratoga hotel? A. Yes sir, it is on the other end of the block.

Q. Have to go right in front of the Saratoga hotel to get there?

A. No sir, we didn't go in front of it.

Q. How did you get down there? A. We went down the street, down on the railroad, and went across the lower end of the street usually.

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Q. Then you did try to conceal yourselves while you were there

in town, did you? A. We did a little in that way, or Simpkins did. He said he had seen a couple of parties he thought might know him.

Q. Was that when he was first there? A. Yes, the first time he was there, yes.

Q. Well, was it the first part of the time that he was there?

A. It was during the time he was there.

Q. Did anybody look at you with any suspicion so far as you know or ask you any questions? A. So far as I know they didn't.

Q. They did not? A. No sir.

Q. Did you yourself go about the town freely? A. Quite freely, yes sir.

Q. During the day time? A. Yes sir.

Q. Reconnoitered the town, looking around it? A. I went around the town, yes sir.

Q. Went out to Staunenberg's place several times? A. I did.

Q. Got a big pair of field glasses? A. I had a pair of field glasses, yes sir.

Q. And you looked at Staunenberg's house from a distance with those field glasses? A. Sometimes I did.

Q. And right from the neighborhood of another house where people were looking at you? A. Might have people seen me but we didn't aim to have people see us much.

Q. Do you know whether or not Simpkins went to Hailey on organization work, if there is not a local there? A. I couldn't say. I think he went up for something like that.

Q. There is a mining country around Hailey somewhere, isn't there?

1166 A. I think there is.

Q. He had no other business there that you know of? A. He said that they wanted him to go over there from Silver City.

Q. What for? A. Well, I think to see about organizing some union.

Q. To see about organizing a local union? A. Yes sir.

Q. There wasn't anything connected with the Steunenberg business that called him over to Hailey, Idaho, was there? A. I don't think there was any more than he wanted an excuse, if he got caught down here, to tell what his business was.

Q. He told you that, did he? A. Yes sir, he did.

Q. So he went over to Hailey, Idaho, because the Silver City lodge had told him that that was a good place to go and organize a local, and he could make that so an excuse? A. Well, I don't know that they told him that, no sir; he didn't say so.

Q. Did he say he had had any correspondence with headquarters about organizing a local in that district where Hailey is located? A. No sir, he did not.

Q. Didn't mention that to you at all? A. No sir.

. Don't know whether he had had such correspondence or not?

A. No sir, I do not.

Q. Don't know whether he had been directed to Hailey for that purpose as soon as possible? A. He hadn't told me that he had.

Q. He had not? A. No sir.

Q. Well, you stayed on and Caldwell for about three weeks, did you? A. I think it was between two and three weeks.

Q. Did you make any trip out in the meantime? A. Yes sir, I went to Nampa I think twice.

Q. Went to Nampa twice? A. Yes sir, I think I went twice.

Q. Where did you register at Nampa, what hotel? A. I stayed one

night at the Grand hotel.

Q. Did you register there? A. I think I did.

Q. The same name? A. I think so.

Q. And from the same place, Denver? A. I don't remember about the place. I may have registered from Denver.

Q. Was that the time that you called Bill Easterly up?

A. No sir.

Q. Well, you went back to Caldwell, did you? A. I had written to Bill Easterly during that time.

Q. You had written to him? A. Yes sir.

Q. Did you get any answer to your letter? A. Yes sir.

Q. Have you got that answer to the letter? A. I don't know I have got all of it.

Q. Have you got the answer to the letter now? A. I haven't got all of it.

Q. You have got all of it? A. I haven't got all of it.

Q. Have you got part of it? A. I don't know whether I have or not.

Q. What did you save part of it for? A. I didn't save any part of it. I tore it up and throwed it away.

Q. You did, but still you think you have got a part of it?

A. I think they have got a part of it, yes sir.

Q. You think they have got part of it? A. I think so.

Q. You tore it all up and threw it all away, did you? A. Yes sir.

Q. Did you have more than one letter from Easterly? A. I think I had two.

Q. What have you done with the other one? A. I tore them up at the same time.

Q. Tore them both up and threw them both away? A. Yes sir.

Q. Have you got any part of the other one? A. Well, I am not positive that they have got any part of them. I told them where to find them, where they could find what I tore up and threw away and I understood they found part of it.

Q. Who did you understand that from? A. Mr. Thiele.

Q. Where was it you tore the letters up? A. Down toward the railroad track, about a mile from Caldwell, down near the bridge across over the Boise river.

Q. To the west of Caldwell? A. Yes sir, I think it is west.

Q. Going towards Oregon? A. Towards Portland.

Q. You told Mr. Thiele about it? A. Yes sir.

Q. And he afterwards told you he had gotten a part of the letters?

A. Told me he found them, yes sir, some of them.

Q. Have you read those letters since? A. No sir, I have not.

Q. Are they within your power to produce? A. No sir.

Q. You haven't got them? A. No sir.

Q. And you wrote how many letters to Easterly? A. I think I wrote two.

Q. Well, now, you wanted to get Easterly to come over there with you, didn't you? A. I didn't ask him in no letters to come over there, no sir.

Q. Didn't ask him in any letter? A. No sir.

Q. Did not? A. No sir.

Q. Did you ask him over the telephone? A. I did afterwards, yes sir.

Q. So far as you know there is only a portion of the letters in existence? A. So far as I know, yes sir.

Q. And you haven't seen that portion? A. No sir, I have not.

Q. When did you talk with Easterly over the telephone?

A. I talked with Easterly over the telephone when I came from Caldwell up to Boise that time just after I left, after Simpkins went home and I came up to Boise.

Q. You talked from Boise then? A. Yes sir, I did.

Q. Well, perhaps we are getting a little ahead of it. The first place you stopped at Caldwell you stayed there three weeks and Simpkins went away? A. I stayed there about three weeks, I think.

Q. And Simpkins went away? A. Yes sir.

Q. And did Simpkins come back before you went away again, or had you gone these two trips down to Nampa in the meantime?

A. I had made these two trips to Nampa in the meantime.

Q. Those trips to Nampa, just simply go down and come back the same day? A. I think one day I went down and came back the same day, I am not sure whether I did or not; and the other one I stayed over night and came back.

Q. What did you go down to Nampa for? A. I went down once to see Jack; I thought I would meet him there when he came from Silver City.

Q. Did you know when he was coming back from Silver City?

A. About when, yes sir. He wrote me a letter telling me about the time he would be back.

Q. You went down there, however, but you didn't see him?

A. No sir, I didn't see him at Nampa.

Q. Have you got the letter that he wrote to you stating when he would be back? A. Not any more than they may have portions of

it with these others.

Q. Was that torn up the same time the others were torn up?

A. I think it was; I tore up several of them.

Q. Don't know how much of that is lost and how much of it is saved? A. No sir, I do not.

Q. Well, when Simpkins came back did he go to Hailey first or come and see you? A. I think he went on to Hailey when he came back from Silver City.

Q. Without coming up to Caldwell to see you at all? A. No sir, he didn't come up to Caldwell then.

Q. How long was he gone to Silver City and to Hailey?

A. I think that he was gone about a week, possibly a little more.

Q. This was some time in the month of November, wasn't it?

A. I think it is in November, yes sir.

Q. In November? A. I think so.

Q. Now if you and Simpkins had come down together for the purpose of killing Steunenberg in the month of November why didn't you kill him then? A. We did make an attempt to.

Q. Why didn't you do it? A. Well, it was unsuccessful.

Q. And when the attempt was unsuccessful Simpkins went on back home, did he? A. Yes sir; Simpkins didn't go home right there; he said he would go on home and he would see me when he came back, that if we were caught there then it would be worse for him and it wouldn't be well for me to be there if Steunenberg was killed.

Q. Hadn't you known that before you started from Spokane on the expedition? A. Yes sir, we had, but Simpkins begin to get

scared after we got right down there on the ground.

Q. He began to get cold feet, did he? A. You might call it that; we do, sometimes.

Q. That is what you call it sometimes, you had thought about it, it would be bad for him and bad for everybody, and yet at the same time he came down here and stayed two or three weeks or more? A. I don't think he stayed three weeks.

Q. How long was he down here in all from the time he came down until he went back? A. I think somewheres about two weeks.

Q. Was he here any longer than it was necessary to make this trip into Silver City and over to Hailey, Idaho? A. He was around in Caldwell with me about a week.

Q. In all? A. Nearly a week I think, yes sir.

Q. On one occasion or two different occasions? A. Well, two different occasions.

Q. The second time he was there, however, he came in on the afternoon train and went out on the midnight train, didn't he?

A. He came in on the morning train I think and went out on the midnight train.

Q. Well, that time he was there one day? A. About that.

Q. And then he was there about six days besides that when you first came down? A. I don't know whether it was quite six days, somewheres about that I think.

Q. Now you brought along with you the material to manufacture a bomb? A. Yes sir, we did.

Q. Who manufactured that bomb, you or Simpkins? A. We both manufactured the first one.

1172 Q. You were both there together and manufactured the first bomb?

A. Yes sir.

Q. You manufactured it in the hotel, did you? A. Yes sir, in a room.

Q. Spill any of your stuff that you manufactured it out of around the room? A. Not that I know of.

Q. Very careful about that, were you? A. Tried to be.

Q. There was no trouble then in that hotel about the evidences of the bomb being around the room? A. I never heard of any.

Q. Was that the bomb that you buried in the strawstack?

A. We did bury it in some straw afterwards.

Q. Was that a bomb that was ever used? A. Yes sir, it was used.

Q. Was that the bomb that killed Steunenberg? A. It was the powder, yes sir

Q. You said you made two bombs. A. I did.

Q. When did you make the second one? A. I made it in the Saratoga hotel.

Q. Why did you make the second one? A. Because I wanted to change it a little. The first one was in a wooden box and I had a tin box that I got out of my trunk and I was going to use that.

Q. And you made the second bomb out of the first bomb? A. I made it out of the powder that was in it.

Q. You took the first bomb apart, to pieces? A. I took the powder out of the box.

Q. Took the powder out of the box? A. Yes sir.

Q. Well, the first bomb consisted then simply of having the powder in a box, did it? A. Yes sir.

Q. Were the caps put in it? A. We did have caps in it, yes sir.

Q. In the powder? A. Yes sir.

Q. And you took the powder and the caps out and put them into another case, which was all the change there was? A. Yes sir.

Q. That is the change, is it? A. Yes sir.

Q. Well, now, Simpkins went home along about the first of December then according to your best recollection, did he? A. He went home before the first of December.

Q. And you haven't seen Simpkins from that day to this?

A. I haven't seen him since he went home.

Q. Whatever time that it was? A. It was in November he went home.

Q. And you haven't seen him from that day to this? A. No sir, I have not.

Q. And you stayed around in this neighborhood, did you, for a considerable period of time after he went home? A. I didn't say very long after he went home.

Q. Where did you go to? A. I came up to Boise and stayed I think two days.

Q. Now it was from Boise that you talked to Bill Easterly, wasn't it? A. Yes sir, it was.

Q. Over the telephone? A. Yes sir.

Q. And that was the first time you had talked to him?

A. The first time I had talked to him for some time.

Q. What did you say to Easterly? A. I asked him if he wanted to come over and take part in a contract I had over there.

Q. Is that the first time you had said anything to him about coming over here? A. The firsttime I had asked him, yes sir.

Q. Had you said anything to him about hail insurance in any way?

A. I didn't at that time. I spoke to him once about hail insurance in Pueblo when I seen him.

Q. You didn't speak to him in your letters nor over the telephone about hail insurance? A. No sir, I did not. I don't remember that I did.

Q. Nor tell him what work you were engaged in until you talked to him over the telephone? A. I don't know that I told him at that time. Mr. Simpkins said that he had told him what he was down here for.

Q. Mr. Simpkins told you that he had told him? A. Yes sir, he did.

Q. So you talked with Easterly over the telephone, did you?

A. I did, yes sir.

Q. What did you say to Easterly over the telephone? A. I asked him if he wanted to come over and take part in a contract I had over here.

Q. Take part in a contract that you had over here? A. Yes sir, or words to that effect I said.

Q. What did he say to that? A. He said he didn't think that he could leave there then right off.

Q. Why? A. He didn't say why.

Q. Did he tell you it was because he had a good job? A. No sir, he didn't.

Q. A steady job? A. No sir.

Q. And didn't want to leave? A. He didn't say that, no sir.

Q. He said he didn't think he could leave there right then?

A. That is what he said, yes sir.

Q. Without giving you any reason why? A. He didn't say why.

Q. Was that all the conversation you had over the telephone with him? A. It was about the substance of it.

Q. You just called him up over the telephone and when he responded you said, "Do you want to come over here and take part in a contract that I have got here"? A. Oh, I spoke to him and said something over the phone to him in a general way.

Q. What did you say, that is what I want to know? A. Well, I don't remember, I think I asked him how he was and how he was getting along, or something like that.

Q. Did he tell you? A. I think he did. I aint sure just what was said.

Q. Did he tell you he was working in a mine? A. He said he was working; I knew he was working. He had told me so before.

Q. Did he tell you he was getting good pay? A. I don't know that he told me what he was getting except in the letter.

Q: Did he tell you he had a steady job? A. He told me he had a job, yes sir.

Q. Did he say anything about its being a good, steady job?

A. I don't know that he did.

Q. And that he was satisfied with it? A. Didn't say anything about that.

Q. And that he didn't want to make a change or make any experiments by going into anything else? A. No sir, didn't say anything about that.

Q. The substance of the whole conversation then was simply that you asked him if he wanted to come over and take part in a contract that you hadover here and he said he didn't think

he could get away at that time? A. The substance was to that effect, yes sir.

Q. You understood many other things but that was all that was said? A. I said that I think we talked about howhe was getting along, something like that.

Q. What is that? A. I think I asked him likely first how he was getting along or something to that effect.

Q. Now that was shortly after Simpkins went home in November?

A. Yes sir, it was.

Q. Now you stayed around here for some time after that, didn't you? A. I stayed in Boise two days I think.

Q. What were you doing during that time? A. I wasn't doing anything.

Q. Did you go out to see anybody who was running a quarry here?

A. No sir, I did not.

Q. Did you have any talk with a man named Van Orsdale here?

A. No sir, I did not.

Q. Did you try to sell him any explosives? A. No sir, I did not.

Q. Did you tell him that you had a non-freezeable explosive of great power? A. No sir, I did not.

Q. Or any words to that effect? A. No words to that effect neither.

Q. Do you know a man named John Jellison? A. No sir, I don't, not by that name.

Q. Not by that name? A. I don't know that I know a man by that name at all.

Q. A man who runs a stone quarry somewhere in this vicinity?

A. No sir, I don't.

Q. Didn't have any talk with any man of that kind? A. Not that I know of.

Q. Did you tell anybody, go around and see anybody and tell them that you had invented a non-freezable explosive of great power?

A. No sir.

Q. Or try to sell anything of that kind to anybody? A. No sir.

Q. Van Orsdale, Jellison or anybody else? A. No sir, I never tried to sell it to anybody.

Q. Was that your last visit to Boise, I mean prior to the Steunenberg killing? A. Yes sir, I think it was.

Q. You think it was? A. Yes sir.

Q. And you stayed here a couple of days? A. I think about two days.

Q. What were you doing while you was here? A. I wasn't doing anything.

Q. Did you go back to Caldwell? A. Not direct from here, no sir.

Q. Just loafing around here doing no thing? A. I wasn't doing anything, no sir.

Q. Did you go to Salt Lake from here? A. Yes sir.

Q. Went from here directly to Salt Lake City? A. Yes sir.

Q. What did you go down there for? A. I went down to see Charley Shoddy or Wyatt.

Q. Went there to see Charley Shoddy or Wyatt -- that was the same man, wasn't it? A. Yes sir.

Q. How long did you stay in Salt Lake? A. I think about three weeks.

Q. Were you trying to sell any mining stock at that time?

Shoddy or Wyatt

A. No sir, I don't think I tried to sell any mining stock.

Q. Were you telling anybody that you was trying to sell mining stock? A. I think I was, I was going to.

Q. Had you made any arrangements about selling mining stock?

A. I had some, yes sir.

Q. Who with? A. Dave Coates.

Q. That was before you left Wallace, wasn't it? A. Yes sir.

Q. You had told Dave that you was going down to Salt Lake when you left the Coeur d'Alene country, didn't you? A. No sir, I told him I was going to Los Angeles.

Q. And you wrote him from Salt Lake to know if the mining stock was ready? A. I did, yes sir.

Q. He said that he was organizing a mining company, did he not

A. He said -- I think he might have said he was organizing a company, he said the stock was all ready any time I was ready for it.

Q. Did he say the stock was ready at that time? A. I think he did.

Q. Why didn't you take it at that time? A. I didn't have no use for it then.

Q. Didn't he say that he was organizing a mining company but the stock wasn't quite ready, and if you would write him he would send ~~him~~ you the stock and then you could sell it?

A. I wouldn't say that he didn't say something like that, but I don't think he did. I think he said that the stock would be all ready when I was ready for it, and he said he wondered where I was during that time that he didn't hear from me before, something like that.

Q. That is, he wrote back to you to that effect? A. Yes sir.

Q. You wrote him from Salt Lake and asked him to send on the stock, didn't you? A. No sir, I didn't ask him to send on the stock.

Q. What did you say to him about it? A. I told him I would be down there again, I would be down to Los Angeles I thought before a great while and I would write him again.

Q. And asked him if he had the stock ready? A. I don't think I asked him if he had the stock ready. I think he told me it was ready.

Q. What was your object in writing him? You told him when you left there you was going to Los Angeles? A. I didn't know but I might go to Los Angeles. I wasn't sure about it.

Q. And you wrote him from Salt Lake you was going to Los Angeles? A. I told him I would be down there I thought before long.

Q. Did you write him you was sick? A. I may have, I don't know whether I did or not.

Q. And that you had not gone to Los Angeles as soon as you expected to go? A. I may have wrote him to that effect.

Q. You did? A. I may have; I don't remember. If I did, I wasn't sick.

Q. But you think likely that you did write him to that effect? A. I wouldn't say that I didn't. I might have.

Q. Did you give that as the reason why you hadn't got to Los Angeles sooner? A. I couldn't say whether I did or not. I might have.

Q. When you left the Coeur d'Alenes you gave Costen to understand that you were going to Los Angeles? A. Yes sir.

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Q. Directly? A. I think I did.

Q. And that you were going to sell stock in some mining company that he either had incorporated or was going to incorporate at that time? A. He was going to furnish some stock for me to sell, that was the understanding.

Q. And then you wrote him at Salt Lake because you hadn't gone to Los Angeles as soon as you expected to do so? A. Well, I wrote him for some excuse from there, yes sir.

Q. How long did you stay in Salt Lake? A. I think I stayed there about three weeks.

Q. What were you doing while there? A. I was out hunting some, hunting ducks, and loafing around the city.

Q. Went hunting ducks from Salt Lake City? A. Yes sir.

Q. And did you meet any of your old friends there? A. I met some of them, yes sir.

Q. Did you meet Pat Shoddy? A. No sir, I didn't meet Pat Shoddy.

Q. Didn't meet him? A. No sir.

Q. Did I get that right, was it Pat Shoddy? A. No sir, it was Charley.

Q. Did you meet Charley Shoddy? A. No sir.

Q. But you met some of your other old cronies? A. I met some of them, yes sir.

Q. How long did you stay around Salt Lake? A. I think I stayed there about three weeks.

Q. Had you gone down there because you got cold feet? A. Not exactly.

Q. Were you waiting so that Simpkins could get a long ways from Caldwell? A. No sir, I was not.

Q. You wasn't thinking anything about that? A. No sir.

Q. And didn't go to Salt Lake for any such purpose? A. No sir.

Q. Were you waiting for anything so far as killing Steunenberg was concerned? A. I was waiting to see Charley Moody.

Q. Steunenberg was right here handy all the time, wasn't he?

A. I don't know whether he was or not.

Q. Were you keeping track of him? A. I wasn't while I was away.

Q. You was not? A. No sir.

Q. What time was it when you came back up here? A. I think it was about the middle of December.

Q. You went to Salt Lake then and had a good time for two or three weeks, and then came back up here? A. Yes sir, I came back here, yes sir.

Q. About the middle of December? A. I think it was.

Q. Did you go directly to Caldwell? A. I think I did.

Q. And stayed around Caldwell? A. Yes sir.

Q. You were gambling there some? A. At Caldwell?

Q. Yes. A. I played for some drinks and I think I played a few games of sluff for a dollar on the corner or something, two or three games.

Q. At that time you went directly to the Saratoga hotel, didn't you? A. Yes sir.

Q. The most prominent and highest priced hotel there was there?

A. Yes sir.

Q. And the hotel where everybody who comes into Caldwell pretty near goesinto? A. A good many people; it is the leading hotel I think there.

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Q. The leading hotel, and it has a nice lobby, and all of the

people of the town, prominent people of the town, go in there very nearly every day, don't they? A. A good many people goes in there.

Q. So that you got well identified and well acquainted with people in Caldwell? A. Yes sir.

Q. You sat around that lobby? A. Yes sir.

Q. You drank in the bar room just off of the lobby? A. I did some.

Q. You ate in the dining room? A. Yes sir.

Q. And slept upstairs? A. Yes sir.

Q. And you got well acquainted with the servants in the hotel? A. I knew them, yes sir.

Q. The proprietor? A. Yes sir.

Q. And the people of the town generally? A. Some of them, yes sir.

Q. You think you became quite a fixture in Caldwell before this event happened, don't you? A. I knew a good many people; I don't know about the fixture.

Q. You registered as Thomas Hogan of Denver? A. I don't know whether I registered from Denver or not. I registered as Thomas Hogan.

Q. And you went by the name of Thomas Hogan? A. Yes sir.

Q. And was hail fellow, well met, with everybody around town, weren't you? A. I don't know how that was.

Q. You didn't try to conceal yourself in any way? A. No sir, I did not.

Q. And you went out on the edge of town and practiced with explosives while you were there, didn't you? A. I don't think I practiced any.

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Q. Well, didn't you go out and discharge some explosives out on

the north side of the railroad track? A. No sir, I did not.

Q. You did not? A. No sir.

Q. Not while you was there? A. No sir.

Q. Was anybody with you, anybody around town with you that you chummed with? A. No sir, only those around the hotel.

Q. Just those around the hotel? A. Yes sir.

Q. You didn't go out where there is a stone quarry or near a stone quarry on the north side of the town on one Sunday anddischarge some bomb out there? A. I never discharged nothing while I was there only the bomb that was spoken of.

Q. That is the only one? A. Yes sir.

Q. Did you shoot off your gun anywhere? A. I think I shot a gun, yes sir.

Q. Did you go out hunting? A. Yes sir.

Q. Did you make any experiments of any kind or character while you were there? A. I don't think I made any experiments, no sir.

Q. You learned that Steunenberg was running sheep, didn't you, know that he was a sheep man? A. Yes sir.

Q. And you learned that he was in the habit of going out where his sheep were, didn't you? A. I did, yes sir.

Q. You saw him go many times, didn't you? A. I saw him two or three times.

Q. And you saw him come back? A. Yes sir.

Q. And you knew that there was no trouble whatsoever in following him out and finding him out on the prairie alone, didn't you?

1184 A. I didn't know how that was.

Q. And yet you chose to kill Steunenberg right there in the town

by the explosion of a bomb, which would attract the attention of everybody? A. I did afterwards, yes sir.

Q. Why did you choose that method? A. Well, after I had been there so long I got desperate, I got so I didn't care much; I got disgusted with myself and I wanted to finish it up and get away from there and I took that means to do it.

Q. That was the very thing you had planned to do and had taken along the materials for making the bomb? A. I hadn't planned for it, I hadn't made no plans exactly then.

Q. Well, you took along the powder, didn't you? A. Yes sir.

Q. And the stuff to make this bomb with? A. Yes sir.

Q. And yet as a matter of fact you didn't intend to use it?

A. I did intend to use it if the opportunity presented itself, yes sir.

Q. And so finally you did use it in the way you have stated?

A. I did.

Q. In the most public manner imaginable? A. I may have; I don't know that it would bevery public, it would be public if it exploded.

Q. What is that? A. It would be public if it exploded.

Q. You never went to Mountainhome to look for Steunenberg?

A. No sir, I did not.

Q. You never followed him out to any of these sheep camps?

A. No sir.

Q. You never tried to meet him out of town? A. I went to Nampa once to come back with him on the train.

1185 Q. You did? A. Yes sir.

Q. Did you come back on the train with him? A. I think I did, but

I didn't see him.

Q. You think you came back on the same train but you didn't see the very man that you had gone to see? A. I didn't see him on the train, but he got off of the train.

Q. Why didn't you? A. The train was crowded and I didn't notice him when I went through the train.

Train

Q. Did you go for the purpose of killing him? A. I had the bomb along with me, and I had it in a little grip, and I thought possibly I might go in the train in Nampa and set it under his seat and go out and leave it there.

Q. Do you think you had the bomb with you? A. Yes sir, I do.

Q. You were going to put it under his seat in the car?

A. I thought of it.

Q. Didn't make any difference how many people there were in the car? A. I couldn't put it under if there was many people there; I didn't think of that though.

Q. In order to get Steunenberg you were willing to kill all the people that were on the car if it was necessary? A. I didn't think of it at that time.

Q. You would blow up the train besides? A. I didn't consider what it was likely to do.

Q. So you stayed in Caldwell fifteen days before you finally discharged this bomb onthat last occasion? A. I think it was about that time.

Q. After you discharged the bomb you got right back to the hotel just as quickly as you couldn't didn't you? A. I tried to, yes sir.

1186 Q. What did you do that for? A. I wanted to be at the hotel if I could when it went off.

Q. Did you say you run all the way from Stauenberg's house?

A. No, I didn't run all of the way. I run most of the way.

Q. Ran the most of the way? A. Yes sir.

Q. And you were on that little foot bridge that leads across from one street to another there at the time that the bomb went off? A. I was, yes sir.

Q. That is about five or six blocks from the hotel, isn't it?

A. No sir, it is not.

Q. How far is it? A. It is about a block and a half.

Q. About a block and a half from the hotel? A. Yes sir.

Q. And did you run before you got to the foot bridge?

A. Yes sir, I did.

Q. And ran after you passed the foot bridge? A. I don't know that I ran much after I passed it. I might have went pretty fast.

Q. Then you were in a very flustrated condition and heated condition when you got to the hotel? A. I was a little warm, yes sir.

Q. How long was it after the explosion occurred before you reached the hotel? A. I don't think it was more than two minutes.

Q. You think you were in the hotel in two minutes after the explosion occurred? A. I think I was.

Q. ~~But~~ You had set the bomb out there and come back about a mile, had you, before you heard it explode? A. I think it is nearly a mile. I don't know just how far it is.

Q. How far is it from the town out to Stauenberg's house in your judgment? A. I think it ~~wi~~ is somewhere about a mile, possibly not quite that far.

Q. About a mile, might be a little more and might be a little less? A. I think it is a little less, but I wouldn't say.

Q. You had gotten most of the way back to the hotel before Stauenberg got out there and exploded the bomb? A. I got nearly back there befor e it exploded.

Q. You went into the bar room? A. Yes sir.

Q. Just as cool and collected as you are now? A. I tried to be cool.

Q. Well, you were, weren't you? A. I don't know that I was very cool, I tried to act cool.

Q. Wasn't any effort for you, was it? A. Well, some little effort yes sir.

Q. Helped the bar tender tie up a parcel, didn't you? A. Yes sir.

Q. And you yourself did the tying of the string, didn't you?

A. No sir. I held my finger on the string while he tied it. He asked me to help him tie up a little parcel he had there, so I held my finger on the string.

Q. Displayed no nervousness at all that you know of? A. I tried not to.

Q. Then you turned around and went upstairs? A. Yes sir.

Q. And when you was upstairs you exploded this cap in your pocket?

A. There was a cap exploded in my pocket while I was up there.

Q. Was there anything around your room at that time to indicate that pu had been manufacturing bombs, there or changing bombs there? A. There was some things, yes sir.

Q. What were they? A. Well, I don't know that it would tend to show that I was manufacturing bombs exactly either.

Q. You spilled some stuff around on the floor, did you?

A. I had changed this powder out of a box in there the day before and mixed some plaster of paris.

Q. Had you scattered that around on the floor at that time?

A. I tried not to.

Q. You had not, had you? A. I don't know. I guess I did leave some of it around.

Q. Now isn't it true that at this time after you got up there you purposely scattered some stuff on the floor? A. No sir, I did not. I went up there and was going to clean this stuff -- anything which might look suspicious, out of my room.

Q. When had you made the bomb in your room or changed it?

A. I think I changed it several days before that.

Q. Several days? A. I think so.

Q. If there had been anything scattered around at the time of changing the bomb that had already been cleaned up, hadn't it?

A. There might have been a little plaster of paris, and there might have been even some little crumbs of powder, I don't know whether there was or not.

Q. You hadn't put that plaster of paris and those little crumbs of powder around there, had you, after you killed Steunenberg?

A. No sir. I tried to clean it up, if I had spilled it there I didn't want to leave it.

Q. That had been there, if you spilled it, several days?

A. I don't know how long. I tried to clean it up.

Q. You came back and tried to clean it up after you exploded the Steunenberg bomb? A. I didn't try to clean it up but I was going to.

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Q You noticed when you came back from the explosion of the Stauenberg bomb that some plaster of paris and powder and so forth were about the room? A No sir, I didn't notice it. What I intended to clean up was some stuff that was in my grip.

Q What was the stuff that you had in your grip? A I had some cayenne pepper and I had some chloride of potash and had some acid.

Q What was you going to do with the cayenne pepper?

Q I had it, I thought I might use it if I was found out on my shoes or on my tracks so dogs wouldn't be apt to follow me.

Q That was what you had the cayenne pepper for? A Yes sir.

Q And you had the plaster of paris in your grip, did you?

A No sir, it was in the bureau drawer.

Q Did you start in to cleaning up things that night right after the explosion of the Stauenberg bomb? A I went to empty some acid out and started in to clean it out, yes sir.

Q And that was the way you exploded the cap in your pocket, by putting the acid bottle in your pocket, was it? A Yes sir.

Q When that cap exploded you were considerably flustrated and scared, were you? A It made me nervous, unnerved me at that time.

Q You emptied this stuff in the wash bowl in the room?

A I emptied it in the wash bowl -- it was a sink that the water run into there.

Q There was a sink? A It wasn't a sink, it was in the shape of a wash bowl.

Q In your room? A Yes sir.

Q. Well, a room that had running water in it, a lavatory in it so it is called? A. It had a wash bowl in where I could pull the stopper out and let the water out.

Q. It wasn't a wash bowl and pitcher affair? A. No sir.

Q. And you poured this acid into that wash basin? A. Yes sir, I did.

Q. And let it run out? A. Yes sir.

Q. And then stuck the bottle in your pocket? A. Yes sir.

Q. And that was what exploded the cap? A. Yes sir.

Q. You had left the tamp carelessly in your pocket, had you?

A. Yes sir, I had.

Q. And that burned your coat or tore your coat some, did it?

A. Tore it some, yes sir.

Q. So you took that coat off and put on another? A. Yes sir.

Q. What did you do with the coat? A. I took and put it in my grip.

Q. At that time? A. Yes sir.

Q. And left the other stuff in your grip? A. Well, I had two grips, I left a part of it I think in each grip.

Q: That scared you up so you wanted to get out of the room as quickly as possible, did you? A. I wanted to get out of the room as quickly as possible, I thought someone would be coming up there to see what was the matter.

Q. You had always allowed your room to be taken care of by the chambermaid, hadn't you, just the same as other guests of the hotel? A. Yes sir.

Q. You hadn't tried to take care of it yourself? A. No sir.

Q. Nor interfered with nor prevented anybody going in there?

A. No sir.

Q. And see everything there was there? A. No sir, I did not.

Q. Did you lock your grips when you went out? A. Yes sir.

Q. How many grips did you have? A. Two.

Q. Did you ever take your trunk over there to the hotel?

A. No sir.

Q. You had left your trunk in the U. P. & N. depot?

A. Yes sir.

Q. And was paying storage on it? A. Yes sir.

Q. Rather than take it over to the hotel? A. Yes sir.

Q. Did you go over there to the depot to get any stuff out of your trunk? A. I did once or twice.

Q. Did once or twice? A. Yes sir.

Q. And the baggage man allowed you to do that, did he? A. Yes sir, he did.

Q. So you didn't unpack your trunk at all? A. Nothing any more than to take some things out that I wanted.

Q. I overlooked one thing. You had a little trouble with that trunk, didn't you, up in Spokane? A. Yes sir.

Q. And you employed Mr. Miller to sue the railroad company for the loss of your trunk? A. I did, yes sir.

Q. And after he commenced suit, why, your trunk turned up, didn't it? A. I think I found my trunk before the suit was commenced.

Q. Before the suit was commenced? A. Yes sir.

Q. Then he commenced suit for damages for detaining it, didn't he?

A. Yes sir.

Q. That was the time that you shipped your trunk from Wallace to Spokane? A. Yes sir.

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Q. How long was your trunk lost? A. Five or six days, something like that -- four or five days.

Q. That was the occasion of your becoming acquainted with Mr. Miller, wasn't it? A. Yes sir.

Q. Hadn't known him before? A. No sir.

Q. And he was your attorney? A. He was in that case.

Q. Well, you wrote him out authority to act for you, didn't you, and signed it? A. I signed some statement to him for him to act for me.

Q. As attorney? A. Yes sir.

Q. And that was all the relation that there was between you, was attorney and client, to get your trunk? A. All the relation there was between me and Mr. Miller at that time.

Q. You asked Mr. Simpkins for an attorney, didn't you, who he would recommend? A. I talked about suing them and he recommended me to go up to Miller and Robertson or Robertson and Miller.

Q. Robertson, Miller and Rosenhoff was the firm, wasn't it?

A. Yes sir.

Q. And you went up and saw Mr. Miller? A. Yes sir.

Q. And employed him as you have stated? A. Mr. Simpkins went up with me and introduced me to him.

Q. Did the trunk come down to Spokane immediately? A. I got my trunk when I went up to go to Harrison.

Q. Did your trunk come from Salt Lake City or had your trunk been there in the depot for a month or more at Caldwell?

A. It had been with me when I came from Salt Lake, I had it at Salt Lake with me.

Q. You took it down to Salt Lake? A. Yes sir.

Q. Then brought it back from Salt Lake up to Caldwell? A. Yes sir.

Q. And it had been in the depot at that time about fifteen days when you killed Steunenberg? A. Been there during the time I was in Caldwell, yes sir.

Q. You slept in your room that night? A. Yes sir.

Q. You went down and ate supper in the dining room? A. Yes sir.

Q. Sat around the hotel and discussed the death of Steunenberg with other people? A. I talked of it some, yes sir.

Q. Well, that was the general topic of conversation there, wasn't it? A. Yes sir, it was.

Q. And the only topic of conversation? A. It was the general talk.

Q. And you joined in that talk? A. I did some.

Q. Did you advance any theory, about who did it, to anybody?

A. No sir, I don't think I did.

Q. Well, when Sunday morning came were you arrested? A. Not on Sunday morning, no sir.

Q. What time were you arrested? A. I think I was arrested first about four o'clock Sunday afternoon.

Q. Sunday afternoon? A. Yes sir.

Q. You had stayed around there all day Sunday? A. Yes sir.

Q. Talked with different people about it? A. I talked with some.

Q. And heard what they had to say about it? A. I tried to hear what they had to say, yes sir.

Q. And at four o'clock Sunday afternoon you were arrested but you were not confined, were you? A. No sir, I wasn't confined.

Q. Put on parole? A. Yes sir.

Q. However, somebody told you you were under arrest and you mustn't leave town or something like that? A. Not to leave town or leave the hotel, I forget which. I think it was not to leave the hotel or not leave town.

Q. Did you stay in the hotel? A. I stayed in the hotel all the time after I was arrested.

Q. And Monday were you confined? A. I was Monday evening.

Q. You were at large all day Monday? A. I was until Monday I think about four o'clock or five o'clock.

Q. Who arrested you? A. The sheriff did first.

Q. And took you down to the jail of Canyon county, the jail back of the court house? A. He arrested me first. He didn't-- it was the deputy sheriff that told me he wanted me to come over to the prosecuting attorney's office or district attorney's office, or something.

Q. He did? A. Yes sir.

Q. And was that on Monday afternoon? A. Yes sir.

Q. And you went over to the prosecuting attorney's office and were questioned there, were you? A. I wasn't questioned much, a little.

Q. Was that Mr. Van Duyn that questioned you? A. No sir, he did not.

Q. Who was it? A. A man by the name of Johnson asked me all the questions that ~~I~~ was asked me there except reading a warrant to me.

Q. Was that a detective? A. I don't know whether he was a detective or not.

Q. But that was over in the prosecuting attorney's office?

A. Yes sir, or an office next to it.

Q. After he questioned you were you taken to the jail?

A. I was later, yes sir.

Q. Well, you were put in jail then and stayed there on Monday night? A. Yes sir.

Q. Were you questioned any further on Tuesday? A. I don't know that I was on Tuesday.

Q. And you stayed there on Tuesday? A. Yes sir.

Q. Tuesday night? A. Yes sir.

Q. Wednesday? A. Yes sir.

Q. Wednesday night? A. Yes sir.

Q. Thursday? A. Yes sir.

Q. Thursday night? A. Yes sir.

Q. And Friday? A. Yes sir.

Q. Before anybody came to see you? A. Well, I don't know what time it was they came to see me exactly.

Q. On Friday somebody came to see you, did they, that you knew?

A. I don't remember whether it was on Friday or not.

Q. Well, was it Saturday? A. Well, I couldn't say just when, it was a few days after I was arrested.

Q. It was several days after you were arrested, wasn't it?

A. Not very many days.

Q. It is a fact, isn't it, that on Saturday Mr. James J. Sullivan came to the jail to see you? A. I don't know that it was on Saturday; Mr. Sullivan came to see me.

Q. Mr. Sullivan came to see you and found you in the jail?

A. Yes sir.

Q. And you asked him to act as your attorney, didn't you?

A. I did after he came there, yes sir.

Q. Mr. James J. Sullivan was the man whom you had employed in Denver to sue for a commission for the sale of the Virginia rooming house, wasn't he? A. I don't know that I directly employed him. He was one of them.

Q. You were one of the plaintiffs, weren't you? A. Yes sir.

Q. And Hullivan was the other plaintiff, wasn't he?

A. Hullivan was one and Mr. Pettibone was the other.

Q. Was Mr. Pettibone one of the plaintiffs also? A. Yes sir.

Q. Sure about that? A. Yes sir.

Q. All three of you were plaintiffs in a suit for a hundred dollars? A. I think it was two hundred dollars.

Q. Two hundred dollars? A. I think that is what it was.

Q. In any event Sullivan was Jack Hullivan's attorney, wasn't he -- had been for some time and didn't you know that he had?

A. I didn't know that.

Q. Didn't know that? A. No sir.

Q. But he became your attorney by reason of your connection with Hullivan and Pettibone in this Virginia rooming house deal?

A. He said that he would take that case and collect that for $50 and he would take his chance of getting the $50 out of it. I think it was $200, the whole thing was, and if he got it we was to have $50 apiece.

Q. And he became your attorney on that occasion in that way, and that is the way you knew him? A. Well, I had knew him before that.

1197 Q. You had gotten a letter of recommendation from him, hadn't

you, to Mr. Stearns? A. I didn't get it myself.

Q. One had been gotten? A. Yes sir.

Q. It was the same man? A. Yes sir.

Q. Mr. Sullivan came in to see you on Saturday? A. I am not sure whether it was Saturday or not.

Q. You were called Harry Orchard at that time? A. No sir.

Q. You were called Thomas Hogan at that time, were you?

A. Yes sir.

Q. And he came in to see if you were Harry Orchard? A. He said he came in to see if this was me -- Tom, that is the way he spoke.

Q. He said he came in to see if that was you, Tom? A. Yes sir.

Q. And of course you said it was? A. I didn't have to say so, I guesshe knew.

Q. And then you asked him if he would act as your attorney in the matter? A. I did in the meantime, yes sir.

Q. And he told you he wouldn't, didn't he? A. He shook his head and said it was a long ways from home and he advised me to get a local attorney, he would hunt around and get me one he said.

Q. He said he was not acquainted with the laws of Idaho nor the practice in Idaho? A. He didn't say that. He said it was a long ways from home and he advised me to get a local attorney and he would look around and get me one.

Q. Look around and get you one? A. If I wanted him to.

Q. And then didn't you say to him that you knew a man named Miller up in Spokane that was a good lawyer? A. No sir, I didn't say that in those words. I told him that I had a telegram

from a man -- from Fred Miller of Spokane, but I expected him two or three days before that but he hadn't turned up yet.

Q. Didn't you ask Mr. Sullivan at that time and at that place to telegraph to Mr. Miller to come to see you? A. I asked him in the first place to. He said afterwards he would telegraph to Mr. Miller and find out if he was coming.

Q. And didn't Mr. Sullivan write out a telegram at your dictation which you signed in the sheriff's office to Mr. Miller?

A. No sir, I don't think I signed any telegram. I think --

Q. Don't think you did? A. I don't remember of signing any.

Q. Weren't you in the sheriff's office when you were having a consultation with Sullivan, when you talked with him?

A. I was in the sheriff's office at that time.

Q. And wasn't that the time that Sullivan wrote a telegram to Mr. Miller? A. I don't think he wrote it there. I don't remember if he did.

Q. Well, he did write a telegram? A. He said he would send a telegram for me and find out if Mr. Miller was coming.

Q. Wasn't Mr. Stone, one of the attorneys for the prosecution, there at the time that the telegram was written? A. He was there at that time. I don't know whether there was a telegram written. There might have been. I don't remember.

Q. Didn't he inspect the telegram? A. I don't remember of him inspecting it there.

Q. Don't remember it? A. No sir.

Q. Did he inspect it anywhere? A. I don't know whether he did or not.

1190 Q. Don't know? A. No sir.

. And Sullivan left, didn't he? A. He said he was going to Baker City but he would stop off and see me when he came back. He said he had some business down there.

Q. He was going up to Baker City? A. That is what he told me.

Q. He told you he had read in the newspaper of your arrest?

A. That he had seen the account of it and was wondering if it was me. He said he stopped off to see.

Q. Stopped off to see if it was the same man that had been his client? A. Didn't say anything about me being his client.

Q. Did not? A. No sir.

Q. So he went on the afternoon train to Baker City, did he?

A. I don't know just what train he went on.

Q. Did he get off there from the morning train? A. I couldn't say what train he got off of.

Q. Was it during the day that you first saw him? A. The first time, yes sir.

Q. In the forenoon of the day? A. I rather think it was, but I am not sure.

Q. He told you he would stop on his way back from Baker City and see whether or not you had gotten an attorney? A. He said he would stop on his way back from Baker City and see me again.

Q. And if you hadn't gotten an attorney he would help you to get one at that time? Did he say that or anything like that?

A. I don't remember that he did say just that.

Q. Do not? A. I don't remember that he said anything just like that.

Q. But in any event he was going on to Baker City and said he

1200 would stop and see you when he came back? A. That is what he

said, yes sir.

Q. But he wouldn't take your case because it was too far from Denver? A. That is what he said, but he afterwards wanted to get into the case.

Q. He did afterwards want to get into the case? A. Yes sir.

Q. When was that? After he came back from Baker City?

A. No sir, it was when he had seen Mr. Miller. Mr. Miller asked me if I wanted him for my attorney or wanted him in the case with him.

Q. You hadn't seen Mr. Sullivan on that subject? A. No sir.

Q. You had some talk with Mr. Miller about it? A. He didn't see Mr. Sullivan.

Q. You saw Mr. Miller? A. I seen him twice, once in the jail and once in the sheriff's office.

Q. Well, Mr. Miller became your attorney at that time, did he?

A He came down there afterwards.

Q. What time did Miller get there? A. I think he came in two or three days after this telegram -- after Mr. Sullivan sent the telegram.

Q. If that was on Saturday then it was some time during the fore part of the second week after your arrest? A. I think it was within a week after my arrest.

Q. Within a week? A. I think it was, as near as I can remember.

Q. It was about a week after your arrest before you saw Sullivan the first time, wasn't it? A. I don't know. It was some days, I don't know just how many.

Q. How long did you remain in the Caldwell county jail?

A. I think eighteen days.

 Q. Eighteen days? A. As near as I can remember, I think that is

what it was.

Q. You were arrested on the 31st of December? A. I was arrested on the 1st day of January.

Q. The 1st of January, that is, you were put in jail on the first of January? A. Yes sir.

Q. And on the 14th day of January you were taken away from that jail and put in the penitentiary, were you? A. I think so, yes sir.

Q. When you were put in the penitentiary what part of it were you put in? A. Put in a cell in what they call the new cell house.

Q. In the new cell house? A. What they call the new cell house.

Q. What kind of a cell was it? A. A steel cage.

Q. Bars or solid walls? A. Solid steel walls, bars in front, bars for a door.

Q. It was a place of solitary confinement, wasn't it?

A. I don't know what you would call it.

Q. Wasn't an individual that you could speak to anywhere, was there? A. Yes sir.

Q. Who was it? A. There was a man right next to me and there was a man outside I could speak to, a guard.

Q. You could speak with the guard if you wanted to? A. Yes sir.

Q. Was he a man who paced up and down? A. No sir, he was sitting outside in front of the cell.

Q. Did you speak to him? A. Sometimes, yes sir.

Q. You did? A. Yes sir.

Q. This man in the next cell was separated from you by a solid wall of steel, wasn't he? A. He was, yes sir.

Q. You no didn't see him? A. I could see him when he came outside, yes sir.

Q. You did see him when he went outside? A. Yes sir.

Q. Did you ever speak to him? A. Yes sir.

Q. You did? A. Yes sir.

Q. Often? A. I spoke to him quite often, yes sir.

Q. How many times a day? A. I couldn't say just how many times I did speak to him.

Q. Were you put into that penitentiary by your consent?

A. No sir, I wasn't.

Q. Wasn't asked anything about it, was you? A. No sir.

Q. Did you know or were you advised about your rights as to going to the penitentiary? A. No sir, I was not.

Q. You was not? A. No sir.

Q. You didn't know or enter any protest against being taken to the penitentiary? A. I wanted to know where I was going, when I started away I wanted to know where they was taking me.

Q. Did they tell you? A. No, I don't think they did.

Q. They refused to tell you, didn't they? A. I think they did.

Q. And they took you into this penitentiary and put you into this solid steel cell with just simply the bars in front, in the door that you went in and out? A. Yes sir.

Q. And then they placed a guard there over you? A. I don't know that they placed one there for me. There was a guard there.

Q. Which guard for the most part sat absolutely silent in front of your cell, didn't he? A. I beg your pardon.

Q. That guard, I say, for the most part sat absolutely silent

in front of your cell? A. Well, he talked a good deal to the other man that was there, and I spoke to him sometimes, not much

. How many times did you speak to him? A. I couldn't say.

. I used to speak to him quite often.

Q. Who was the other man, did you find out? A. Bob Wetter.

Q. A condemned murderer? A. I believe he was condemned, yes sir.

Q. Under sentence of death at that time? A. Yes sir.

Q. And he was the only man that you had any chance to talk ~~to~~ to outside of this guard? A. Well, I used to talk to the warden, who used to come in to see me three or four times a day or two or three times.

Q. Every day? A. Yes sir.

Q. From the time that you went there? A. Yes sir.

Q. How many days did you remain in that cell next to this condemned fellow? A. Well, I wouldn't say just how many, three or four weeks, three weeks or something.

Q. About three weeks? A. I think it was about three weeks, something like that, possibly a little more.

Q. How long before anybody came to see you and talked to you other than the warden and the guard who sat outside and Mr. Bob Wetter, the man who was condemned to death?

A. I don't know just how long, probably a week or ten days or two weeks.

Q. You were allowed no exercise at all, were you? A. I didn't get out to exercise at first, no sir.

Q. Didn't have any exercise until after this man came to see you, did you? A. Except what I could walk in my cell.

Q. And no one to talk with you except as you have stated?

A. That is all, yes sir.

Q. Your cell was about as large as the top of this table, wasn't it, or a trifle larger? A. A good deal larger than that. I think it is about five by seven feet, or seven and a half.

Q. Five by seven and a half feet? A. I think so.

Q. So that you had that much space to walk in? A. Yes sir.

Q. And you stayed there night and day? A. Yes sir.

Q. A part of this five by seven and a half feet was taken up by the bunk, wasn't it, upon which you slept? A. Yes sir, there was a cot in there.

Q. Where were you served with your meals? A. In that cell.

Q. How were you served? A. I was served by a man bringing them to me on a tray.

. Shoving it in to you the same as he did to this condemned murderer? A. Yes sir, put it in to me that way.

Q. And you stayed in that condition -- A. The door was opened part of the time.

Q. The door was opened? A. The door was opened to put it in.

Q. Did you have any literature to read while you were there?

A. Yes sir.

Q. What? A. I had some books that I got out of the library.

Q. Out of the penitentiary? A. Yes sir.

Q. Have any newspapers? A. No sir, I don't think I did.

. Weren't allowed to read a single newspaper, were you?

A. No sir, not at first.

Q. You asked for the newspapers, didn't you? A. I don't remember whether I did or not.

(240) Q. And you were told you couldn't have them? A. I didn't get

way then.

Q. And once in a while you were talked to, were you not, about your attorney having deserted you? A. No sir, I was not.

Q. Anybody say that to you? A. No sir.

Q. Now after you had been there, confined in that way for a number of days, who was it that came to see you? A. Well, Mr. McFarland came to see me.

Q. You didn't know him of course at that time? A. No sir, I didn't know him only from reputation.

Q. You didn't know who it was that came to see you, did you?

A. Not at first I didn't.

Q. He came in and sat down on a stool outside of your cell, didn't he? A. No sir, he did not.

Q. Where did you see him? A. I seen him out in the clerk's office.

Q. Were you taken out to the clerk's office? A. Yes sir.

Q. And at the time that you were taken there what did you do?

A. I talked to Mr. McFarland.

Q. At once? A. After I was introduced to him I talked to him.

Q. Did you know who he was as soon as you was introduced to him?

A. Not at first I didn't.

Q. Had you never met Mr. McFarland before? A. Not to know him.

Q. You had heard of him frequently? A. Yes sir, I had heard of him.

Q. And you knew about him? A. Yes sir.

Q. Had you ever been connected with him in any way? A. No sir.

Q. Or had any business arrangements with him? A. No sir.

Q. You went out into the office of the warden of the penitentiary, did you? A. I went out into the clerk's office, which was next

to the warden's office.

Q. How many rooms are there there? A. There are two on that side I think; there is two big rooms and there is a couple of little closets and a vault, I think, something like that.

Q. Were you in the room, the inner room, the one that is close to the wall of the penitentiary? A. The closest to the wall, yes sir.

Q. And there for the first time you saw James McFarland, did you?

A. Yes sir, the first time I ever seen him to know him.

Q. Who introduced you? A. The warden.

Q. Shook hands? A. I don't think I did.

Q. Did he offer to shake hands with you? A. I don't remember whether he did or not or whether I shook hands.

Q. Was he sitting or standing? A. He was sitting when I went in.

Q. Did he get up when you came in? A. I am not quite sure whether he did or not; perhaps he did.

Q. You were invited to take a seat, were you? A. I did take a seat, I think I was.

Q. Did the warden leave you? A. Yes sir.

Q. Left you with Mr. McFarland alone? A. Yes sir.

Q. How long did you stay there with Mr. McFarland? A. I think possibly an hour at that time, or an hour and a half.

Q. Did he talk with you or just sit there and look at you?

A. He talked with me.

Q. During the entire hour? A. Most of the time, yes sir.

Q. Commenced talking at once? A. Yes sir.

Q. You were not saying anything at that time, were you?

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A. Yes sir, I talked to him some.

Q. You did? A. Yes sir.

Q. The very first time you saw him? A. Yes sir.

Q. What did you say to him? A. I don't remember just what I did say to him. I didn't say as much to him as he did to me.

Q. Did you make any complaint to him about your treatment there?

A. Yes sir, I think I did.

Q. About your being in the penitentiary? A. Yes sir.

Q. About their right to keep you in the penitentiary?

A. I think I spoke of it, yes sir.

Q. Said they had no right to put you in the penitentiary, didn't you? A. I think I said they had no right or I didn't think they did.

Q. You hadn't been tried or convicted at that time? A. No sir, I had not.

Q. And there was nothing but an accusation against you? A. There was a charge against me.

Q. Then McFarland started in to talk to you? A. McFarland had been talking to me before that.

Q. Before you said anything, made any complaint, eh? A. Yes, he talked to me before I made any complaint.

Q. He started in to talk with you and told you who you were, didn't he? A. No sir, he didn't tell me who I was.

Q. Did he know who you were? A. I don't know whether he did or not.

Q. Did he talk with you about your past life? A. Yes sir, some.

Q. Told you about his past life too, didn't he? A. Told me some about it, yes sir, after I knew who he was.

Q. After you knew who he was he continued to tell you about his experience with the Molly McGuires, didn't he? A. He told me

something about the Molly McGuires, yes sir.

Q. That was about the first thing that he told you, wasn't it?

A. No sir, it wasn't.

Q. Related some Bible stories to you first? A. Talked to me some about the Bible, yes sir.

Q. Commenced on the Bible, eh? A. I don't know as he did right at first. He asked me if I believed in the Bible or believed in a God.

Q. Then you commenced to talk about the Molly McGuires?

A. We did talk about the Molly McGuires.

Q. And as quick as he got to talking with you about the Molly McGuires he commenced to talk about the Western Federation of Miners, didn't he? A. No sir, I don't know that he mentioned the Western Federation of Miners that time.

Q. Didn't that day? A. I don't know that he did at that time, not by calling them the Western Federation of Miners.

Q. That day he confined himself to Bible stories?

A. No sir, he did not.

Q. What did he call the Western Federation of Miners? A. I think he spoke about my being at the headquarters or going in and out of headquarters in Denver.

Q. Of the Western Federation of Miners? A. Well, he may have said that. I don't think he said anything about the Western Federation of Miners other than mentioning the headquarters.

Q He told you that he knew you was guilty of killing Steunenberg?

A I believe he said that he believed I was connected with it.

Q Did he say anything further about that? A He said he believed that I was guilty of it and did not believe I was alone in it; he believed there were others in it with me.

Q Did you hear him talk to Steve Adams? A I think I have heard him talk with him, but not at that time.

Q Did you hear all his talk with Steve Adams? A I heard of it afterwards, yes sir.

Q Well, did he talk with you along the samelines that you understood talked with Steve Adams? A I don't know that he did; some things I believe was,-- I am not positive about that.

Q Then he commenced by telling you what a bad man you were, did he? A No sir, he did not say so.

Q He commencedby telling you some bible stories? A He spoke about the bible.

Q And told you some stories about David and Uriah? A Yes sir, he mentioned King David, yes sir.

Q And how David got Uriah's wife away from him? A I don't know about that.

Q David got Uriah killed,-- he set him in the fore front of the battle? A Yes sir.

Q And did he tell you about St. Paul? A He spoke of St. Paul, yes sir.

David & Paul

Q And you had never known, or had much or any experience with McFarland to know anything about him? A No sir, only by reputation.

Q You never had heard that McFarland was a very religious man?

A I had not heard much about him.

Q Or that he was around engaged in converting people? A No sir, I had not heard much about him.

Q And he told you that David had killed Uriah to get Uriah's wife? A I don't know that he mentioned that, but he spoke of King David.

Q And that King David, after becoming a bloody murderer, became a man after God's own heart? A He told me about King David being a murderer.

Q And then he told you what a wretch St. Paul was? A Yes sir, he spoke of St. Paul.

Q He did not say what effect it had had on Uriah, did he?

A I don't remembrthat he spoke of that particularly.

Q Did not consider Uriah at all,-- just David? A He might have spoken of that.

Q And you did not, either one of you, consider that it was pretty tough on Uriah?

MR. HAWLEY: We object to that.

A I don't remember that he did.

Q He did not say it anyway? A I don't remember that he did.

Q Did he mention St. Paul? A Yes sir, he did.

Q Who else did he mention? A I don't know just who else he mentioned.

Q How long did he talk of these bible stories of his? A Not very long.

Q After he got through talking about the bible stories did he go ahead and talk about the men at the head of the Western Federation of Miners? A I don't think so. He did mention-- he did not anymore than about my being at headquarters.

Q Did he mention the men at all? A I don't think he did.

Q At that time? A No sir.

Q That first tak did not have much effect on you, did it? A I don't know that it did, but I was thinking about these things some.

Q You was thinking about these things some? A Yes sir.

Q And after that he went to talking about the Molly McGuires.

Q I don't know that it was after he got through-- after talking about the bible; I think he talked about the Molly McGuires before that.

Q He told you how he, as a Pinkerton detective, went down among the Molly McGuires, did he? A He told me about being down there.

Q And how he joined one of their lodges? A I think he told me he was a Molly McGuire.

Q And how he became possessed of their secrets by so doing?

A He told me something about that, yes sir.

Q How one would be appointed to murder a man who the Molly McGuires were opposed to? A He told me about the leaders of the Molly McGuires employing men to murder men they could not control.

Q Did he tell you that he had become an officer of one of the Molly McGuire lodges? A I don't remember that he did.

Q Did he tell you that he was a member of Shenandoah lodge of the Ancient Order of Hibernians? A No sir.

Q Did he tell you that as an officer in that lodge he signed a draft for $500. for Tom Hurley the man who killed Bloomer James? A No sir.

Q He did not mention that? A No sir.

Q He did not tell you that he had paid for the murder of one of those men? A No sir.

Q Did he tell you about Kelly the bum? A No sir.

Q Did he tell you that he was connected with twelve or thirteen atrocious murders? A No sir.

Q How many did he say he was connected with? A Only one.

Q Did he tell you that he himself knew Kelly the bum well?

A Yes sir.

Q And that he was associated with him as a member of the lodge?

A No sir, he didn't say that.

Q And that he knew Kelly the bum was a murderer? A He said he knew he had been used as a tool to commit murder.

1218 Q And he said that Kelly the bum had turned State's evidence?

A He said he was a witness, yes sir.

Q And that he had gotten him to turn State's evidence through his influence? A He did tell me that afterwards. I don't think he did at that time.

Q And he had gotten him under the promise that he would be protected if he turned State's evidence? A No sir, he did not.

Q And after he testified he gave him a thousand dollars to leave the country on? A No sir.

Q What did he say? A He said he thought there was a collection taken up and they gave Kelly seven or eight hundred dollars to leave the country.

Q And he was not put on trial for his life? A I think no.

Q And that he was allowed to leave the country? A I think he did.

Q And to reform and become a better man? A He told me he did not think he ever did reform.

Q And he said the State had kept its promise to Kelly the bum?

A No sir.

Q And that Kelly the bum was allowed to leave the country?

A He said he left the country, but he did not tell me that he was promised anything by the State.

Q Well, he left the country under McFarland's promise? A No sir.

Q And he was taken care of and no harm came to him? A He said he thought there was a collection taken up of seven or eight hundred dollars to leave the country.

Kelly Chris

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Jack Jones as Witness

6

Q He was given his liberty? A He said he left the country.

Q And he told you the State always took care of its witnesses in that way? A No sir, he told me the State was always fair with its witnesses.

Q Did he tell you anything about Tom Hurley? A I don't remember that he did.

Q Did he mention anybody else but Kelly? A He may have.

Q Did he mention a man by the name of Kerrigan? A I think he did.

Q He said that Kerrigan was guilty of several murders didn't he? A No sir, he did not.

Q Did not? A No sir.

Q But he said Kerrigan had turned State's evidence? A I don't remember what he said about him.

Q And didn't he say that Kerrigan had got off all right and no trouble came to him? A I don't remember that he told me anything about Kerrigan. I think he mentioned him in some way.

Q Do you remember his mentioning a man named Lawler? A No sir.

Q But he did mention several other names besides Kelly the bum and Kerrigan? A I think I remember Kerrigan and Kelly the bum.

Q And these men when he mentioned were all men who had turned State's evidence, were they not, that he mentioned to you?

A I think he said they were witnesses, yes sir.

Phil Enslow Witness

Q witnesses for the State? A I think so.

Q And not one of them had been prosecuted or tried? A He did not say. He said-- he spoke of Kelly the bum, and I don't remember what he said about the others.

Q Didn't he say that all these men had gotten off? A No sir, I don't remember that he said just that. I remember about Kelly the bum, but the others I don't remember.

Q Had either one of them been prosecuted for their crimes?

A I couldnot tell you.

Q But the men they peached on, every one of those fellows had beenhung higher than Haman? A He told me that several had been hung.

Q And that he, after joining their organization, he himself had gotten off? A He told me he had never participated in any crimes; that he had stopped all the crimes with the exception of two.

Q And one of those he had paid for, didn't he? A He did not tell me that.

Q He did not tell you about taking part in any of these riots where men werekilled? A No sir.

Q And he did not tell you that he was regarded as the worst man of then all? A No sir.

Q Did he tell you about a battle that was fought there between the Molly McGuires and the troops where the troops were guarding a certain building? A No sir.

1216

Q

Q And that the troops had directions not to shoot at a certain gray coat in the crowd? A No sir.

Q Which gray coat he was encased in? A No sir, he did not tell me that.

Q And he did not tell you that he had become one of the leading officers of the Molly McGuires? A No sir.

Q And that he was regarded by them as one of the worst desperadoes in the entire bunch? A No sir.

Q Did he tell you that he went in there in 1873 and stayed until 1876 and was engaged in drunkedness and dissipation and association with these men all the time? A He told me he was there three or four years.

Q And during all the time he was a Pinkerton detective?

A He was a detective.

Q And that was wherehe had won his spurs? A He did not tell me that, no sir.

Q Did he tell you that prior to going in there in 1873 there had never been but three murders committed in the Anthracite coal region, onein 1864, one in 1867, and one in 1871?

A No sir, he did not. He told me there had been about twenty-three or twenty-four murders, or twenty-six.

Q Twenty-six murders committed in that region? A Something like that.

Q And he did not tell you that prior to his going in there that out of that twenty-six murders there were only three committed

beforehis arrival? A No sir, he did not.

Q And you did not know that three of them were committed prior to 1873 and the other twenty-three subsequent to that time and during the time that he was there?

MR. HAWLEY: We object to the as not cross examination and not being pertinent to the issue.

MR. RICHARDSON: Very well, I will ask--

THE COURT: Is the question withdrawn, Mr. Richardson?

MR. RICHARDSON: I will put the question as to whether he told him.

THE COURT: Is the question withdrawn?

MR. RICHARDSON: Yes sir.

Q Did he tell you either in substance or effect on that occasion or on any any occasion when you talked with him that prior to his going in there in 1873 there had been only three murders in the anthracite coal district, one in 1864, one in 1867 and one in 1871, and the balance were committed while he was an officer and a member of the Ancient Order of Hibernians known as the Molly McGuires?

MR. HAWLEY: We object to that question as incompetent, immaterial and irrelevant and not proper cross examination. I want to say this: That we have no objection to going fully into all these matters , as fully as counsel desire; we have no objection to obtaining any legitimate information by any process that it can be obtained, nor will we enforce the strict rules which govern cross examination, because the rules

are just as well defined for cross examination as they are in respect to the direct examination, but it is evident that questions of this kind are not asked for the purpose of eliciting information, or inquiring into, or obtaining information in regard to a conversation that was had,-- there is an easier and better way of doing that than that way, but it is evidence, as I take it from this question, as well as other questions, that there is an effort to make the impression, not that these conversations were had, but that there was something in reality in these matters to which this conversation, or pretended conversation, is apparently directed. Now, we object to that and we object to it now, and we simply bring it to the attention of the court, not because we are attempting to stifle the examination in the slightest degree, but because we believe it is not a proper method of cross examining, and it might unintentionally deceive the jury perhaps. If there is anything pertinent in these matters they can be inquired into. We have no desire to limit the inquiry. If there is anything in this conversation that they desire let them bring it out in any way, but if your Honor will recollect the rule in cross examination of witnesses, it does not lie in the mouth of counsel to put an imaginary conversation in the mouth of the witness, and they must ask in regard to this conversation themselves. There is a limit to that; not that we are desiring to go to that limit or to enforce, so far as

this matter is concerned, the strict application of the rule, but we do desire to have a rule of the court in regard to these questions which are apparently directed, not for the purpose of eliciting information, but possibly of leaving a wrong impression upon the minds of some of the jury.

MR. RICHARDSON: If your Honor please, here is a man who is an accomplice, under his own testimony; who is not only an accomplice but the actual perpetrator of the various offenses which he says were committed, and the actual perpetrator of the offense for which this defendant stands here for trial. He comes upon the stand and relates his story with respect to it, in no way attempting to shield himself, admitting that he is the chief actor in all these matters, but simply submitting that somebody else is the instigator of these actions. Being so placed upon the stand as an accomplice we are entitled to the widest latitude in cross examination and there never was any rule of cross examination in any book, at any time, that can be produced which does not allow us to ask leading and suggestive questions which he is at perfect liberty to deny if they do not exist. Now that is exactly what we are doing. Here is a man fitted for this examination, prepared to assist the State as an accomplice in this crime; he comes here voluntarily to tell what he knows about it so far as he is concerned, and to implicate other people. If there is any motive held out to him, or

inducement, or any statement made to him, or any inducement of any kind or character, we can, under the law, and we ought to be allowed by the Judge to have the widest latitude in this cross examination to see what influences actuated him in the story he is telling this jury, involving as it does a man who says that he had no participation in it whatever. Here is a man himself who is of the guiltiest character, according to his own statement. Is he going to escape by laying the crime he has committed onto somebody else? And is there any rule of cross examination which prohibits us from examining as to the motives which actuated his testimony? Every rule which affects his credence before the jury we are entitled to the widest latitude in this cross examination.

MR. HAWLEY: We are not objecting to leading and suggestive questions, or to inquiring into the inducement or the influence. That is begging this question. We understand that the rules of cross examination of this witness, or any witness would permit that, and we are willing that the rules of cross examination shall be stretched to the utmost limit so far as this witness is concerned, but that is not the proposition I have submitted to the court. What I stated to the court in opening as to this question, either that it was not an honest effort to obtain information with regard to a conversation which may be obtained very rightly, and in a dozen ways, but simply an attempt to prejudice, perhaps, that heard

the question in regard to the actions of the party that was holding the conversation-- read the question, Mr. Reporter-- that is what I object to. Didn't he say so and so in regard to something that happened in Pennsylvania, or didn't he say so and so or that such and such an event happened there, implying that such an event did happen,-- that is what the objection goes to.

THE COURT: I am going to permit counsel to exercise a good deal of latitude in examining and cross examining this witness and if you think that the jury may be in any way prejudiced by questions of that character that can be cured by an instruction at the proper time. The court will permit the witness to answer this question.

Q Read the question.

The last question was read.

A No sir, he told me nothing of the kind at no time.

Q Have you got-- did he give you a book to read entitled "The History of the Molly McGuires,-- I don't know as I have got the title of the book exactly right-- written by Allan Pinkerton? A No sir.

Q Have you seen that book? A No sir, I have not.

Q And never have read the story which it contains? A No sir, I never did.

Q Did he tell you that he was sent in there-- did he say anything about his being sent in there to break up the coal miners union?

A No sir.

Q Did not say that that was the object and purpose of it?

A He said the Molly McGuires was not a labor union.

Q That they were not a labor union? A That is what he told me.

Q Did he say it was the Ancient Order of Hibernians? A No sir, he did not say anything about the ancient order of Hibernians.

Q Did he say who did send him in there? A I don't think he did.

Q Did not mention the President of the Pennsylvania and Reading railway or railroad? A No sir, not that I know of.

Q Did he mention Franklin McGowen's name? A I don't remember that name.

Q Did he tell you that the President of that road assisted in the prosecution of the Molly McGuires? A No sir.

Q But he did tell you that all the people who had turned State's evidence were held immune from prosecution and punishment and had gotten away? A No sir.

Q Did he tell you that part of that? A He spoke of Kelly the bum and one or two others.

Q Did he say that any witnesses had been hung that had turned State's evidence? A I don't remember that he did.

Q He told you that the result of that investigation had hung fourteen men and imprisoned twenty-three others? A He told me twenty-four, I think.

MR. BORAH: You have got it too low.

MR. RICHARDSON: I may have; I don't know.

Q The men who had turned State's evidence, so far as you know had all escaped? A I don't know any more than what I have spoken of.

Q And have got away? A He told me that.

Q And Kelly the bum got seven or eight hundred dollars premium for his testimony? A He told me he thought they took up a collection and gave it to him to get out of the country.

Q Who took up a collection? A I think he said the citizens.

Q But Kelly the bum got away? A Yes sir.

Q And didn't he tell you he was the most redhanded and worst murder in the entire bunch? A He told me that he had a very bad reputation and had been guilty of a good many offenses from murder down.

Q Had been guilty of everything from murder down? A Yes sir.

Q And then he was given seven or eight hundred dollars?

A He told me just as I have stated it.

Q Did he tell you that you would get seven or eight hundred dollars and immunity from punishment? A No sir, he did not.

Q But it left that impressi on on your mind? A I was very much in doubt about what he was telling me; I did not believe much of it.

Q You did not believe it? A No sir.

Q But if it was true it left that impression on your mind? A I did not believe it was true in the first place.

1221 Q You did not say anything to him about it? A I don't know

that I did in particular then.

Q He then told you all these religious stories and followed them up by a lot of stuffyou thought was a lie? A I don't know whether he told these religious stories first or not.

Q How long were you and he there together? A An hour or an hour and a half.

Q You had heard these religious stories before, hadn't you? A I had read the bible some.

Q Had you been connected with a Sunday school? A Yes sir.

Q You had attended Sunday school? A Yes sir.

Q Had you been connected with the Methodist church? A Yes sir.

Q Were you ever a Sunday school superintendent? A No sir.

Q Were you a regular attendant at church when you were a boy? A Yes sir.

Q Were your people Methodists? A No sir.

Q Were they Quakers? A Yes sir, I think they attended the Quaker church.

Q Did you attend the Quaker church when you was a little boy? A Yes sir, until I was a young man.

Q And then you went to the Methodist church from that on? A Some usually.

Q Did you attend the Methodist Sunday school? A Yes sir.

Q And you were a member of the Methodist church? A I am not sure whether I was a member or not; I rather think I was at one time.

Q You cannot remember whether you were taken into the Methodist church as a member? A I was taken on probation once.

Q Then you experienced religion and joined the church on probation when you were a young man? A I may have been admitted to membership.

Q You were a member of the Methodist church when you ran away with another man's wife? A No sir, I was not.

Q Had you ceased going to church before you ran away with another man's wife? A Yes sir, I had.

Q How long before that? A About a year.

Q You stopped going to church a considerable time after you had been stealing cheese? A Yes sir, I did. I had went to church but I did not take any part in it.

Q You kept going to church while you were stealing cheese?

A Yes sir.

Q And while you were burning the factory? A No sir, I don't know as I was exactly stealing cheese; I did not take the cheese myself. I was weighing the cheese and I used to weigh the milk there, and the cheese there some times.

Q Was there any man watching you at the time that you set fire to that factory that you had any alteration with afterwards? A No sir, not that I know of.

Q Pettibone didn't tell you to weigh this cheese short, did he?

A No sir, he did not.

Q Did you have any trouble with any man that was watching you

when you burned that factory, afterwards? A No sir.

Q Never had any difficulty with him? A I don't remember that I did afterwards.

Q Did you ever tell anybody that you had trouble with a little man that had been working in the cheese factory and watched you while you were burning it and you got him before you left that country?

MR. HAWLEY: We object to that.

THE COURT: The objection will be sustained.

Q Were you ever a member of the Salvation Army? A No sir.

Q At Spokane? A No sir.

Q Nor anywhere else? A No sir.

Q Nor any church organization? A No, only just what I have told you.

Q That is the Methodist church and the Quaker church when you were a child? A Yes sir, I think I went to the Christian Endeavor Society when a young man.

Q Have you ever been connected with any other church besides the Methodist church? A None other than that and the Friends Church.

Q Did you ever parade with the Salvation Army? A No sir.

Q Or the Volunteers of America? A No sir. I may have been in the Salvation Army barracks once in a while.

Q Were you ever out on the streets at Butte, Montana, or Spokane, or either of those places with the Salvation Army when they

were parading? A I may have been on the street.

Q Did you parade with them? A No sir.

Q Did you ever speak, either in fun or otherwise, with the Salvation Army there at Butte or Spokane, or any other place?

A I never spoke-- I might have made some remark or something when the Salvation Army was there in private, but never public.

Q I mean to participate in their exercises? A No sir, I never did.

Q Still you did not get the idea at the first meeting with McParland that he was a deeply religious man? A I don't know that I was; he said he was a religious man, that he believed in the bible and religion and the hereafter, etc.

Q Did he use any profane language while you were talking to him? A I don't remember whether he did or not; he might have.

Q You remember that he has at different times, don't you, when he has been talking with you?

MR. BORAH: Is it very material here whether McParland swears or not? If it is for the purpose of showing that McParland cussed him into this---

THE COURT: Have you an objection Mr. Borah?

MR. BORAH: Yes sir, that it is not an issue in this case whether McParland swears or not.

MR. RICHARDSON: McParland is the man who purports to have influenced him into a confession and which we have been

advised of in the papers for a year or more.

MR. BORAH: Read the question:

The question was read.

MR. BORAH: I will withdraw the objection.

MR. RICHARDSON: As usual, there is nothing before the court when Mr. Borah talks.

Q Go ahead. A I have heard him swear.

Q And you have heard him tell bible stories as well? A Yes sir, I have.

Q How long was he with you this first time that he came?

A About an hour or an hour and a half.

Q And how long was it beforehe came again? A I think three or four days.

Q Now, before this time you talked with him had you ever seen McFarland? A Not to know him.

Q Had you seen him? A I might have possibly seen him, but not to know him.

Q Did he ever come and sit down before your cell and look into the cell silently for five or ten minutes and then get up and go away? A No sir.

Q You don't know whether he was there exercising a silent influence or not on you before talking with you? A I never seen him there.

Q How soon did he come again after that time? A I think three or four days.

Q Did he tell you when he went away to think carefully on what he had said? A He told me to think over my past life-- something like that.

Q He wanted you to think over your past life? A Yes sir.

Q And what he had told you in connection with it, is that what he said? A I don't know that that was part of it; he wanted me to think over my past life, something to that effect.

Q Did he tell you that Kelly the bum was a good example for you to follow? A No sir, he did not.

Q Didn't say anything about that? A He did, no sir.

Q Did he leave the impression-- did you feel ~~kk~~ that you were like Kelly the bum?

MR. HAWLEY: We object to that as improper cross examination.

THE COURT: The objection is overruled.

A I don't remember that I thought anything about that.

Q The first time you kind of resented what Mr. McFarland said,-- thought it was untrue? A Yes sir.

Q Notwithstanding the fact that he told you some bible stories in connection with his statement? A He told me some bible stories, yes sir.

Q When did he come the next time? A I think three or four days after, possibly more.

Q You were thrown back into this same cell, weren't you?

1230 A Yes sir.

Q Practically solitary confinement except as you have stated?

A Yes sir.

Q Kept on coarse prison food, wasn't you? A No sir.

Q Wasn't it the same as the convicts had? A No sir.

Q How do you know? A Well, because-- I know it was not; they fetched it from the guard's kitchen.

Q They did? A Yes sir.

Q At that time, did they? A Yes sir.

Q Well, from the very first you were put in there? A Yes sir.

Q How do you know it was brought from the guard's kitchen?

A I don't know, only what I was told.

Q And you did not know what the convictsfare was as compared with yours? A I do now pretty near.

Q So you now know from convict's fare that you were getting something better than convict's fare? A The food I got was good, yes sir.

Q Was it better than the convict's fare? A Yes sir.

Q From the knowledge you have now? A Yes sir.

Q Better than convict's fare? A Yes sir.

Q Were you visited by Warden Whitney in the meantime? A He came into see me two or three times every day.

Q Did he come to see the other prisoners two or three times every day? A I don't know whether he did or not; he used to walk there in the corridor.

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Q And he stopped and talked to you there, did he? A He spoke

to me usually and asked me if I wanted anything.

Q Just simply asked you if you wanted anything? A Yes sir.

Q And you knew you were there accused with the murder of one of his friends? A I did not know it was one of his friends.

Q Nothing said about that? A No sir.

Q And yet he stopped every time and asked you if you wanted antyhing? A He asked me if I wanted anything.

Q Three times a day? A I could not say three times a day.

Q Did you ever tell him there was anything you wanted? A I told him I wanted to send a letter once.

Q Was that all that Warden Whitney would say to you, ask you if you wanted anything? A It was at that time practically all; he asked me how I felt some times perhaps.

Q Did he talk with you about your condition of mind? A No sir, he did not.

Q Did he say he wanted you to talk with anybody? A No sir, he did not.

Q Well, in three or four days McFarland came back again?

A Yes sir.

Q Were you taken out again? A Yes sir.

Q Who took you out? A Mr. Whitney.

Q He took you out the first time too, didn't he? A Yes sir.

Q Did you ever see him take out any other prisoner but you?

A I don't know but I have and I don't know as I have.

Q The guards usually take the prisoners out, don't they, if they are to be taken out? A I think they usually do.

Q And yet Warden Whitney came to you and took you out?

A He did that time.

Q They fed you better thm the rest of the prisoners? A I think my food came from the guard's kitchen.

Q The only thing you had to complain of was being in solitary confinement? A I did not complain of the confinement at all.

Q Didn't you complain of that? A No sir, I did complain of being in the penitentiary I think.

Q And did not complain of being in solitary confinement? A I did not know what they called solitary confinement at that time.

Q You were not allowed to talk or associate with any of the other prisoners except this man in the condemned cell next to you? A I used to go out and get shaved in the barber shop.

Q And talked with the barber? A Yes sir, and had a bath.

Q And did you have an attendant when you took your bath? A A guard went with me.

Q Did he prepare the bath for you? A The bath was already prepared.

Q When Mr. McFarland came again how did he open the conversation that time? A I could not say just what he did say; he asked me how I felt, and if I had thought over what I had been talking about, etc.

Q And did he proceed to talk again with you about it? A Yes sir.

Q Told you some more bible stories? A I don't remember that

he did.

Q Tell you some more Molly McGuire stories? A He might have spoken of that again.

Q Told you of other instances besides Molly McGuire instances, didn't he, where the State had taken care of its witnesses?

A I think he spoke of something like that, yes sir.

Q Told you the State had the power to condemn you or to pardon you, in effect, didn't he? A I think in effect he told me I was in a position to do the State a great deal of good and the State usually acted fair with its witnesses.

Q And you being in a position to do the State a great deal of good he said the State was in a position to do you a great deal of good? A He said the State was usually fair with anyone they used.

Q Did he tell you that that was the result of thirty or forty years experience of his in prosecuting those said to be offenders against the law? A No sir, I don't think he said that; I don't remember that.

Q Then he proceeded to tell you who he wanted to get, didn't he?

A No sir, he did not.

Q Nobody had suggested to you up to the time you talked with Mr. McFarland that they wanted to get any particular person?

A Other than he said he believed I was mixed up with the murder of Governor Steunenberg and he did not believe I was in it alone and he said I had left a bad trail behind me. I pro-

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tested my innocence to it, and he said that they had watched me going into headquarters and being mixed up in headquarters or he believed I was mixed up with them and I was able to do the State and the cuntry a greatdealof good.

Q And he told you that you were the tool of other people?

A Yes sir.

Q And who the people were? A Yes sir, he did later

Q And that came from him before it came from you? A He spoke to me of being a tool but I never mentioned it to him then.

Q You knew what he wanted long before you told him anything?

A I knew who he was before I talked with him five or ten minutes the first time, yes sir.

Q And knew who he was after, didn't you? A I knew he wanted-- I knew that he spoke of that after I talked to him the second time, yes sir.

Q And you knew, or felt reasonably certain that you were safe if you would help him in what he was after? A No sir, I did not; I was very much in doubt about the stories he told me about the State in using its witnesses; I could not call to mind myself any trials where any such thing had happened as that.

Q But it left an impression on your mind? A I thought of it some.

Q And you talked with Mr. McFarland very frankly every time he came? A No sir.

Q He came in and shook hands with you? A Yes sir.

Q Did he offer you a cigar? A I think he did.

Q Did you smoke? A No sir, I did not.

Q Did he bring you presents of any kind? A No sir, he did not.

Q ~~Many~~ Show you any favors? A No sir.

Q Did not? A No sir.

Q Just sat there and talked with you? A ~~Hm mhm.~~ Yes sir.

Q Now, the second time how long did he talk? A I think he talked an hour or an hour and a half or maybe two hours.

Q And the whole burden of his talk was that you werein a position to do the State a great deal of good? A He told me that yes sir.

Q And that States were usually grateful and took care of the people who did them good? A He spoke of some instances where they did, yes sir.

Q And conveyed that impression to your mind although you doubted it? A I did doubt it, yes sir.

Q Yes,-- at that time? A Yes sir.

Q Now, when did he come again? A I think it was three or four days, I think-- probably about a week from the first time he came to the third time; I am not just sure about the time.

Q How long did he stay there the third time? A I think he stayed all the afternoon.

Q Did anybody talk with you in the meantime? A No more than

they had before.

Q Did he tell you he had looked up your boyhood record?

A No sir.

Q He did not know any more about your boyhood record than anyone else did? A I don't think anybody knew anything about it at that time.

Q Did he talk with you about your bringing up? A I think he asked me if I was-- if my folks were religious, or something like that.

Q He got all the information he knew about you then from you yourself? A He did, yes sir, as far as I know.

Q After he had talked with you these two times before? A Yes sir

Q Well, he stayed there all the afternoon that time, did he?

A I think he did as near as I remember.

Q Did he recount bible stories at that time? A He spoke something about the bible; I don't remember but what he did.

Q And when he came to talk about the Western Federation of Miners and the men connected with them it was then that he swore wasn't it? A Mr. McFarland did not swear very much. I hade heard him swear two or three times, I think, since I knew him.

Q Maybe you have some doubt about his religion, don't you-- that made you have some doubt about it? A I was in doubt about what he told me.

Q What did you talk about all that afternoon? A I think he talked about my-- I told him something of my wrongdoing.

Above was written by wife

Q You did? A Yes sir.

Q Commenced to tell him there on the occasion of his third visit? A I think I did.

Q Think you did? A Yes sir.

Q And did he, before you told him, commence on this same old line? A No sir, I had made up my mind to tell him if he came back again.

Q Who had come with Mr. McFarland to see you? A Nobody that I know of.

Q You had been told in the meantime that your attorneys had deserted you? A No sir, I had not.

Q Had not been toldthat? A No sir.

Q Nor anything had been said to you about that? A No sir.

Q You had not given any orders for your attorney not to be admitted? A No sir.

Q You were willing to see your attorney, weren't you? A I was at that time, yes sir.

Q You was at that time? A Yes sir.

Q Then this third time that Mr. McFarland saw you must have been along the latter part of January or fore part of February? A Possibly it was the last of January or fore part of February.

Q You were taken over there on the 18th of January? A I think so.

1238 Q And it was three or four days before McFarland came the first

time? A I think it was a little longer than that-- about a week as near as I can remember.

Q That would be about the 25th of January when you saw him the first time? A I may not have been a week.

Q You said so; you said it was longer than three or four days?

A I think possibly it was.

Q Well, about the 25th of January? A I am not positive about the time.

Q Then it was about the 28th or 29th when he saw you the second time? A I would not say positively about the time it was.

Q And about the second or third of February when he saw you the third time? A I would not say just about the day.

Q All right, it don't make so much difference about that, but I would like to have you give it to me as nearly as you can?

A It might have been the last of January, the third time I saw him.

Q That is all the help you can give us on that? A Yes sir.

Q You know the occasion, but not the date? A Yes sir.

Q You spent the entire afternoon with McFarland at that time?

A I don't know as it was all the afternoon; I think from two to four, or possibly half past four or five.

Q Did he tell you how long he had been after the Western Federation of Miners? A He never told me he had been after them at all.

1239

Q Did he say anything in regard to the ~~length~~ length of time that the Western Federation of Miners had been suspected of these crimes which you had committed? A I don't know that he did tell me anything about the length of time.

Q Did he mention the Independence depot matter, the Vindicator matter, the spike pulling matter, the Walley matter, or any of the things you have testified to before you commenced to tell him your confession? A He mentioned the Vindicator.

Q He mentioned the Vindicator matter? A Yes sir.

Q And he said the Western Federation of Miners was suspected of it? A No sir, he said I was suspected of it.

Q That was the first thing he told you? A No sir.

Q And he told you he thought somebody must have instigated you to do it? A He did not say that particular thing, no sir.

Q He suggested to you that there was somebody behind you all the time before you told him anything about it? A He did. He said he believed I had been connected with the murder of Steunenberg and I was not in it alone.

Q He used the word tool; said you were the tool of somebody else? A Yes sir.

Q And directed your mind in that way, that he wanted you to implicate somebody else? A No sir, he did not.

Q And finally he wound up by charging the officers of the Western Federation of Miners, because you had been seen going in and coming out of the Federation headquarters? A He said he believed the Western Federation of Miners was behind this crime and behind many others that had been committed and I was in a position to do the State a whole lot of good and he believed I had been connected with them.

Q Then it was that you knew what McParland wanted before you told him anything about it? A I knew what he asked me to tell him.

Q And you knew he was at the head of a detective agency?

A I did, yes sir.

Q And you believed that that agency was anxious to get the officers of the Western Federation of Miners, didn't you?

A I believed he was anxious to find out who had committed these crimes.

Q And you knew that you were guilty of the murder of Steunenberg, in your heart? A Yes sir.

Q But you thought that the history of Kelly the bum-- with that before you-- and those other men whom he had mentioned, that you would procure immunity if you would do as he wanted

you? A No sir, those things did not influence me at that time anyway. Perhaps my talks with McPerland made me tell these things sooner than I would otherwise.

Q Now, if they did not influence you at that time when did they influence you? A They did not influence me any further than I might possibly have made this confession before I otherwise would, but I had been ~~[illegible]~~ thinking about it before I ever saw McPerland. I got so I did not want to live any longer that way.

Q You had made up your mind that you wanted to die? A I was tempted to put myself out of the way, yes sir.

Q You did contemplate putting yourself out of the way? A Yes sir

Q You knew that if you confessed to the Steunenberg murder the State would put you out of the way? A Yes sir.

Q And would do it quickly? A I believed they would put me out of theway.

Q But somewhere along the line the thought came to you that you could get out of it by laying it onto somebody else? A No sir, that was not the thought at all.

Q That was not the thought at all? A No sir.

Q But you wanted to put yourself out of the way? A I thought of putting myself out of the way when I thought over my past life. I did not believe in a hereafter at all but I was afraid to die, and I thought at times that I had been such an unnatural monster-- my crimes had been so great that I would not

be forgiven.

Q Who told you all that? A No one.

Q Who wrote that out for you? A No one; but after I had been sent a bible and had read it some I came to the conclusion that I would be forgiven if I made a confession of everything, and I made up my mind to tell the truth about the whole thing.

Q Who had sent you the bible? A It was sent by a missionary society from Chicago.

Q That is a part of your narrative, aint it? A No sir, I have no narrative.

Q Was this bible sent you before you knew McFarland? A No sir, a good while afterwards.

Q Then you had told McFarland about this thing long before you got this bible? A Yes sir.

Q Then the bible did not have any influence on you in telling thisto McFarland? A When I told him the story first I cared very little what did become of me.

Q There was one time there in the jail after you had told McFarland that you wanted to get rid of yourself? A Yes sir.

Q And you wrote a letter, didn't you? A Yes sir.

Q And you ripped open the lining of your vest and put it inside of your vest? A Yes sir.

Q And you told Steve Adams that you was going to commit suicide with the crystal of your watch and you wanted this letter sent to your brother? A No sir, I did not.

Q But you ripped up the lining of your vest and put that letter in there? A Yes sir.

Q And Steve Adams called in the warden and told him about it, didn't he ? A I don't know that he called the warden in; I think he told somebody about it.

Q Did McFarland give you a bible? A No sir.

Q And you did not have any bible until long after you had told him what you had done? A It was some time after that.

Q So that it was not the bible that actuated you at the time you made your confession to Mr. McFarland? A I had thought of that; I was thinking about that before, but I cared very little what did become of me.

Q You had experienced religion when you was a young man and you knew all about the sensation of that? A I don't think I was ever really converted in my life. I don't think I ever lived up to what I called religion.

Q You sent some bibles to Mrs. Toney's little boys down in Colorado? A Yes sir.

Q Who got those for you? A Reverend Dean Hincks.

Q Didn't you say in your letter to your wife that Mr. McFarland was going to give you some bibles? A No sir.

Q He did not give them to you? A No sir.

Q How soon after you were put in jail did Dean Hincks come to see you? A Possibly two or three months.

1244 Q So you thought you could make your peace with the future by having somebody else hang, did you? A No sir, I did not.

Q Did not? A No sir, I think any man can make his peace with the future if he wants to. I believed it was my duty to tell the truth. I did not see any other way, regardless of the consequences to myself or anybody else; I owed it to society, I owed it to God and to myself.

Q Did anybody write that out for you? A No sir, they did not.

Q Any secret organization that you belong to where you ever heard language like that? A No sir, I never saw any language like that.

Q Are you a member of any secret organization? A I have belonged to the Masonic order.

Q You have belonged to the Masonic order? A Yes sir.

Q This man Peabody whom you were so anxious to kill is a 33rd Degree Mason isn't he? A Yes sir, I think so.

Q This man Sherman Bell whom you was going to shoot was also a Mason? A I believe he was.

Q You know he was? A I understood he was.

Q This man Goddard whom you was going to put a bomb under and kill was also a 33rd degree Mason and one of the highest Masons in Colorado? A I don't know about that.

Q Don't know that Luther M. Goddard was a 33rd degree Mason and a Knight Templar? A No sir, I don't know that.

Q One of the most prominent men in Masonic circles that we have in Colorado? A I don't know that.

1215

Q Did you know that Gabbert was a Mason? A No sir, I did not.

Q Ever see him wearing a masonic charm on his watch chain?

A No sir.

Q And you did know that Peabody and Bell were Masons? A Yes sir, I understood so.

Q You know that Steunenberg was a Mason? A No sir.

Q You know that Steunenberg was an Odd Fellow? A No sir, I don't know that I do.

Q You did not know he was a member of any secret organization?

A No sir.

Q What lodge were you a member of Mr. Orchard? A I was a member of Colburn lodge, Ontario, Canada,-- I am not sure it was called Colburn lodge, but it was in Colburn.

Q When did you become a member of that lodge? A I think in about 1890.

Q Did you remain in good standing? A I was up to the time I left there.

Q Did you ever pay your dues after you left there? A No sir.

Q You were simply dropped for non-payment of dues? A So far as I know I was.

Q That does not necessarily drop you, does it? A They can suspend you.

Q You don't know whether you were suspended or not? A No sir, I do not.

Q You have visited a Masonic lodge since, haven't you? A I did once, yes sir.

Q That was up in the Coeur d'Alenes? A Yes sir.

Q A lodge of which Al. Hutton was the Master? A He was, yes sir.

Q What name did you give when you wanted to visit that lodge?

A I wrote a name that I don't think they could tell what it was.

Q You did not write the name Horsley? A No sir.

Q You did not give the name of Harry Orchard? A I was going by the name of Harry Orchard.

Q You don't think you wrote that name? A I think possibly I wrote Orchard in a way.

Q Was the time you visi ted that lodge just before you killed Steunenberg? A No sir, it was not.

Q It was in 1899 that you visited it, was it? A No sir.

Q When did you visit it? A In 1896, soon after I went to Wallace when I was on the Markwell Dairy.

THE COURT: We will stop here, Mr. Richardson.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, and the jury retired in charge of the bailiffs, the witness and defendant were remanded to custody and court took a recess until 1:30 o'clock P. M.

R E C E S S.

1

Boise, Idaho, Thursday, June 18, 1907.

1:30 o'clock P. M.

Parties met pursuant to adjournment.

The clerk called the names of the jurors and announced all present.

WITNESS HARRY ORCHARD ON THE STAND.

CROSS EXAMINATION CONTINUED

BY MR. RICHARDSON:

Q You were speaking at the noon adjournment about an attempt you made to commit suicide; that was long after you made your confession, wasn't it? A Some time after, yes sir.

Q You had made your confession before Steve Adams was put in the penitentiary? A Yes sir.

Q And it was quite a while after he was put in the penitentiary that you made this attempt to commit suicide? A I did not make any attempt.

Q You contemplated it— you prepared for it? A Yes sir, some.

Q And wrote a letter which you wanted sent to your brother and put it between the lining and outside of your vest? A Yes sir.

Q And you told Steve Adams the means by which you intended to commit suicide, didn't you? A I don't think that I did.

1248 Q You were going to break your watch crystal, wasn't you, and was going to use that? A No sir, I did not tell that to Steve

Adams then.

Q You were very despondent weren't you at that time? A I did not feel very well.

Q How many weeks was that after you made your confession?

A Oh, I could not say exactly; I think two or three weeks,-- possibly more.

Q You were taken down to the office of the penitentiary, weren't you, at that time? A No sir, not at that time.

Q Weren't you? A No sir.

Q Shortly after that? A Shortly after that, a day or two after.

Q And the lining of your vest was investigated wasn't it?

A No sir, it was not.

Q An investigation was made and the letter was taken out of your vest? A No sir, I took it out myself.

Q You at first denied to Warden Whitney that you were doing anything of that kind, didn't you? A No sir, he did not ask me anything about it.

Q Did he send for Mr. McFarland? A No sir-- I don't know whether he did or not.

Q But McFarland came? A Yes sir.

Q And he had a talk with you on that subject? A Yes sir.

Q And he had been in almost daily communication with you during all that time? A No sir, he had not.

Q How often did he come out there? A He had been away from there for some time but came back again.

Q But you wrote this letter and concealed it in your vest?

A I think he had been away, yes sir.

Q Yes, then your confession was made prior to the time that you was talking about this morning, when you spoke about your God, your country and society? A I beg your pardon.

Q I say, then your confession was made prior to the time you were talking about this morning when you said that you owed a duty to your God, your country and society? A I made the confession before I had experienced anything of that kind, but I was thinking of it.

Q Where did you get that language from, about your God, society, your country and yourself, etc? A I don't know,-- I believe that God gave it to me.

Q You got that from McFarland, didn't you? A No sir, I did not.

Q You are sure about that? A Yes sir, I am sure about that.

Q Did McFarland say anything to you about your duty to God and society? A Yes sir.

Q And to yourself? A I don't know that he mentioned myself.

Q And to your fellowmen? A He said just what he had said to me about that, that he believed I was in a position to do a great deal of good if I would.

Q Did he say in substance and effect that you owed it to yourself, your God, your country and to society? A No sir, I don't believe that he did.

Q Had you ever taken any obligation other than the one you took

Confirmed before the fact
or disguise

when you became a member of Burke Miners' Union, as far as the Western Federation of Miners is concerned? A I think I took an obligation when I joined the union at Altman, Colorado.

Q The same one, was it, that you had taken in Burke? A I think it was as near as I can remember.

Q At that time you were stood upon the floor and you were advised by the President of the local union in this language: "You have been elected to membership in Burke Union No. 10 of the Western Federation of Miners. This body exacts no pledge or obligation which in any way conflicts with the duty you owe to your God, your country or your fellow man. With this assurance from me as President of this Union, are you willing to take theobligation?" A I believe it is something like that.

Q Having assented to that, as you did, did you not? A I did.

Q The following obligation was administered to you, was it not: "I, stating your name, in the presence of Almighty God and the members of this Union, solemnly pledge myself to be a true and faithful member of Burke Union No. 10 of the Western Federation of Miners, and that I will support and obey all the laws, rules and regulations contained in the constitution and by-laws of this Union, and of the Western Federation of Miners.

"I further pledge that I will not work for a less compensation than the rate established by this Union or any other Union of the Federation of which I may hereafter become a member, or

within the jurisdiction of which I may be employed.

"I further pledge that I will practice the principals of fraternity by giving support as I may be able to my brothers in time of trouble or affliction; that I will uphold and at all times aid in securing the rights of the working man; that I will not unlawfully receive or misappropriate any of the funds of any Union of the Federation; that I will keep secret all business, signs, grips and pass-words of the Federation, and will endeavor to be useful and efficient in our efforts to advance true labor reform.

"And in pursuance of the pledges I have taken, I, as a faithful and loyal member of this Union, further pledge that whether I remain a member of this organization or not, the obligations I have taken shall be preserved inviolate. So help me God."

MR. HAWLEY: I object to that as immaterial and not proper cross examination.

THE COURT: He may answer the question.

A I would not say it is all that; I don't remember.

Q Have you ever taken any other obligation? A I took an obligation when I joined the Masonic order.

Q Well, you don't remember any other or a different obligation that you took from the Western Federation of Miners than the one I have just read to you, do you? A No sir, I don't know that I ever did. I don't know-- I believe that I took

that one one insubstance; I would not say it is just like that.

Q And when you joined Altman Union didn't you join it by a card from the Burke Union, or did you join it as though you had never been in a Union before? A I joined it as if I had never been a member before.

Q You repeated that same obligation? A I repeated some obligation. I could not remember that that is the one, but it was something like it.

Q After being assured that there was nothing in that oath or your duties as a member that would conflict with your duties to your country and your God? A I think it was something like that.

Q Then, those are the only two oaths you have ever taken so far as the Western Federation of Miners or its members are concerned? A I think it is the only oath.

Q You have heard McFarland talk about the inner circle?

A Yes sir.

Q Has he ever told you or have you ever told him about any iron clad oath of the inner circle? A No sir, never.

Q And you never took any such oath? A No sir.

Q Nor never was called on to take any such oath? A No sir.

Q Nor never heard of it? A I have heard of it.

Q You have heard of it from McFarland, have you? A I don't know that I have, and I don't think I ever have heard of it either. I may have but I have forgotten whether I have or not.

Q But you have read in the newspapers about the inner circle of the Western Federation of Miners? A Yes sir.

Q And you may have read something in the newspapers about the iron clad oath of the inner circle? A I don't remember of reading anything about it.

Q And you know nothing about it? A No sir.

Q How long did McFarland continue to remain in Boise and call on you at the Penitentiary the first time he was up here? A I don't know how long he remained here; he called on me several times-- a few times.

Q As long as you had made your confession your cell was changed, was it not? A It was changed some time after that.

Q Right away after it, wasn't it? A No sir, not right away.

Q How soon after? A I think about two weeks.

Q You were taken over to the hospital building and put in a room wasn't you? A I was some time after,-- I think three or four weeks after.

Q Three or four weeks after you made the confession? A Yes sir, I think it was about that time. I was sick and they took me over there.

Q You have been in the penitentiary constantly with one exception until now haven't you-- the time you went over to Caldwell to plead? A I was away from there-- I have been over to Caldwell a few times.

Q

Q How many times? A Four or five times, I think.

Q Been anywhere else? A Nowheres except down here.

Q You were taken over to Caldwell for court purposes, were you?

A Yes sir.

Q Every time? A Yes sir.

Q Did you appear in court every time you went over there?

A I don't know that I appeared in court every time that I went over there; I went over there once when I did not appear in court.

Q I mean since you made your confession, how many times have you been over there? A I think four or five times.

Q Did you go over there before you made your confession?

A No sir.

Q Didn't you have a preliminary examination over there?

A I did.

Q Didn't you attend that? A Yes sir.

Q That was before you made any confession? A Yes sir.

Q Then you did go at least once before you made your confession? A No sir, I was there.

Q That was before you came to the penitentiary? A Yes sir.

Q What was the occasion of your making this trip over there when you didn't go to court? A Yes sir.

Q Do you remember? A Yes sir.

1255 Q What was it? A I was before the grand jury.

Q That was part of the court? A Perhaps it was.

Q You went once to the grand jury and four times to the court?

A I think so.

Q Have you ever been out of the penitentiary since you were here until you was brought down here to this trial? A No sir.

Q Nevertheless? A No sir.

Q How long did McFarland remain thereon that first visit?

A I don't remember just how long; I think a couple of weeks.

Q And how many times did he visit you during these two weeks?

A I could not say just how long. I think three or four times, or four or five times altogether.

Q And the subject of his conversation every time was going over pretty much this same ground that you have stated?

A No sir, not after I made the confession to him.

Q After you made the confession he did not go over the Molly McGuire ground with you? A He spoke of it some times.

Q He did tell you that the State usually took care of its witnesses and now that you had made a confession you were all right? A No sir, nothing to that effect whatever.

Q What did he say about that? A He never said anything to me about it after I made that confession-- about what the State would do to me.

Q He came to visit you right along? A Yes sir, he did.

Q And you were invited into the Warden's office? A Into the clerk's office.

1256

Q And you and McFarland sat there and chatted as long as you

saw fit to do so? A We chatted an hour or so.

Q And McFarland after being away a couple of weeks came back again? A Yes sir.

Q In the meantime Steve Adams had been arrested? A I think he had, yes sir.

Q And he had been thrown into the same cell you occupied when you were brought in there? A No sir, it was not.

Q Into a similar cell? A Yes sir.

Q You were taken out of your cell and put in with him, weren't you? A No sir.

Q Weren't you? A No sir.

Q How many days before you were put into the cell with Steve Adams? A I was not put in the cell with Steve Adams at all.

Q Not at all? A No sir.

Q In a cell next to him? A No sir.

Q Where were you? A I was in the same cell that he was.

Q Then he was put in the same cell that you were? A Yes sir.

Q They put him into your cell, did they? A Yes sir.

Q How many days did they keep him in the cell with you?

A I don't remember just how long; I was taken sick and was taken over to the hospital a few days after he was there.

Q McFarland had told you that Steve was going to be arrested?

A That they would arrest him if they could find him.

Q You knew he was going to be arrested and thrown into that cell with you? A No sir.

1257

Q Were you told to work on Steve? A No sir. When Steve was arrested and brought there the Warden asked me if I wanted,-- if I thought he better put Steve in with me.

Q You were not told to work on Steve? A No more than that; he asked me what I thought about it.

Q What did you say? A I told him if he put him in here I would try to get him to tell what he knew, that I would tell him I had told all.

Q That you would do the best you could to get Steve to make a confession? A I did, yes sir.

Q And you did start right in to work on Steve as soon as he was put in the cell with you, didn't you? A I did in a way.

Q And you worked on him so constantly and so hard that you got sick? A No sir, I did not.

Q How many days did you work on Steve? A I think only a couple days, or three days, when he promised-- well, he never promised me he would make a confession.

Q Never did? A Not before he said he would make one.

Q Not before he said he would make one? A Not before he promised Mr. McFarland.

Q But you kept talking to him about your confession? A I told him just before he went outside that I had made a confession and told everything.

Q You told him that the first thing, didn't you? A No sir.

1258 Q Did you refrain from telling him that in order to sound him?

A I refrained from telling him at first.

Q You did? A Yes sir.

Q And put yourself in the position of being a friend of his in trouble with him and discussed with him the idea of whether or not it was not best for you and him to make a confession?

A I told him I thought of making a confession, that I thought it was right, and there was so many that knew this thing it would get out any and he might as well make a confession too.

Q You did advise him to make a confession? A Yes sir.

Q And you told him that for the purpose of getting him to make a confession as though you and he were going to make it together?A I did not tell him I had made a confession, I told him I thought I would.

Q You told him that you would? A Yes sir.

Q And the purpose of that was to make Steve think that you were still right with him? A I wanted to see whether he would or not.

Q But you had already been told that it was the proper way to work? A No sir, I had not been told nothing.

Q Hadn't McFarland told you about that? A No sir, he had not.

Q You had not got religion then? A I had not got much religion, but I thought I would lead a better life if it was possible for me to be forgiven for what I had done.

Q And you had not any instructions as to how you were to handle Steve? A No sir.

Q And you commenced to lie to Steve, did you? A I don't know as I exactly lied to him; I did not tell him I had made a confession.

Q Wasn't that a lie when you said to him that you and he had better make a confession? A I don't know as it was a lie, no sir.

Q Didn't you finally tell Steve that when this thing was all over you was going to put water between you and what was left of the Western Federation? A No sir.

Q Nor anything like that? A I did not at that time.

Q When did you tell him that? A I think I said something to Steve that if it ever happened that I got out of this that I would go across the pond or something like that.

Q You told him you were going to get out of it? A No sir, I did not. When I told him I had made a confession I told him I had not been promised nothing for it.

Q Didn't you tell him that you had been promised immunity and that thefirst thing you would do would be to put the pond between yourself and the Western Federation of Miners?

A No sir, I did not.

Q Why did you say that you would put the pond between you if you neverexpected to get out? A I did not expect to get out.

Q Why did you say that? A It had been always talked amongst these men, the Federation, Haywood, Pettibone, Moyer and myself and others that any one that ever coughed up anything we

had been doing, it would not do them any good, that they would get him soon after.

Q What difference would that make to you if you did not expect to get out? A We were talking about that in a sensual way, if it was possible for us to get out of it and spoke about these things.

Q You had killed Steunenberg? A Yes sir.

Q Murdered him, hain't you? A I had, yes sir.

Q You knew that you deserved death at that time? A I knew I did.

Q And the penalty was hanging? A Yes sir.

Q And that you ought to hang? A Yes sir, I believed I had, yes sir.

Q And yet at that same time you were discussing the plans of your future life? A We talked about that, yes sir, in that way.

Q Was that hope implanted in your breast by the talk of McFarland that the State always treated its witnesses fair?

A I don't know as I had any hope. We were talking in that way, and this talk came up.

Q And you were talking about leading your future life across the pond, meaning the ocean? A It was spoken of in that way.

Q At the time knowing that you deserved death and expected it right then by hanging,-- that is what you told us, is it?

1261 A I don't know just what I thought at that time.

Q Well, after Steve had been there and afteryou had worked on him several days McFarland came back, didn't he? A He came back in three or four days.

Q Isn't it true that warden Whitney came each day and took you out of the cell each day for a little while? A I think I was out nearly every day, yes sir.

Q But Steve was not out, was he? A I don't know that he was clear out,-- he was in the corridor.

Q You know that you were taken out and taken out by warden Whitney himself, wasn't you? A I think Mr. Whitney took me out most of the time.

Q And you went down to Whitney's office with him and held a consultation with him about the progress you were making on Steve? A I think I went out once or twice.

Q And made a report of progress? A I told him, yes sir, I did.

Q And that is what you and Steve were in there for? A Yes sir.

Q For you to work on him? A Yes sir.

Q And you knew it? A I knew it was, from Mr. Whitney.

Q And you told them when to send for McFarland, did you?

A No sir, I did not.

Q But he finally came? A He came in three or four days.

Q And when McFarland came you were taken away from Steve and put over in the hospital pretendi ng to be sick? A No sir,

1262

I was taken over before.

Q About the time he came? A No sir, it was before, I think.

Q Nothing was said, and Steve got a few days of solitary confinement before he came? A I don't know anything about that part of it.

Q About four or five or six days before McParland came?

A I don't think it was that long; I annot quite sure whether it was before or not.

Q You was not so sick but that when McParland came you went out and met him and made a report to him on Steve's condition; isn't that right? A I ain't quite sure whether I saw him before he saw Mr. Adams or not.

Q Are you sure you did not? A I would not say that I did not.

Q Don't know whether you did or not? A I kind of think I did see him.

Q And you reported to him, did you not, the work which you had done on Steve? A If I seen him, I told him, yes sir.

Q That you had prepared the soil and sewed the seed? A If I seen him I told him something of what I had said.

Q Did you tell him that you had told Steve about putting the pond between you and the Western Federation? A No sir, I did not.

Q Didn't say anything about that? A No sir.

Q But he had led you to believe that that was what you would be able to do after this case was over? A No sir.

1269

Q That after you got the Western Federation officials hung you

would go at large? A No sir, he did not.

Q And he told you at the same time that he did tell you that he could make no promises, that all these men who had been informers under him had got out all right? A No sir, he did not say that. He said that he could make no promises for if he did he could not keep them.

Q He did not tell you that in the same breadth, in effect--

A He told me what I have told you.

Q He told you he could make no promises, did he? A Yes sir.

Q And he was in reality making promises to you by telling you what had happened to other men? A I did not believe much of what he told me. He told me he could not make me no promises and if he did he could not keep them, but he would have the prosecuting attorney come and see me, and I told him that he need not have the prosecuting attorney come to see me, that I did not care what became of me.

Q When did he tell you he would have the prosecuting attorney come? A The second time he was there, I think.

Q What did he tell you that for? A I don't know just what he told me for, but he told me he could not make me no promises but perhaps they could fix it.

Q That while he himself could not make any definite promise that he would send the prosecuting attorney up who would fix it for you? A He send he would send him up to see me and I told

1264 him that he need not do it.

Q That is what you said? A I put that construction on it myself.

Q You put that construction on it yourself? A Yes sir, just now.

Q That is the construction McFarland intended you should put on it from the language he used, wasn't it? A I took it that way, but he told me that he would send him up and I told him he need not send any prosecuting attorney, that I would tell what I had to say.

Q And about that time the Governor came to seeyou, didn't he? A No sir, he did not.

Q When did the Governor first come to you? A I don't know just when it was,-- about three or four weeks after I was up there.

Q Three or four weeks after you was up there? A Yes sir, something like that.

Q Well, it was right after you made the confession, wasn't it? A No sir, it was not.

Q Did he come beforeyou made the confession? A No sir, he did not.

Q Did you have any word from the Governor through warden Whitney or McFarland? A No sir.

Q And the Governor of the State came up to callan you after you made your confession? A Quite a while after.

1265 Q And he came in and called you Harry? A I think possibly he

did.

Q Shook hands with you? A Yes sir.

Q And he has made a great many visits to you since, hasn't he?

A Not many; I have seen him several times since.

Q How many times? A Probably seven or eight times, I think.

Q More than seven or eight? A I don't think it was much more.

Q The first time he met you he called you Harry? A I am not sure what he called me.

Q He calls you Harry? A I think he does.

Q Shakes hands with you when he meets you? A Yes sir.

Q Sits down and chats with you? A Yes sir, talks me to some, yes sir.

Q And you know from the way he talks to you that he has no intention of allowing you to be hung? A He never said anything of the kind to me.

Q I didn't ask you what he said. He has told you that he could not say anything to you-- could not make a promise to you?

A No sir, he has not.

Q But he has treated you in a way that allows you to know that he regards you as a friend? A He has told me that he believed I was doing right and that I was doing a great thing for the State and for the country.

Q The State and the country would be under great obligations to you if you would go on and get these other three men hung?

A No sir.

Q Was that the effect of it? A It was not said in that way.

Q Yet, speaking as the Governor of the State of Idaho, he gave you to understand in that language that the State of Idaho was under great obligations to you? A No sir, he did not use that remark at all.

Q Didn't he use it? A No sir, he did not.

Q He believed you was doing right? A He believed I was doing right, yes sir.

Q And that the State was under great obligations? A No sir.

Q Or that the State would be undergreat obligations? A No sir.

Q What did he say about that? A He said he believed I was doing right and was doing a great thing for the country.

Q Didn't you say in the last five minutes that he said the State was under great obligations to you? A No sir, I don't remember it.

Q Did you say that the State and the country-- A He said he believed I was doing a great thing for the State and the country.

Q But he did not say that they would be under great obligations to you for doing it? A No sir.

Q Bring you out anything to add to your comfort? A No sir.

Q Never been in a cell since that time, have you? A Yes sir, I was for a while.

Q You have been put in a cell since the time you went into the hospital after Steve Adams came there? A Yes sir.

Q When? A Well, a little while after that.

Q Was that about the time that Steve Adams went back on his confession and said it was extorted from him? A No sir.

Q A little while after that? A No sir, it was before that.

Q How did you come to be put back in a cell? A I was all right and they put me back from the hospital.

Q With Steve? A Yes sir, we were together.

Q Now, since Steve was taken away from there--- A Steve was over in the hospital with me.

Q Have you ever since Steve was taken away from there been ina cell? A No sir, not to stay.

Q How long did you stay in a cell at that time? A A few days.

Q You have full liberty around there, do you? A Around the yard.

Q Go where you please? A I go around the yard inside if I want to.

Q Do as you please pretty much? A I obey the rules around there.

Q The warden calls you Harry, doesn't he? A Yes sir.

Q And always shakes hands with you when he sees you? A No sir.

Q Looks carefully after everything you want? A The warden has been kind to me that way, yes sir.

Q Furnishesyou everything you ask for? A No sir, he has furnished me what things I needed.

1268 Q Get you money when you wanted it? A No sir.

Q He has done that for you? A I have not asked him for any money other than what I told you?

Q You got it at once, didn't you? A I got it after a time, not at once.

Q And if you wanted more you could get it? A No sir,-- I don't know.

Q And you have been petted and all that during the time you have been out there? A No sir.

Q And made a hero of? A No sir, I have not been made a hero/

Q Both by the Governor and the Warden and McFarland? A No sir, I don't know what you mean.

Q Have you been allowed wine with your meals? A No sir.

Q Have you been served with meals the same as the rest of the convicts? A No sir.

Q You have eaten from the warden's table for a long time? A Yes sir.

Q Have you eaten with the warden's family? A No sir.

Q Have you eaten with the Warden when his family was away?

A No sir.

Q At the warden's table? A I ate with the Warden once at his table.

Q But your food comes from the Warden's table and is prepared by the Warden's cook, is that right? A I believe it is.

Q Is there any other person in that institution that is fed that way? A I don't know of any except the cook and the waiter

Ate at Warden's table

Earl Wilson Collo

at his house.

Q Did the cook and waiter eat, or get their food that way?

A I suppose they do.

Q They are convicts in the penitentiary, are they? A Yes sir.

Q They prepare the food themselves and therefore you think they eat some of it? A I think so.

Q But you don't know? A No sir, I don't.

Q Do you go to the Warden's house to eat? A No sir. I ate there once, one morning when I was going to Caldwell to attend court.

Q Your food is brought to you from the Warden's table? A I think it is brought from the Warden's house.

Q And no other man, woman or child in that institution under a charge of crime or serving for crime is treated in that manner?

A There is none that I know of.

Q That has continued during all the time since you made this confession? A No sir, not all the time.

Q Pretty nearly all the time? A No sir, it has possibly continued for-- I don't know just how long.

Q You have not been confined within the walls of the penitentiary have you there? A Yes sir.

Q All the time? A Yes sir.

Q Is the woman's ward within the walls of the penitentiary proper? A It is in the yard of one wall.

1270 Q You go out of the penitentiary proper to get to the woman's

ward? A You go out of the men's department, yes sir.

Q And for months you were kept in there, weren't you, in the daytime? A No sir, only to go over and eat my meals.

Q You don't stay over there? A I don't stay with the exception to eat my meals, only a few times on Sunday I stayed over there a few hours.

Q You don't sleep over there? A No sir.

Q How soon was it that McParland came back the second time? A I could not tell you just how soon it was.

Q What is that? A I could not tell you just how soon it was.

Q He came to visit you? A He did when he was here once in a while, yes sir.

Q Patted you on the back? A No sir.

Q And told you what a good fellow you were? A No sir.

Q Called you Harry? A He usually calls me Harry, yes sir.

Q Did he tell you he would write to New York to Mr. Bangs the General Superintendent of the Pinkerton Agency about you?

A No sir, he did not.

Q Or that he had written them? A No sir.

Q And that he had letters from them of commendation to you and himself? A No sir.

Q For the part you were playing in convicting the officers of the Western Federation of Miners? A No sir, he did not tell me anything of the kind.

1271 Q Well, McParland came up here shortly after his first visit and

stayed here two or three months? A I don't remember how long he was here.

Q Quite a while, wasn't it? A I could not say just how long.

Q Two or three times a week he came out and visited you?

A He used to come out and see me when he was not busy.

Q And he has made several trips to Boise in the last year to see you? A I don't know that he has,-- he never told me that he came here especially to see me.

Q He was up here a long time last summer? A He has been here several times.

Q Several times? A I don't know how many times.

Q And has never allowed you to go without seeing him for a longer period than a month or six weeks? A I think there has been longer periods than that; I would not say positively about it.

Q And when he ~~was~~ is gone he has written you a letter at least once or twice a week all the time he has been gone? A No, I don't think he has written me that often; he has written me some letters.

Q But you don't know how many? A I don't know how many, no sir.

Q You put your future entirely in his keeping? A No sir, I do not.

Q But he told you it was wise to do so, didn't he? A No sir, he did not.

1272

Q And he has helped your family, has he? A I don't know that

he has.

Q You spoke of sending some money indirectly to your family; did you refer to the family at Cripple Creek? A No sir.

Q Has McParland taken care of them at all for you? A Not that I know of.

Q You don't know that he has? A No sir.

Q And you have not asked him to? A No sir.

Q You have had detectives take letters from you through McParland to the second Mrs. Orchard? A I think I gave him some letters to mail for me once.

Q Mr. Hawley and Mr. Borah have called on you frequently.

A Mr. Hawley I have seen quite often; I have not seen Mr. Borah for a good while before the case started.

Q Where did you get the bibles you sent to the little boys?

MR. HAWLEY: He has already testified to that.

MR. RICHARDSON: I can ask him again, I suppose.

A Reverend Dean Hinaks got them for me.

Q When was it you sent them? A I forget just when it was; it was some time probably a year ago or a little over or a little less than a year.

Q Along in the middle of last summer, wasn't it, some time?

A I think it was along in June or July.

Q You sent them bibles but no money? A I did not send them no money, no sir.

1273 Q Has Mr. Hawley and Mr. Borah called on you frequently?

A I have seen Mr. Hawley once ina while, but I have not seen Mr. Borah very often.

Q You have seen Mr. Hawley once in a while? A Yes sir.

Q But Mr. Borah not very often? A No sir.

Q Now, the first thing you did after making this confession was to write out the story of your testimony on the stand, to be told on the stand, wasn't it? A No sir, it was not.

Q Did you write out the testimony, or the story of your testimony for Hawley and Borah? A I wrote out the history of my wrongdoing, yes sir, all of it.

Q Did you write out the subject of your testimony that you were going to give him on the stand? A I wrotoout the whole history of my wrongdoing in every detail and gave it to Mr. Hawley.

Q You knew the case had been turned over to Hawley and Borah?

A I did, yes sir.

Q And you knew they had been hired especially to prosecute this case? A I understood so, yes sir.

Q And that the regular officers of this court had taken a back seat? A I don't know as to that.

Q You never paid any attention to that or had anything to do with that, did you ? A Very little.

Q Did they ever come out to see you? A No sir.

Q When you prepared this statement it was at Hawley's request, was it not, or Borah's? A No sir, I don't think he did. I

am not sure whether he asked me to write it up or not.

Q Ain't sure about that? A No sir.

Q But in any event you delivered it to Warden Whitney to be given to Mr. Hawley? A I gave it to Mr. Hawley, yes sir.

Q You gave it to him yourself? A I think I sent it to him.

Q By Warden Whitney? A Very likely, yes sir.

Q Now, that was revised, amended and altered and brought back to you? A No sir, it was not.

Q Was any statement made to you that it was too long or too short? A No sir, there was no statement made to me. The first I wrote up I did not write it all up in detail; I wrote up some things connected with this case.

Q And the things you left out was the connection between Moyer, Haywood, Pettibone and yourself? A No sir, it was not.

Q You wrote up the events, didn't you? A I wrote up some of them.

Q And then it was sent back to you to be connected up with Moyer, Haywood and Pettibone? A No sir, it never was sent back to me.

Q You never did get it back? A No sir.

Q What did become of it? A I don't know, I suppose he has got it yet.

Q And you don't know what its contents were in respect to connecting it up with Moyer, Haywood and Pettibone? A I don't remember that. I wrote it up telling all I knew about this,

and when I started to writeup the rest of it I wrote up everything of all my life-- of all my wrong doings in detail.

Q Did you write up a copy for the Governor? A No sir.

Q Did you ever give him a copy? A No sir.

Q After this had been written up you were requested to write another one, weren't you? A No sir, I was not.

Q Did you write up another one? A I wrote up one I was trying to get in book form.

Q Did you write one for the use of the attorneys? A Yes sir.

Q Another one? A Yes sir.

Q They kept that first one and you wrote a second one? A Yes sir, I wrote the second one in every detail.

Q Was it because the first was not in sufficient detail that you wrote the second one? A When I wrote the first one I left out some of my wrong doings and I made up mind that I would put it all in so that they would knowall my wrongdoing from the time I was born.

Q Neither of them made a request for that at all? A No sir, I don't think they did.

Q Nor had any talk with you about your first written statement? A I think Mr. Hawley referred to it. I forget just what he did say.

Q Was this statement which you made this morning with regard to your views when you made your confession in your written statement? A I don't understand what you mean.

You made a statement here this morning about the duty which you owe to yourself, your society and your God , and that was the thing which actuated you in making this confession; was that written out in your statement? A No sir.

Q Who wrote that for you? A Nobody.

Q Did you deliver it here this morning without any preparation on that subject? A Not the least, no sir.

Q And when I was trying-- A I may have thought of something that I might say, but I did not know what I was going to say when I started exactly.

Q And you made up your mind about the phraseology you were going to use and Mr. Hawley objected to any interruption, and you knew that was going to be done? A No sir, I did not know it.

Q Have you been furnished books to get the dates of the various events you have taken part in? A No sir, I have not.

Q You did not keep any books? A I had one book some time ago.

Q Was that the red book of the Mine Owners Association? A No sir, it was a book written up by some man of the commission-- the Commissioner of Labor of the United States Government, that I looked at.

Q Carroll D. Wright's reports commonly called? A I think it was.

Q A book of about 300 pages? A I read part of that to get some things I was writi ng up in my manuscript.

Q Detailing all the troubles in the Coeur d'Alenes in 1892 down to those in Cripple Creek in 1903, some of them, yes sir.

Q Giving all the information which the Government expert had been able to obtain in regard to the various catastrophes in the miners troubles? A Some of them.

Q You have given practically your entire year to the study of this matter, have you? A Yes sir, I have.

Q You have? A Yes sir,-- not altogether; I have read a good deal of books since that time.

Q And have prepared yourself for giving this testimony?

A I have tried to familiarize my mind with everything connected with this as well as I could.

Q And you have been placed in a chair and examined and cross examined by the counsel for the prosecution? A No sir, I have not.

Q Have they talked with you upon the subject of your testimony?

A They have talked over it in a general way.

Q They did not ask you any questions? A They asked me a few questions last spring.

Q Were you not examined categorically upon more than one occasion by one counsel and cross examined by the other? A No sir, I never was.

Q You never have been? A No sir.

Q At any time? A No sir.

Q Although the subject of your testimony has been frequently discussed? A There are some parts of it that they have asked me about some times.

Q Has McFarland examined and cross examined you? A No sir--yes sir.

Q Told you about your demeanor on the stand? A No sir.

Q What you should do? A No sir.

Q What position you should sit in? A No sir, nothing of the kind.

Q How you should look at counsel questioning you? A No sir.

Q Nothing of that kind has ~~occurred~~ occurred? A Nothing whatever.

Q And yet he has visited you practically every day? A No sir, he has not visited me every day.

Q Nearly every day? A I have seen him some times. The longest I seen him was on Sunday and other than that I have just spoke to him but have not talked to him more than five minutes at any time with the exception of Sunday.

Q Wasn't McFarland here four or five weeks before the commencement of this case? A I don't know how long he has been here.

Q Was he not here three or four weeks before you went on the stand? A I don't know about that.

Q Don't he visit you nearly every day? A No sir.

Q How many times a week did he visit you? A He possibly visited me twi ce a week.

Q Did he go over your testimony with you when he visited you? A No sir, he did.

Q What was the occasion of your visit with him? A We used to talk

talk over some things about the case and some witnesses we might call maybe, and we talked about the other things -- the questions of the day, etc.

Q That was the only subject of interest between you and McFarland was this case and your connection with it? A No sir, it was not.

Q And what you were going to do? A He did not ask me; he knew what I was going to do.

Q Did you think he was visiting you except in the interests of this case? A I did not know just what he was visiting me for.

Q You don't think he was visiti ng you because he was concerned in the salvation of your soul? A I could not say as to that.

Q He was not trying to convince you that the salvation of your soul depended on his own-and some other-- depended on sending some other soul to some other place? A No.

Q It was not because he liked your company that he cared to see you? A I could not say; he has come to see me.

Q. Couldn't say as to that, but he has been extremely friendly with you? A. He has been friendly to me, yes sir.

Q. All of the time, talking with you about "Coming through", hasn't he? A. No sir.

Q. Has he ever said anything to you about "coming through"?

A. No sir.

Q. Has the governor of the state ever said anything to you about "Coming through"? A. No sir, he has not.

Q. You know what is meant by that expression, don't you?

A. I think the governor of the state and McFarland have both knew what I was going to do for months and months.

Q. Have they ever been worried about it at all or expressed their worry to you? A. I don't think they have.

Q. You don't know, however, about that? A. I couldn't say, no sir.

Q. Didn't it strike you as queer that they were calling on you so frequently? A. Not necessarily so, no sir.

Q. And inquire so carefully about your health? A. I don't know that they were inquiring very carefully about my healthy.

Q. And looking after your well-being? A. They had nothing to do with my well-being that I know of.

Q. And finally when the trial came they fixed you up for the trial, didn't they? A. I don't know who you mean by "they" exactly.

Q. Well, the governor of the state and McFarland? A. I don't know that McFarland had anything to do with fixing me up.

Q. And the warden of the penitentiary? A. The warden may have.

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Q. The warden of the penitentiary is appointed by the governor,

isn't he, and gets his orders from him, you understand that, don't you? A. I know he is appointed by the governor.

Q. What? A. I know he is appointed by the prison board and the governor.

Q. Did the governor arrange for your personal adornment here at the trial? A. I don't know.

Q. But you know you were personally adorned for the purpose of this trial, don't you? A. I don't know that I was adorned, no sir.

Q. You got a new suit of clothes just before the trial?

A. I got a new suit of clothes a little while before this.

Q. Who got them for you? A. I think Mr. Whitney got them, or Mr. Elmer, I don't know which.

Q. What tailor made them? A. A tailor up at the penitentiary, Levi.

Q. A man came to the penitentiary and measured you, didn't he?

A. No sir, he did not.

Q. A man who lives at the penitentiary? A. Yes sir.

Q. A man by the name of Levi? A. Yes sir.

Q. Is he a convict up there? A. Yes sir.

Q. ~~Was~~ He made the suit of clothes for you? A. Yes sir, he made this suit.

Q. And shirts were bought for you? A. I had some shirts, yes sir.

Q. Who bought those? A. Mr. Whitney got the stuff for the shirt I have got on and I got it made up there.

Q. Who made the natty little top coat that we hear described frequently? A. I don't know what you mean by top coat.

1282

Q. The top coat that you wear when you come in mornings, the

English top coat. A. I don't know what you call -- mean by top coat.

Q. The coat that you put on over that coat. A. Who made it do you mean?

Q. Yes, who made it. A. I don't know who made it.

Q. Where did you get it? A. I didn't get it at all. I borrowed it from Mr. Whitney.

Q. Mr. Whitney's top coat, is it? A. It belongs to Mr. Whitney, yes sir.

Q. It wasn't made for you then? A. Not that I knowof.

Q. Did you ever see Whitney wear it? A. I think I have.

Q. It is a new top coat, isn't it? A. I don't think it is very new; it may be new.

Q. What do you call it, an overcoat? A. I call it an overcoat, yes sir.

Q. A very short, fine fitting, handsome coat, isn't it?

A. It isn't a very long coat.

Q. Did you get a new hat? A. Yes sir.

Q. Who got that for you? A. Mr. Whitney or Mr. Elmer, I don't know which.

Q. Did you get a new pair of patent leather shoes, Vici kid shoes?

A. I don't think I got any patent leather shoes.

Q. Did you ever wear any Vici kid shoes before in your life?

A. I don't know exactly what you call Vici kid shoes.

Q. That is what you have got on now, isn't it? A. I don't know as it is.

Q. Did you ever wear any of this kind of shoes before in your life? A. I don't know that I did. I don't know just what they

are.

Q. You never wore a nice fine shoe like that before, did you?

A. I have worn good deal better shoes than this.

Q. You have? A. Yes sir.

Q. Where did you get these? A. Whitney got them for me.

Q. Got them for you and brought them out to you, did he?

A. Yes sir.

Q. And fixed you up in the way in which you have appeared since you came into this trial? A. I don't know as he fixed me up.

Q. Do you know of any other man out there at the penitentiary who dresses like you do?

MR. BOHAN: We object to that, if your Honor please, as immaterial.

THE COURT: Objection sustained.

MR. RICHARDSON: Note our exception.

Q. How long have you been treated in this manner that you have described, ever since you made your confession? A. I have been well treated ever since I have been up there.

Q. Been well treated? A. Yes sir.

Q. Like the place? A. Not necessarily.

Q. And like your expectations? A. No sir, I do not.

Q. Satisfied with them thoroughly, are you? A. I don't know that I am satisfied. I am trying to be satisfied with my conditions the best I can.

Q. You know a prisoner up there named Bob Wotter? A. Yes sir.

Q. A man who was under sentence of death? A. Yes sir.

1284 Q. The date was all fixed for his hanging ? A. I believe it was,

yes sir.

Q. Did you get that sentence commuted? A. No sir, I did not.

Q. Did you speak to the governor about it? A. I spoke to the governor some time before that, yes sir.

Q. Just before the time that this man was to be executed?

A. I was talking about it, yes sir.

Q. You spoke to the governor about it? A. I talked it over with him one time when he was up there a little, yes sir.

Q. And requested the governor to commute his sentence, didn't you, not to have him hanged? A. I told him I felt sorry for him, he wasn't a very bad man, that I liked Wetter --

Q. That you would like to have him commute his sentence from hanging? A. I didn't ask him to commute his sentence. I told him perhaps something would turn up that he could give him a stay of sentence maybe; that I had heard a deputy sheriff at Caldwell say that he didn't believe that he was guilty of what he had done or he believed that them folks went up there to kill him.

Q. And thereupon the governor gave him a reprieve the very next day, didn't he? A. No sir, I don't think he gave him a reprieve the next day.

Q. He gave him a reprieve before he was hung, didn't he?

A. I believe he got a reprieve.

Q. And he finally commutted his sentence, didn't he? A. I think he did, yes sir.

Q. And so far as you know up to the time you talked with the governor it was expected to carry out the sentence on the day it was set, wasn't it? A. I don't know anything about that.

Q. The governor told you he would look into the matter and see what could be done? A. No sir; he thought it was a pretty cold blooded murder, he didn't know whether he could do anything about it or not. He said he had been thinking about what he could do and he would like to do something if he could. He didn't say whether he would or whether he wouldn't do anything about it.

Q. No, but you requested him to, didn't you? A. I just talked to him in that way. No sir, I didn't make no request.

Q. Well, he did ~~say~~ do it, didn't he? A. I believe he did afterwards.

Q. And he finally commuted his sentence to imprisonment for life? A. I believe he did.

Q. And Bob Wetter is out there in the penitentiary now?

A. I think he is.

MR. RICHARDSON: Now, if your Honor please, this concludes this cross examination, with this exception: There are quite a number of impeaching witnesses and only one or two of them are here, and I cannot ask the impeaching questions, fixing the time and place exactly, nor the exact form of the impeaching questions, until I have the men. It might as well all be taken up at one time, and with that exception we have no further cross examination.

THE COURT: How soon will you be ready to take up the rest of the cross examination?

MR. RICHARDSON: I presume in the course of three or four days, probably, before the state will rest. We have

one hundred and fifty, between one hundred and fifty and two hundred witnesses on the information in this case, and we have thought it not wise to bring our witnesses here until such time as they would be reasonably needed, if your Honor please. It costs, as your Honor knows, to get witnesses here from Colorado probably from one hundred dollars to one hundred and fifty dollars apiece, and so we have not wanted to bring them until we were sure that we would want them, and we have had some consultations with the other side with respect to bringing witnesses and there is a sort of a general understanding that we shouldn't do that until such time as they were needed. Now I would like to recall this witness at such time as we are able to ask the impeaching questions.

THE COURT: That is, to lay the foundation?

MR. RICHARDSON: To lay the foundation for impeaching questions. Otherwise than that, we are through with this cross examination. If there is no objection, we would like to have your Honor allow us to do so.

THE COURT: The court is disposed to give you reasonable time. Are you ready to go on with your re-direct?

MR. HAWLEY: If the cross examination is not to be concluded at this time, if your Honor please, we would prefernot to go on with our re-direct.

MR. RICHARDSON: It is all concluded except that one thing, and of course they would have a re-direct on that.

MR. HAWLEY: Is this a conclusion of all of your examination except so far as impeaching questions are concerned?

MR. RICHARDSON: To ask impeaching questions alone, so far as we know. If we should find that I have overlooked anything material, we may ask, under the allowance of the court, to ask another question. But I believe we have asked most of the questions that we want to.

MR. HAWLEY: Can you give us any idea now as to who your impeaching witnesses are?

MR. RICHARDSON: Yes sir, we can give you a number of them.

MR. HAWLEY: Will you give us a list of them?

MR. RICHARDSON: We will give you a list of the names of these impeaching witnesses.

MR. HAWLEY: It looks to me, if your Honor please, like a re-examination in regard to impeaching questions necessarily will go over the whole territory that has already been travelled upon this evidence.

MR. RICHARDSON: We guarantee not to take thirty minutes, probably not ten. We will guarantee not to take over thirty and we probably will not take over fifteen with the witness.

MR. HAWLEY: All together?

MR. RICHARDSON: All together. We want to ask a specific question of time, place, persons present and conversation, in a well known form.

THE COURT: And I presume relates to matters that have been gone into already in this examination?

MR. RICHARDSON: Yes sir.

THE COURT: As to the conversations and statements of

persons whose names have already been mentioned?

MR. RICHARDSON: Yes sir.

MR. HAWLEY: We would prefer to have the re-direct at the time of the finishing of the cross examination, outside of one matter that he has not been examined on at all that we especially call the attention of the court to; butoutside of that we would prefer to go on with our re-direct at the time they finish their cross.

MR. RICHARDSON: I don't quite understand what you mean.

MR. HAWLEY: I say there is one matter to which we called the attention of court and caused at the time we turned the witness over for cross examination; we did not have a certain exhibit here to which we intended to direct his attention. We had that exhibit and it will be part of the examination in chief of course.

THE COURT: Can't you make your direct examination upon that and let them cross examine him on it?

MR. HAWLEY: Yes sir.

THE COURT: Go ahead and finish your direct examination.

MR. HAWLEY: I may, if your Honor please, necessarily repeat one or two questions I have asked him.

RE-DIRECT EXAMINATION

BY MR. HAWLEY:

Q. I will ask you, Mr. Orchard, with reference to the Goddard bomb, the bomb which you have stated you planted in front of Judge Goddard's house or in front of his yard: Did you describe that

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bomb in your prior examination, the covering of it and contents of it? A. I think I did; I am not sure.

Q. What was that bomb made out of, did you say? A. I said it was made out of a little wooden box, made out of boards, filled with giant powder.

Q. Would you recognize that --

MR. HAWLEY: Please mark that.

(Exhibit handed to the stenographer and marked for identification Exhibit K).

Q. I will show you plaintiff's Exhibit K for identification. You may state what that is, if you know. A. That looks like the same bomb that I planted at Mr. Goddard's gate.

Q. Judge Goddard's gate? A. Yes sir.

Q. The one you have testified with reference to? A. Yes sir.

MR. HAWLEY: You may take the witness.

MR. DARROW: Let us see that, will you?

(Exhibit K handed to counsel for defendant).

MR. RICHARDSON: That is all -- with the exception of the matter I have stated; no questions on that.

THE COURT: Is that all your re-direct, Mr. Hawley?

MR. HAWLEY: That is all of the re-direct now. With the consent of the court, we will continue our re-direct until the cross is finished.

THE COURT: Have you other witnesses ready, Mr. Hawley?

MR. HAWLEY: I think we can go on.

THE COURT: This witness will be remanded.

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(Witness remanded).

MRS. SADIE SWAN, a witness on behalf of the People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q. What is your full name? A. Sadie Swan.

Q. Mrs. Sadie Swan? A. Yes sir.

Q. Where do you reside, Mrs. Swan? A. 1726 Bryan Street, San Francisco.

Q. What was your name before you were married? A. Sadie Bell.

Q. Sadie Bell? A. Yes sir.

Q. Where were you residing, Mrs. Swan, in the fall of 1904?

A. At 1404 Washington Street, San Francisco.

Q. At whose residence were you residing? A. Mr. Bradley's.

Q. F. W. Bradley? A. F. W. Bradley, yes sir.

Q. Known as Fred Bradley? A. Fred Bradley, yes sir.

Q. What was the number of that street? A. 1404 Washington Street.

Q. In what capacity were you in the household or the home of Mr. Bradley? A. I was the upstairs girl.

Q. Was there anyone else working there with you in the family?

A. Yes sir.

Q. Who was that? A. Mrs. Crowe and my sister.

Q. Mrs. Crowe? A. And my sister.

Q. What was your sister's name? A. Edith Bell.

Q. Was Mrs. Crowe a relative of yours? A. No sir.

Q. In what capacity was Mrs. Crowe working there? A. She was a cook.

Q. The cook? A. Yes sir.

1291 Q. And ~~Mrs~~ Miss Edith Bell? A. She was the nurse.

Q. The nurse A. Yes sir.

Q. How far is Mr. Bradley's residence from what was known as the Glubinnintore at that time? A. Just right across the street.

Q. What kind of a store was this? A. A grocery and saloon.

Q. Did you know Mr. Glubinni? A. Yes sir.

Q. State whether or not you ever purchased goods or groceries there for the Bradley residence? A. Yes sir, I did.

Q. Did you during the fall of 1904 meet a party in that vicinity by the name of Berry? A. Yes sir, I did.

Q. Where did you first meet him? A. I met him in Mr. Glubinni's store.

Q. Do you remember what his given name was? A. No sir, I do not.

Q. He was going under the name of Berry? A. Yes sir.

Q. What was he doing at the store when you saw him? A. Well, he wasn't doing anything.

Q. What did he appear to be doing at the store? A. Well, he didn't seem to be doing anything, just hanging around there.

Q. Have you seen that party since you came to this city?

A. Yes sir.

Q. State who it is with reference to his appearance here upon the witness stand, if you know? A. Yes, I know him.

Q. What is his name as he appears here? A. Mr. Orchard.

Q. Is the party which you met at that store under the name of Berry the same party who has been on the witness stand here for several days? A. Yes sir, it is.

Q. You have no doubt about it being the same party? A. No sir.

MR. RICHARDSON: We object to that, if your Honor please, as cross examination.

MR. BORAH: Your objection is a little late, but I will not repeat it.

MR. RICHARDSON: It is always in time if it is before the answer.

THE COURT: The answer is already given, I think.

Q. How long was Mr. Berry about there? A. Well, I don't remember how long.

Q. How often did you see him? A. I saw him quite often.

Q. Where at other places than the store did you see him, if any place? A. I saw him around the corner of the store, around the Leavenworth Street side.

Q. Did you ever see him at Mr. Bradley's residence? A. Yes, I did.

Q. What was the occasion of his being there? A. He came there sometimes to deliver some groceries.

Q. From what point did he deliver the groceries? From what store? A. Mr. Giubinni's store.

Q. Do you know whether or not he made the acquaintance of Mrs. Crowe? A. Yes sir, I do.

Q. Did he get acquainted with your sister? A. Yes sir, I think he did.

Q. And yourself? A. Yes sir.

Q. Who introduced you to him? A. Mr. Giubinni.

Q. Who introduced him to Mrs. Crowe, if you know?

A. Mr. Giubinni did.

Q. Do you know whether or not he went out any evening with Mrs.

Crowe. A. I don't know about that.

Q. I will ask you to state if you were at Mr. Bradley's residence at the time of an explosion? A. Yes sir, I was.

Q. Were you there at a time when there was some question about the condition of the milk? A. Yes sir.

Q. What was that? Tell us just exactly what occurred as you can now recall it. A. Well, I took the milk in from the door and tasted it and it was bitter, and laid it on the table for Mr. Bradley and he said it was bitter and for us not to use it, to put it away.

Q. How long was this prior to the explosion? A. Might have been three or four days.

Q. What did you do with that milk, if anything, after Mr. Bradley rejected it? A. I kept it in the house for a while.

Q. Who finally got hold of it, if you know, or to whom was it delivered, who was it turned over to? A. The owner of the dairy, he came for it.

Q. The dairyman? A. Yes sir.

Q. Do you know his name? A. No sir.

Q. Do I understand that the dairyman came and got this milk which was supposed to be bitter? A. Yes sir, he did.

Q. You don't know the dairyman's name? A. No sir.

Q. In what condition was this milk delivered to the house?

A. Well, a pint bottle of cream and two pint bottles of milk I think.

Q. How many bottles all together? A. Three bottles all together.

Q. Two bottles of milk and a bottle of cream? A. Yes sir.

1294 Q. Where was it delivered? A. At 1404 Washington Street. It was

left at the back door.

Q. Who generally got the milk from the back door?

A. Well, it didn't make any difference which of us took it in.

Q. Where was this back door situated? How did you get up to that door? A. There is quite a long stairway up the back way.

Q. How was this building situated with reference to the hillside?

A. Well --

Q. I mean the front and the back part of the building, was the hill lower at the back end of the building? A. Yes, it was; yes sir.

Q. How many stories was the building in which Mr. Bradley was living, if you remember, how many stories high was the building?

A. I think four stories.

Q. You say this matter in regard to the milk was some three or four days before the explosion? A. Yes sir.

Q. Where were you at the time of the explosion? A. I was upstairs.

Q. Had you been down to the door that morning or to the street prior to the explosion? A. Yes sir, I was down at the door.

Q. For what purpose? A. For the paper.

Q. Was there anything in front of the door? A. I didn't see nothing.

Q. Was there any foot -- anything there in the way of a mat?

A. Yes sir.

Q. How far was this door from the street, the door that you now speak of? A. It was I should think about twelve feet, or something like that.

Q. What was the condition of this building after the explosion?

A. The front was all torn to pieces.

Q. How was the front constructed, out of what material? Was it a wooden building or a brick building? A. I am not sure which.

Q. What? A. I don't know.

Q. How long was it before the explosion that you went down and got the paper? A. Only about twenty minutes.

Q. Did you ever see Mr. Berry there after the explosion?

A. No sir, I did not.

Q. How long prior to the explosion had it been that you had last noticed him? A. Well, I don't know.

Q. Could you give approximately how long prior to the explosion that you saw him? A. I think I saw him the day before.

Q. Where did he generally stop around in that neighborhood?

A. Well, I just saw him around Mr. Giubinni's store.

MR. BORAH: You may cross examination.

MR. RICHARDSON: We move to strike out all of the testimony of this witness as immaterial, irrelevant and incompetent. The only object and purpose, if your Honor please, of this testimony would be to corroborate Orchard, and it is not such corroboration as is required by the statute. It is not Orchard who is on trial. It is Mr. Haywood who is on trial. And corroborating testimony must be such as to connect the defendant on trial directly with the commission of the offense independently of the testimony of the informer or accomplice.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

CROSS EXAMINATION

BY MR. DARROW:

Q. How long did you work for Mr. Bradley? A. About eight or nine months.

Q. Mrs. Crowe was working there all the while you were there, was she? A. Yes sir.

Q. Did she stay there after you left? A. No sir, she did not.

Q. Does she live there now? A. No sir.

Q. Where does she live now? A. She lives on 18th Street, San Francisco.

Q. Is she here, do you know? A. No sir.

Q. Whereabouts on 18th Street does she live? A. She lives on 18th between Mission and Valencia.

Q. Between Mission and Valencia? A. Yes sir.

Q. Is her name still Mrs. Crowe? A. Mrs. Pickard is her name now.

Q. P-i-c-k-a-r-d? A. Yes sir.

Q. Do you remember when these matters occurred which you were speaking of, do you remember when it was that the front of the house was blown out? A. Well, I think it was some time in November.

Q. November, 1904? A. Yes sir.

Q. Do you remember how much time was covered by the time you saw Berry, from the first to the last time? A. No sir, I do not.

Q. About how much would you say? A. What do you mean?

Q. Well, about how long was it from the first time you saw him until the last time you saw him? A. Oh, it might be -- I don't know, about three or four weeks I suppose.

1297 Q. That you saw him around the store? A. Yes sir.

Q. Most every time? A. Yes sir.

Q. You thought he was working there I take it? A. No sir, I did not.

Q. Was he delivering goods over there? A. Once in a while he would.

Q. How many times did he deliver any goods? A. Well, I don't know just how many.

Q. About how many? A. Several times.

Q. Well, can't you tell anything about it? A. About eight or nine times.

Q. A half a dozen? A. Yes sir, more than that.

Q. A dozen? A. Well, I don't know how many times.

Q. Would you think a dozen? A. I am not sure.

Q. Where did he deliver the goods, back way? A. At the back way, yes sir.

Q. You didn't get much acquainted with him? A. No sir, I did not. I just knew him.

Q. Mr. Giubinni introduced you to him? A. Yes sir.

Q. Was your sister introduced to him also? A. Yes sir.

Q He was introduced to Mrs. Crowe too? A. Yes sir.

Q. You don't know whether he got better acquainted with them than he did you or not? A. No sir, I don't.

Q. Now you say there was three bottles of milk at this time and you found that they were bitter? A. Two bottles of milk and one of cream.

Q. And you found that they were bitter, and Mr. Bradley found that they were bitter and you didn't use them? A. Yes sir.

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Q. What time in the morning was that? A. About half past seven.

Q. What time? A. About half past seven.

Q. What kind of bottles were they? A. I think they were pint bottles; I am not positive.

Q. All pint bottles? A. I think so, yes sir.

Q. And glass, I suppose? A. Glass bottles, yes sir.

Q. And what other members of the family were there there at that time? A. Just Mr. and Mrs./Bradley and Mrs. Crowe and my sister.

Q. Any children? A. A baby, yes.

Q. And what did you do with the milk afterwards? A. Well, the owner of the dairy, he came for it and he took two bottles away.

Q. What did you do with the other one? A. We kept it in the house for a while.

Q. Well, after you kept it in the house a while what did you do with it? A. Threw it out.

Q. Did you take any of it over to Giubinni's store? A. Yes sir, we did.

Q. Did you take it over? A. No, I didn't take it over.

Q. Who did? A. I think Mrs. Crowe took it over.

Q. Tell Mr. Giubinni what was the matter with it? A. No, I don't know whether she did or not.

Q. You don't know? A. No sir.

Q. Did you ever talk with Giubinni about it? A. No sir, I did not.

Q. How long was it there at the store? A. What is that?

1299 Q. How long was the milk there at the store? A. It was there three or four days I think.

Q. Standing on the counter? A. No, I don't think so.

Q. Do you know where it was? A. No sir, I don't.

Q. But you know it was taken there? A. Yes sir.

Q. How did you find that out? A. Well, I knew Mrs. Crowe took it there.

Q. Well, do you know that from her, do you mean? A. Yes sir.

Q. That is all you know, is what she told you about it, is that right? A. Yes sir.

Q. About that matter. You don't know what became of it afterwards, do you? A. I know she took it back again and threw it out.

Q. That is, she took it to the store and left it several days and brought it back and threw it out, is that it? A. Yes sir.

Q. And this you think was three or four days before the explosion?

A. Yes sir.

Q. Was it brought back before the explosion? A. I don't think so, no sir.

Q. Well, do you know? A. I know it wasn't brought back before the explosion.

Q. Now have you got any way of remembering how many days it was between the time of the milk and the time of the explosion?

A. Well, as near as I can remember, it was three or four days.

Q. Do you know what day of the week the explosion occurred on?

A. No sir, I do not.

Q. Did you talk about it at the time? A. No sir.

Q. Did Mr. Bradley speak about it? Was there anything said to you about why the milk was bitter? A. No, he didn't say anything to me about it.

Q. You didn't hear anything said at all? A. No sir.

Q. Did you know why it was given back to the milkman? A. For the purpose of having it analyzed.

Q. Who spoke of it? A. Mrs. Bradley did.

Q. At that time? A. Yes, when he was taking it away.

Q. What is that? A. When he was taking it away, yes sir.

Q. To see what made it bitter? A. Yes sir.

Q. And nothing was said as to what their information was?

A. No sir, I don't think so.

Q. As to what made it bitter, you don't recall that anyway?

A. No sir.

Q. But they did say they would take it away to have it analyzed?

A. Yes sir.

Q. And they took this one bottle over to Giubirmi's for some such purpose too? A. Yes sir.

Q. Well, now, did you know whether they got it analyzed?

A. I don't know, no sir.

Q. Who was the milkman? A. Well, I don't remember his name. I never heard it I don't think.

Q. Never heard of his name? A. No sir.

Q. How long had he been delivering milk there? A. Well, I don't know how long.

Q. Had you never heard his name from anybody? A. I heard somebody say they thought his name was Mr. Crook; I am not sure.

Q. You have heard his name somewhere sometime? A. Yes sir.

Q. What did you say his name was? A. Crook.

1301 Q. That is the name of the milkman, was it, C-r-o-o-k? A. Yes sir.

MR. BORAH: A capital "C".

Q. Do youknow where his place of business was? A. No sir, I do not.

Q. Have you seen him since? A. No sir, I have not.

Q. You don't know where he is now? A. No sir, I do not.

Q. Do you know how you happened to taste the milk that morning?

A. Well, I tasted it; I didn't have any reason for doing it.

Q. Did you taste it in each one of these bottles? A. No, I just tasted the cream.

Q. You didn't taste the milk? A. No sir.

Q. Well, now, this morning of the explosion you say you went down and got a paper? A. Yes sir.

Q. What did you do with the paper? A. I picked it up.

Q. Where did you take it? A. To the dining room for Mr. Bradley.

Q. Where was Mr. Bradley when you took it up? A. I think he wasn't out of his room yet.

Q. In his room? A. Yes sir.

Q. That is, in his bedroom? A. Yes sir.

Q. He hadn't yet got through dressing? A. No sir.

Q. Do you know whether you took it to his bedroom? A. I left it in the dining room.

Q. And after awhile he came down to breakfast? A. Yes sir.

Q. Of course you have no way of remembering how long it took him to dress after you got the paper? A. No sir, I do not.

Q. But you know he had not yet got through dressing? A. I don't think so, no sir.

Q. And you laid the paper on the table? A. Yes sir.

Q. And after he came out he ate his breakfast, did he? A. Yes sir.

Q. And after he got through breakfast he started out of the house, did he? A. Yes sir, he did.

Q. Lighting a cigar at the door? A. Yes sir.

Q. And at that time the explosion took place? A. Yes sir.

Q. Do you remember the last time you saw this man Berry, as you have called him? A. Well, I saw him I think the day before t the explosion; I am not positive.

Q. When was your attention first called to looking this matter up and coming here to testify? A. Well --

Q. Hey? A. I didn't look it up.

Q. What I mean, Mrs. Swan, is when was your attention called to remembering these incidents and coming here to testify?

A. Well, about two weeks before I came up here.

Q. How long have you been up here? A. About a week I think.

Q. Who called your attention to it first? A. It was a detective down in the city, I don't know his name.

Q. A Pinkerton man? A. I think so, yes sir.

Q. Came to your house? A. Yes sir.

Q. Did your husband know him? A. No sir.

Q. What is your husband's business? A. He is a carpet layer.

Q. Well, did he come one day or evening? A. He came both in the daytime and the evening both.

Q. How many times did he come to see you? A. He came several times

Q. How many? A. About five times I should think.

Q. About five? A. Yes sir.

Q. Told you what he wanted, did he? A. Yes sir.

Q. Told you the first time he came, I suppose? A. No sir, he did not.

Q. What did he tell you he came for the first time? A. He just wanted to know if I knew this Mr. Berry.

Q. Told you what he wanted the first time then, didn't he?

A. No sir, he didn't; just wanted to know if I know him, if I remembered seeing him around Bradley's.

Q. Did he tell you at what time? He told you -- asked you whether you remembered Berry, who was around Giubinni's and around the place about the time of the explosion and about the time of the milk, didn't he? A. Yes sir, he did.

Q. And how long did he talk with you after that? A. Oh, not very long, a few minutes.

Q. Well, about how long? A. About five minutes or so.

Q. And he showed you this picture, didn't he, of Orchard?

A. Yes sir, he did.

Q. The first time he came? A. No sir, he didn't.

Q. Then he came back and asked you about it again, did he?

A. Yes sir, he did.

Q. And asked you about knowing Berry and about seeing him around Giubinni's and about the milk and about the explosion?

A. Yes sir.

Q. And how long it was from the time you went downstairs and got the paper until you heard the explosion? A. Yes sir.

Q. And then he still came again and asked you about it?

A. Yes sir, he came several times.

Q. And he came about five times about this matter? A. Yes sir.

Q. To get you to come up here to Boise and testify in relation to it? A. Yes sir.

1304

Q. Did he talk with you about this every time? A. No sir, he ~~didn~~ didn't.

Q Well, did he have any other business there? A Well, he didn't talk to me all of the time about coming up here.

Q What other business did he have with you? A He wanted to know all about Barry.

Q He wanted to know about this matter and nothing else?

A Yes sir.

Q He didn't have any other business with you, he wasn't paying you any social calls or anything like that? A No sir.

Q And you finally promised to come? A Yes sir, I did.

Q Had you been in the habit of getting Mr. Bradley's paper in the morning for him to read? A Yes sir, I was.

Q Did he generally read it at the dinner table? A No sir.

Q At the breakfast table? A Yes sir.

Q Or in his bedroom? A Well, I don't know; he read it at the table anyhow.

Q His custom was to read the paper and eat his breakfast?

A Yes sir.

Q Before he left the house? A Yes sir.

Q And I suppose when he left the paper there? A Yes sir.

A And so far as you know he left the paper there that morning?

A I think he did, yes sir.

Q And the only way you know about twenty minutes is the time, that it would naturally take and what this detective has told you, isn't it? A Twenty minutes, about that.

Q You don't know any different from this morning and any other morning, do you? A No sir.

1305 Q Well, where were you when this explosion took place?

A I was upstairs in one of the rooms.

MR. DARROW: I guess that is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q. When you left the upper portion of the building to go down after the paper you were compelled to go from the floor --

MR. DARROW: I object.

MR. BORAH: You object to what?

MR. DARROW: I object to that leading question.

MR. BORAH: You better wait until I ask it.

MR. DARROW: Oh, no, I can see it now. You are too easy.

MR. BORAH: I am glad I am easy.

MR. DARROW: Yes, you are on that, sure.

Q. Mrs. Swan, when you left the upper floor to go after the paper you had to go clear to the street, did you?

MR. DARROW: I object. Let her tell where she had to go. That is a leading question.

THE COURT: Objection overruled.

MR. DARROW: Note an exception.

Q. You had to go clear to the street? A. I had to go down just to the door.

Q. Was that the door which lead to the street? A. Yes sir.

Q. Well, now, I want to ask you this, did you open all the doors which led from the inner part of Mr. Bradley's residence to the street at the time you got the paper? A. Yes sir, I did.

1306

Q. Then there was a complete opening from the street into the

inner part of this house by reason of this going after the paper.

MR. DARROW: I object, as Mr. Hawley says, on the ground that it is argumentative. If she opened every door there would be a complete opening all the way, wouldn't there? She just swore that she did.

THE COURT: Objection overruled.

MR. BORAH: I insist on you being original.

Q. You may state what the effect was -- going after that paper was, with reference to opening the house from the street to the inner part of Mr. Bradley's residence.

MR. DARROW: I object.

THE COURT: The objection is overruled.

MR. DARROW: An exception.

Q. You may state, Mrs. Swan. A. There was only the one door to open.

Q. And that opened into the street? A. Well, yes.

MR. BORAH: That is all, Mrs. Swan.

RE-CROSS EXAMINATION

BY MR. DARROW:

Q. When you opened one door it made a complete opening all the way? A. Yes sir.

MR. BORAH: We object to that as argumentative.

MR. DARROW: That is all.

THE COURT: Call your next witness.

MR. BORAH: We will call Mr. Crook.

1307 MR. RICHARDSON: Is that name endorsed?

MR. STONE: Yes sir.

MR. BORAH: You may be sworn, Mr. Crook.

MR. RICHARDSON: Wait, before he is sworn, until I see whether his name is endorsed on the information. I believe under the statute that the proper time to object is before the witness is sworn.

MR. HAWLEY: It is on the original list that I gave after we came here to this county.

MR. RICHARDSON: I have no doubt it is here but I just want to see it. Did you say it commenced with a "K"?

MR. BORAH: That is the way they spell it in Missouri.

MR. RICHARDSON: I find "Mrs. Roy Cook" here. That is a different name, is it?

MR. BORAH: Are you looking under "K" for it?

MR. RICHARDSON: I would be if I was as ignorant of the way to spell it as you are. And I find "D. Crouk": Is that it?

MR. BORAH: No, that is not this man.

MR. HAWLEY: It is "Mr. O. Crook" here on the original.

MR. RICHARDSON: No such name on the list, if your Honor please. I would like to see the order that endorsed that name. (Goes to clerk's desk and examines list). I suppose this is meant for the same name. I see that this was written "D. Crouk". Somebody has changed it in pencil to "O. Crook", as will be seen if your honor will permit me to hand it to you.

And I object to the witness being sworn under any such service as that. That don't give us any information, if your Honor please, in regard to a witness, and the object

and purpose of the statute is to give us some information about it. If they give us the name of "D. Crook" and then somebody changes it in pencil to "C. Crook" that does not give us then authority to swear that witness.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. BORAH: Be sworn, Mr. Crook.

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

DIRECT EXAMINATION

BY MR. BORAH:

Q. Mr. Crook, where do you reside? A. San Francisco?

Q. How long have you resided in San Francisco? A. Twenty-two years.

Q. What is your occupation or business? A. Dairy -- dairyman.

Q. What is the name of your dairy? A. Guadaloupe Dairy Company.

Q. And what relationship do you have to the dairy, are you the owner of it? A. I am the secretary and the manager.

Q. Were you in that business in 1904? A. Yes.

Q. State whether or not you were delivering milk to F. W. Bradley's residence in 1904? A. Yes, one of our routes were delivering milk there.

Q. Were you delivering milk there during the months of October and November, 1904? A. Yes.

Q. Do you know Mr. Bradley? A. No.

Q. Do you know Mrs. Bradley? A. No.

Q. Ever have any talk with Mrs. Bradley or Mr. Bradley?

A. I had a conversation with Mrs. Bradley that morning of the poisoning, that is all.

Q. What morning was that? A. Well, my book says the 16th of November, 1904.

MR. DARROW: I object to that answer and move to strike it out.

Q. You may state, if you recollect --

MR. DARROW: Wait a minute and let us have a ruling on

it.

MR. BORAH: What is the objection?

MR. DARROW: That is not competent.

THE COURT: He may examine his book for the purpose of refreshing his recollection without telling what it says.

MR. DARROW: I move that this answer be stricken out.

THE COURT: It may be stricken out.

Q. You may state if you recollect, about the time that you had this conversation. A. Well, the 16th of November, 1904.

Q. With whom did you have the conversation? A. I first had it with some of the girls of the house, the servant girls, and then Mrs. Bradley said a few words.

Q. What was the occasion of your being at the Bradley residence that morning? A. They rung up on the phone saying the milk was --

MR. DARROW: We object on the ground it is hearsay; can't prove what somebody said over the telephone.

Q. You may just state generally what the occasion of your being there was without stating the details of any conversation.

A. I was there because the milk was reported bad. I wanted to see what was the matter, from a trade standard.

Q. And from whom was the report with reference to the milk?

A. From whom it came?

Q. Yes. A. I don't know.

Q. From whose residence did it come? A. From the Bradley residence.

Q. Did you see Mrs. Bradley after you arrived there? A. Yes.

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Q. And did you see Miss Bell, now Mrs. Swan, and her sister?

A. I don't know who I saw.

Q. Did you see the girls who were working there? A. I saw at least two of them.

Q. Did you get anything at the Bradley residence that morning and take it away with you? A. Yes, I took a quart bottle of milk.

Q. Did you take any more? A. I don't remember that I did.

Q. To whom did you take it? A. To the city chemist.

Q. And who was the city chemist? A. Dr. Botha.

Q. For what purpose did you take the milk to Dr. Botha A. I wanted to see what was the matter with it.

Q. Did you learn what was the matter with it? A. Yes.

Q. From whom did you learn it? A. Dr. Botha told me that.

Q. You needn't state what was said, but ~~[illegible]~~ did you ascertain the fact from Dr. Botha? A. Yes.

Q. How did you afterwards hear about an explosion at Mr. Bradley's residence? A. Yes.

Q. How long before this explosion was it that you took this milk to the city chemist? A. I should think about three or four days.

Q. What position did you say Dr. Botha occupied? A. He is the city chemist of San Francisco.

Q. Were you personally acquainted with him? A. Yes.

Q. Do you have or did you have any knowledge as to what was the matter with this milk except what you learned from Dr. Botha?

A. That is all.

Q. Did you have any complaints with reference to any other milk along that street that morning, or only that time?

MR. DARROW: We object to that on the ground it is incompetent.

THE COURT: The objection is overruled.

MR. DARROW: Exception.

A. No.

Q. Did you take milk from Bradley's residence more than once for the purpose of having it analyzed? A. No.

Q. The only occasion was this which you have spoken of three or four days before the explosion? A. Yes.

Q. Did I ask you the name of your dairy? A. Yes.

MR. BORAH: You may take the witness.

MR. DARROW: Your Honor, in order to preserve the record, I presume we ought to move to strike this out, and I move to strike it out on the ground it is irrelevant and incompetent.

THE COURT: The motion will be denied.

MR. DARROW: Save an exception to it.

THE COURT: An exception will be noted.

CROSS EXAMINATION

BY MR. DARROW:

Q. You don't remember the date excepting as you have looked for it in your book I suppose? A. The day he quit was the day this happened.

Q. The day what? A. He discontinued taking milk that day and that is the way I can tell.

Q. But as a simple matter of remembering what day it was you wouldn't remember? A. Oh, no.

1313 Q. Neither would you remember the date of the explosion?

A. Only that it was spoken of that the folks that quit that day got blown up this morning.

Q. But as to remembering the days you wouldn't remember anything about it? A. Oh, no, I wouldn't know whether it was two or three or four or five.

Q. Might have been a week, mightn't it? A. Might have been a week.

Q. What you know is that you went there and got a bottle of milk and took it to the chemist to analyze? A. (Witness nods affirmatively).

Q. You couldn't see anything wrong by looking at it? A. No.

Q. Didn't see anything wrong by looking at it? A. No.

Q. How many days after was it that you went tothe chemist to get a report? A. Oh, I didn't go. I got it the same morning.

Q. Then you did get a report? A. Yes, had a verbal report.

Q. Did you report back to the Bradley house what you had found out? A. No.

Q. Who did you report to? A. I went to see Mr. Bradley and couldn't see him and dropped it.

Q. Did you ever tell anybody about it or don't you know?

A. Why, I think I spoke to my wife about it.

Q. You would naturally speak about it, wouldn't you? A. Yes.

Q. Did you speak to the police department? A. No, I thought Dr. Botha would attend to that.

Q. What is that? A. I supposed Botha would attend to that.

Q. But it was a matter that you naturally would speak about and naturally didspeak about, didn't you? A. Not more than I had to, no. I didn't want to get tangled up in it.

Q. You thought it wouldn't help your milk business?

A. That is the idea. It generally don't.

Q. You supposed Mr. Bradley would attend to that end of it? A. Yes

Q. Did you deliver milk regularly in that neighborhood to other people? A. Yes.

Q. You did not deliver milk yourself I suppose? A. No.

Q. You don't know where the other bottles went to of your own knowledge? A. Which other bottles?

Q. If there were any other bottles of milk delivered at the Bradley house that morning you don't know what became of them?

A. Only Mr. Bradley told me there had been somebody there prior to my coming with milk from that same point.

Q. That somebody else had left a bottle there? A. Yes.

Q. Did you find out who that was? A. No.

Q. Whether it was Giubinni or not? A. No, I don't know who it was.

Q. But you did find that out and you don't know whether there was a bottle standing out on Mr. Giubinni's counter for several days or not? A. No.

Q. Who got you to come, Mr. Crook? A. Where from?

Q. From San Francisco. I suppose you are living there now, aren't you? A. Why, a fellow named Reeves.

Q. Do you know Reeves' business? A. No, not exactly. He just said he was in the employ of the State.

Q. Of the State of California or the state of Idaho? A. Idaho.

Q. Does he live in Idaho? A. I didn't ask him.

1815 Q. Did you ever see him before? A. No.

Q. Did you see him more than once? A. Yes.

Q. How many times? A. Three to four times.

Q. Well, he lives in San Francisco, doesn't he? A. I don't know.

Q. Didn't ask him any questions? A. No.

MR. DARROW: That is all.

THE COURT: Do you want to ask this witness any other questions?

MR. BORAH: No.

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

DIRECT EXAMINATION

BY MR. DORAN:

Q. What are your initials? A.-- P.L.

Q. Where do you reside? A. In Berkeley, California.

Q. What is your business, Mr. McCleary? A. Analytical chemist.

Q. Speak up well. A. An analytical chemist.

Q. Are you a graduate of any school? A. Not a graduate; I took a three years' special course in the University of California.

Q. How long have you been actively engaged in the pursuit of your profession? A. Since July 1, 1904.

Q. What were you doing in October and November, 1904?

A. I was assistant city chemist of the city and county of San Francisco, Board of Health.

Q. Who was your principal? A. Dr. A. C. Bothe.

Q. Do you remember the occasion of some milk being brought to your place for analysis? A. Yes sir, I do.

Q. From what dairy, do you know? A. From the Guadaloupe dairy.

Q. And who brought it? A. Mr. Crook.

Q. The man who has just been on the witness stand? A. Yes sir.

Q. Did you understand from whose residence it came? A. It came from Mr. Bradley's residence.

Q. On Washington Street? A. I don't know the street.

Q. F. W. Bradley? A. Yes sir, a mining engineer.

Q. Did you make an analysis of that milk? A. I did, yes sir.

1317 Q. What did you find? A. I found strychnine in large quantities.

Q. What kind of strychnine? A. Well, I couldn't say what kind

of strychnine, poisonous strychnine; there are several salts of strychnine.

Q. When you say "large quantities" give an idea of what you mean by that. A. Well, I mean large quantities as referring to poison. There would probably be in the bottle that I analysed from forty to sixty grains.

Q. Did you make a report to your principal? A. I told Dr. Botha, yes sir.

Q. Did you examine milk more than once from Bradley's residence?

A. Not that I can remember of.

Q. Did you afterwards learn of an explosion at Bradley's residence? A. I did, yes sir.

Q. How long was this examination prior to this explosion?

A. A few days, probably three or four.

Q. How much strychnine would it take to kill a person?

A. Well, there has been an instance known where one-half grain caused death in about fourteen minutes. An ordinary poisonous dose would probably be from two to three grains. That would depend upon the party that was taking the poison.

Q. There was sufficient in this milk then to have caused death?

MR. DARROW: I object on the ground that it is argumentative.

MR. BOHN: I don't want you to get funny at the expense of time.

MR. DARROW: I object.

THE COURT: Objection overruled.

MR. DARROW: Exception.

A. I have forgotten the question.

Q. Was there sufficient in this milk to have killed a person had they drank the milk? A. Yes sir, there was sufficient to kill more than one.

MR. BORAH: You may cross examine.

MR. DARROW: First we will move to strike it out on the ground that it is incompetent, irrelevant and immaterial.

THE COURT: The motion is denied.

MR. DARROW: And that it doesnot in any way tend to connect this defendant with anybody, and we take an exception.

THE COURT: Exception will be noted.

CROSS EXAMINATION

BY MR. DARROW:

Q. You haven't any way of remembering independently of when this was? A. Yes sir.

Q. In what way? A. You mean in reference to the explosion?

Q. Yes. A. Yes sir, I have. It takes to get the final test on an analysis and to get at the quantities of strychnine or any of the alkaloid poisons, it takes three or four days; and I distinctly remember I had just finished the analysis of the poison a day or so before the explosion occurred.

Q. And when Mr. Crook says he got the report the same day he is mistaken? A. No sir, he is not. There was so much strychnine in the cream that I was able to get a color test, which is a very delicate test, I was able to get it on the raw cream without extracting the poison.

Q. Then you gave some report the same day? A. I gave him a report the same day that I thought there was poison in it.

Q. Now wait a minute. Don't talk so fast. Just answer my question, please. You gave some report the same day, did you?

A. I gave a report, yes sir.

Q. To whom? A. To the gentleman that brought it in, Mr. Crook.

Q. Have you any independent remembrance about when you made this analysis? A. It was in the fall of 1904.

Q. You have that independent remembrance it was inthe fall of 1904? A. Yes sir.

Q. There is nothing else that you fix it by, to fix it any closer than that? A. Only the explosion.

Q. Have you an independent remembrance of the date of the explosion? A. Not of the date, no sir.

Q. Then you fix it by that, do you? A. Only with reference to it.

Q. But you haven't any independent remembrance of it? A. I do not,no sir.

Q. Do you know whether there was another jug of milk came in from some other place about that time? A. That I couldn't say.

Q. If there did, it didn't fall into your hands? A. No sir.

Q. Do you know whether you said anything about this matter to anybody? A. Yes sir, I have spoken of it.

Q. You are in the habit of speaking now and then, I take it?

A. When necessary, yes sir.

Q. And the chances are you commenced talking about it right off?

A. Well, not right off, no. I told some a few friends about it, that is all.

Q. Don't know about how many friends you got to that first day, do you? A. No, I have no idea as to that.

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MR. DARROW: That is all.

MR. BURAN: That is all.

Thereupon the court cautioned the jury, and the jury retired in the custody of the sworn bailiffs.

The defendant was remanded to the custody of the sheriff.

A recess was hereupon taken until 9:30 o'clock tomorrow morning.

Boise, Idaho, Friday, June 14th, 1907.

9:30 o'clock A.M.

Parties met pursuant to adjournment.

Minutes of session of June 13th, 1907, read by the clerk and the same were signed by the court.

The clerk called the names of the jurors and announced all present.

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

DIRECT EXAMINATION

BY MR. BORAH:

Q. How do you spell your name? A. G-i-u-b-i-n-n-y.

Q. L. D.? A. Yes sir.

Q. Pronounced Gubinny? A. Jubinny.

Q. Where do you reside, Mr. Giubinny? A. Stockton, California.

Q. What is your business or occupation? A. Dairyman.

Q. How long have you been a dairyman? A. Since the fire in San Francisco, since the 18th of last April, a year ago last April.

Q. What was your business prior to that? A. Grocery.

Q. How long had you been in the grocery business? A. About four years the last time.

Q. Where was your place of business while you were a grocer?

A. Corner of Washington and Leavenworth.

Q. What city? A. San Francisco.

Q. Were you in the grocery business in the fall of 1904 in San

Francisco? A. Yes sir.

Q. What was your street and number at that time? A. 1338 Washington Street.

Q. 1338 Washington? A. Yes.

Q. Where was that number and street with reference to Mr. Bradley's residence? A. Right across the street.

Q. F. A. Bradley? A. Yes sir.

Q. The mining man? A. Yes sir.

Q. What kind of a house or building did Mr. Bradley reside in?

A. A wood or frame building three stories high.

Q. Was it an individual building or a flat? A. Flats.

Q. How long had you been in the grocery business at that point prior to November and October, 1904? A. Pretty close to three years I guess.

Q. Were you acquainted with the Bradley family? A. All of them, yes sir, except Mr. Bradley.

Q. Did they do business at your place of business? A. Yes sir, bought pretty near all their groceries there.

Q. Of whom did this family consist inthe fall of 1904, including the servants in the house, and so forth? A. Mr. Bradley and his wife and a little child and the girls, the three servants.

Q. Who were the girls employed in this household? A. Mrs. Euphemia Crowe, Miss Bell -- two Miss Bells.

Q. Do you know what the number of his house was? A. 1404 Washington.

Q. Were you acquainted with the ladies who worked in his house?

A. Yes sir, well acquainted.

Q. How where was his residence with reference to your store, how close? Whereabouts with reference to the street? A. I guess about sixty feet from my corner, the width of the street.

Q. Did you become acquainted with a party by the name of Berry in that vicinity during the fall of 1904? A. Yes sir.

Q. When did you firstmeet him and where? A. In my store along about the middle of October, 1904.

Q. How did you come to make his acquaintance? A. He simply come in my place of business and stayed around there and spent money freely.

Q. Well, what did you have there for him to spend money for?

A. Liquor; I had a grocery and a bar connected.

Q. Where you sold liquor do you mean? A. Yes sir, a saloon.

Q. Had you ever seen the gentl man before he came into your store?

A. No sir, not before along about the middle of October, I guess.

Q. How did you get acquainted? Did some one introduce you?

A. Yes sir.

Q. Well, state just how you got acquainted, how it happened?

A. Simply hanging around there and he made an expression he liked the place, it being up high he could have a good view of the city, a nice climate; he was down for a vacation and he thought he would have a nice time, take life easy, you know, and he didn't want to be down amongst all those noisy places in San Francisco down town.

Q. How long did he remain around your place of business?

A. He was there maybe four weeks at this time.

Q. Did he have any business of his own apparently? A. Not that I

know of.

Q. What did he do in the way of spending money with the people who visited your place? A. Oh, he was a good fellow around there, simply treated everybody and made himself at home there. He didn't drink very much himself.

Q. What inquiries did he make with reference to the surrounding neighborhood, and so forth, if any?

MR. DARROW: Well, we object to that. The statement would be pure hearsay, irrelevant, immaterial and incompetent.

THE COURT: The objection is overruled.

MR. DARROW: Exception.

A. He inquired if I knew a man by the name of Bradley. I told him I did, I said he was my best customer I had in the store; I knew his family, I didn't know Mr. Bradley himself, but I knew his family well.

Q. What, if anything, was done in the way of pointing out Bradley's residence? A. I couldn't tell you how it was done, but I must have told him where he lived.

Q. State what you recollect as to what transpired, Mr. Giubinny, in the way of identifying Bradley's residence, if you recollect anything? A. I told him that Mr. Bradley's help used to come over pretty often in the evening and the day and buying groceries from me.

Q. Did Mr. Berry get acquainted with any of the Bradley family or the employes of the family to your knowledge? A. Yes sir, after he was there for four or five days he did.

Q. How did that occur? A. He asked me if I could introduce him to the girls. The girls used to be in the store and he was in

the bar pretty near all of the time, that is, in the afternoon, not in the morning; I never had a chance to see him in the morning except once.

Q. What did you do in the way of introducing him, if anything?

A. Well, I simply -- the girl was out in the store and I told him that if he wants to get introduced to the girl he could come out here; so he did and I introduced him, -- to Mrs. Crowe.

Q. To whom did you introduce him? A. To Mrs. Crowe, the first one.

Q. Did you introduce him to the other girls? A. Yes sir.

Q. Do you know whether or not Mr. Berry was over at Bradley's residence at any time while he was loafing about your place?

A. Yes sir, he used to go up there with groceries. He always wanted a chance to get over and see the girls every time I had an order to send over there.

Q. Did he secure a room anywhere in that neighborhood? A. After he become acquainted with the girls he did.

Q. What was said to you in regard to securing a room and what did you have to do with his securing a room in that neighborhood?

MR. RICHARDSON: We object to that as incompetent, irrelevant and immaterial, not binding upon this defendant.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A. Well, there was a lady around there that asked me if I knew some body that wanted a room, that she would like to rent a room out.

MR. DARROW: Wait a minute. I don't suppose you want

A. Within a week.

Q. Did you see Mr. Berry just prior to that explosion? A. I saw him the night before.

Q. I wish you would state to the jury just what occurred the night before that you saw with reference to Mr. Berry.

A. I was going to the lodge on Wednesday evening about eight o'clock or ten minutes to eight on the corner of Washington and Jones. I was going to take the car on the corner of Washington and Jones, and there was Mr. Berry with two grips, at least a grip and something else in his hand getting on the car. I got ahold of one of the grips and helped put it on the car. It must have weighed about a hundred pounds. I asked him where he was going. He said he was going down to the Ferry, the next morning he was going to leave for Jackson, California. But instead of taking a transfer to go down Sacramento Street to the Ferry, he went down to Powell and Market, which is away off from the direction of the Ferry. I asked him when he was going, if he wasn't going to come back I would bid him good bye. He said he was going to be back the same evening and he would be in my store when I got back from the lodge. At eleven o'clock I got back from the lodge and there was Mr. Berry.

Q. In your store? A. In my saloon.

Q. Now when was this that you saw him on the car with his grip with reference to the time of the explosion? A. The night previous to the explosion.

Q. About what time did the explosion occur in the morning?

1328 A. I guess along about eight o'clock or within ten minutes of

eight either way.

Q. Did you go over and examine the building after the explosion?

A. After I got dressed (I was just getting up) I did.

Q. You may state as much in detail as you can just what you saw when you got over to the building, or within sight of it, or when you first saw it? A. Well, there was an immense lot of people around there, I could hardly get near it. The building was pretty well wrecked all over in front. Of course I couldn't get near to the building at that time.

Q. Did you see Mr. Bradley? A. I saw Mr. Bradley from my window when I was getting up.

Q. Where was Mr. Bradley when you first saw him? A. He was out at the edge of the sidewalk, tried to pick himself up and he couldn't stand up at all, and somebody carried him upstairs.

Q. You may describe the front finish of this building and of what material it was made, and so forth. A. Well, it is made kind of a porch like; the foundation is of concrete, a concrete foundation, and marble steps going up to the entrance, to his door.

Q. What was the effect of the explosion upon this marble finish or these steps? A. Well, they was all cracked, the steps was all cracked up and the marble up on the porch was just mashed all around, just mashed down like.

Q. When did you last see Berry with reference to this explosion?

A. The next morning, just that same morning after the explosion, about, I should say half an hour or an hour afterwards.

Q. Where did you see him? A. Right there with the gang, watching the explosion the same as anybody else.

Q. How long was this after the explosion had taken place?

A. Well, about half an hour or an hour; I couldn't remember exactly.

Q. Did you ever see him in that vicinity afterwards? A. No sir; he came in that morning. We had a few drinks together, I guess, in the bar room, and that is the last I ever saw of him.

Q. When did you next see him to know who he was? A. Here in this chair.

Q. What was his name as he appeared there? A. Harry Orchard.

Q. I will ask you then if the party whom you saw there as Mr. Berry on these occasions you have described is the same party who was here as Harry Orchard? A. Yes sir, that is the same man.

Q. Did you contemplate or have a talk with Berry about going into business with him? A. I did.

Q. What kind of business? A. Grocery and bar, the same as I had.

MR. BORAH: You may cross examine.

MR. DARROW: Your Honor, we first want to make a motion to strike all of the testimony of this witness on the ground it is incompetent, irrelevant and immaterial and does not serve to connect the defendant in any way.

THE COURT: Motion denied.

MR. DARROW: Exception.

CROSS EXAMINATION

BY MR. DARROW:

Q. Do you live in San Francisco now or anywhere near there?

1330 A. Stockton.

Q. How far is that from San Francisco? A. About 93 miles I guess.

Q. How long have you lived down there? A. I have lived in Stockton about a month now.

Q. About a month? A. Yes sir, not quite.

Q. Who got you to come up here? A. The detectives in San Francisco, the Pinkertons.

Q. Pinkerton men? A. Yes sir.

Q. Go down to Stockton for you? A. No sir, I was down looking at a building in San Francisco that I am having built now and they caught me there.

Q. How many of them? A. One.

Q. What was his name? A. I couldn't tell you. He told me to go down to the office.

Q. Did you go to the office? A. Yes sir.

Q. Whom did you see there? A. Mr. Wilson.

Q. Frasier's office, was it? A. The detectives' office.

Q. The Pinkerton detective office? A Yes sir.

Q. How long did you stay there? A. Oh, about ten or fifteen minutes I guess.

Q. They told you what you were wanted for, I suppose?

A. Yes sir, they wanted me to come up here. They told me I had to come up here, there was no use for me to try to dodge it, that I had to come up here.

Q. Going to kidnap you and bring you up, were they? A. Well, they couldn't very well kidnap me.

Q. You being an Italian, an Italiano, you thought you had to?

A. No, I aint.

Q. German? A. No sir.

Q. What are you? A. Swiss.

Q. Anyway, you weren't familiar with the laws of this country, you thought you had to come? A. I never had nothing to do with law in this country; this is my first experience.

Q. Well, they told you what they were going to do with you after you got here, didn't they? A. They told me what they wanted me for, to tell the truth and nothing else.

Q. They told you they were going to bring you up here, to kidnap you and bring you up here to tell the truth and nothing else?

A. Oh, no, they didn't tell me that. They told me I had to come up here and there was no use for me to try to dodge it.

Q. They told you you were to come up here to tell the truth and nothing else? A. Yes sir.

Q. Didn't tell you anything else? A. No, nothing else, not in regard to this affair.

Q. You mean to say that you didn't talk over this Bradley matter with them? A. With who?

Q. With the detectives. A. They asked me about this case and I told them how it happened, just the same as I am saying now.

Q. You did then talk with them. They told you that besides telling you to tell the truth? A. They wanted to know if I knew the man, they showed me a picture and wanted to know if I knew the man. I said I did and they wanted to know all about it, all the particulars about it, and they told me I had to come up here.

Q. You talked it all over, didn't you? A. Yes sir.

Q. How long were you with them? A. About ten or fifteen minutes.

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Q. Just once? A. Just once in the office. Then they told me

that Friday I was had to come up here but I didn't come up until Saturday.

Q. Where did you see them Friday? A. Friday there was a man come up to Stockton and wanted to know if I was coming or not.

Q. Was he a Pinkerton man too? A. Yes sir.

Q. He told you you had to come? A. He asked me if I was coming up or not and I said as long as you want me to go I will go.

Q. How long did you talk with him? A. He was there in the evening; I stayed with him about an hour running around the streets, and the next morning we went down.

Q. He stayed over night, did he? A. Yes, in Stockton he did.

Q. And then you came to Stockton with him? A. I came to Frisco with him.

Q. Well, he didn't bring you clear on to Boise, I suppose you came to Boise alone? A. I am able to come to Boise, yes.

Q. As long as you knew you had to come you could get here?

A. I found out I didn't have to come if I didn't want to.

Q. Did they read a subpoena to you? A. No, they didn't read no subpoena to me.

Q. Did you get any money? A. I got money to come up, for the expenses, yes sir.

Q. How much? A. $200.

Q. You haven't spent all of that for expenses? A. Pretty near.

Q. How much did your ticket cost? A. $48.50.

Q. You have got a little left over from the $200? A. Well, I am going back.

Q. You didn't get a round trip? A. No, I couldn't get a round trip.

Q. Were you to get any more money? A. They told me if it was necessary that I should stay up here a week or so to call on Mr. Hawley and I would get my expenses.

Q. So you tooka train and came to Boise? A. Yes sir.

Q. When did you get here? A. The 5th.

Q. Been around here ever since? A. Ever since.

Q. Where have you been stopping? A. Down at the Angelus rooming house.

Q. Does Mr. McParland stop there? A. No sir.

Q. Do you know Mr. McParland? A. I know him, I saw him here, yes sir.

Q. Where did you see him? A. Down at his room.

Q. What were you doing down there? A. Well, I went down, I went down to see about the expenses. I saw they wasn't going to get through with me so soon, and I wanted to see what was going on, and I went to Mr. Hawley and Mr. Hawley took me down there.

Q. Mr. Hawley took you down and introduced you? A. Yes sir.

Q. You spoke to Mr. McParland about some money? A. I wanted to see how long I had to stay here.

Q. Couldn't Mr. Hawley tell you? A. I found out I wasn't going home very soon, and Mr. Hawley said —

Q. You asked Mr. Hawley how long you had got to stay? A. Yes.

Q. And he told you he would take you down to Mr. McParland, is that right? A. No, in regard to the expenses.

Q. He took you down to Mr. McParland to inquire about expenses?

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A. I think so.

Q. How long did you stay with Mr. McParland? A. Maybe five

minutes.

Q. Talk about money only? A. That is all.

Q. Nothing but money? A. That is all.

Q. He didn't give you any before you got away, did he? A. No sir.

Q. Didn't crowd any onto you? A. What is that?

Q. He didn't crowd any money onto you while you were there?

A. No danger.

Q. Did you see him again? A. No sir, not since; I saw him go up in the street that is all.

Q. Didn't hand you then of course? A. No.

Q. How many times have you seen Mr. Hawley since you came up here? A. Every day I think.

Q. At his office? A. No sir, I never been to his office only twice.

Q. Those were just social calls or did you talk this matter over with him? A. No, I went over the first time when I got here and I was over once again, the same day I think, or the day after.

Q. Did you meet Mr. Borah there? A. No sir, I did not.

Q. Have you met Mr. Borah sitting here in the court room?

A. That is all.

Q. That is all, is it? A. Yes sir.

Q. Now you have talked it over with the Pinkerton men and with Mr. Hawley? A. Yes sir.

Q. Have you ever talked the money over with Mr. McParland?

A. With Mr. Hawley and Mr. McParland, yes sir.

Q Well, now lets see what you know about it. You used to keep a grocery store near Bradley's house? A Yes sir.

Q On the same street, was it? A Yes sir, on the same street.

Q And how far from the house? A I should judge it was about 60 feet from his house.

Q Sixty feet? A Yes sir.

Q On the same side of the street? A Yes sir.

Q And what kind of a house was this that Bradley lived in?

A A six-flat house.

Q Six flat, and how high? A Three stories high.

Q You delivered goods at the back door? A Yes sir.

Q Remember what kind of a roof was on it? A I guess it was a shingle roof.

Q Remember what shape it is? A A straight up and down roof.

Q A pitched roof, like that (indicating with the hand)?

A A pitched roof, yes sir.

Q One roof covers all of it, I suppose? A Yes sir.

Q That is, each side is not roofed in by itself? A Yes, one roof covers it all.

Q The Bradley flat,-- was that the top or-- A The top flat, yes sir.

Q You have been up there to the back porch, haven't you?

A Yes sir.

Q Is that a wooden porch or brick? A It is just stairs running upp and there is a door there right into the kitchen.

Q How long have you been selling them groceries and stuff?

A I guess a couple years maybe, all together.

Q And you knew the whole family? A Yes sir, knew them well.

Q Now, when did Mr. Berry put in an appearance around your mark store? A Yes sir.

Q Came in you supposed to get a drink? A Yes sir, sure.

Q And he got one? A I don't know.

Q And maybe more. He bought whatever he paid for? A Yes sir.

Q Well, do you remember when you first saw him? A Not the date, no, I don't.

Q Remember about when it was? A About the middle of October, 1904.

Q And do you remember when this explosion occurred? A Yes sir, I do.

Q What day was that? A On Thursday morning, the third Thursday of the month.

Q Thursday morning? A Thursday morning.

Q What day of the month was it? A Well, I have not-- I could not say the day of the month, whether it was the 16th or 17th or 18th-- the 16th or 18th.

Q You mean of November? A Yes sir, of November.

Q 1904? A Yes sir.

Q And that is the last time you saw Berry? A The day of the explosion, yes sir.

Q And you say you saw him about 30 minutes after the explosion?

A Something like that, yes sir.

Q Standing in the street with the crowd? A Yes sir.

Q Did you talk with him? A Yes sir.

Q What did you say to him? A I told him what I heard around there, that the people said it was gas, and I heard from those miners living around there that it was explosives and not gas.

Q That is what you said to Barry that morning? A That is what I said to everybody.

Q No, no, no. That is what you said to Barry that morning?

A I suppose so.

Q You were just te ling that to everybody you met? A Yes sir.

Q You were talking it to everybody you met in the crowd, is that it? A I suppose so.

Q You are naturally just a little talkative, aren't you?

A I don't know whether I am or not.

Q You were telling that anyhow? A Yes sir.

Q You told that to Barry? A Yes sir.

Q THE COURT: One of the jurors desires to ask a question.

A JUROR: Did you ask him if he lives on the same side of the street?

MR. DARROW: I asked him, yes, if the store was on the same side of the street.

Q That is right, is it? A Yes sir.

Q How long did you talk with Harry Orchard there? A I don't

remember.

Q Did he tell you what he thought about what it was? A No sir, I don't remember whether he did or not.

Q And where did he go to? A I don't know. He disappeared and that is all I know of him.

Q He disappeared and was never heard of since as far as you know until he got into court here? A No, only I saw in the paper that he wadethe confession.

Q About how long did you see him that morning? A I don't remember; not very long, I don't think, because I was pretty busy.

Q Did you go right over there as soon as you heard the explosion? A Right over. I was dressing myself at the time and I hurried right over there.

Q Did you wait to get your breakfast? A No sir.

MR. BORAH: How is that?

THE WITNESS: No sir.

Q You just finished dressing and hustled right over there?

A Yes sir.

Q You went right over? A Yes sir.

Q And Orchard was in the crowd? A No sir, he was not there.

Q How soon did he get there? A He got there after I got there, 30 minutes or an hour afterwards.

Q He came there while you was there? A Yes sir.

1339

Q Yes, well now you sayOrchard, when you first saw him, came in and told you he wanted to get a drink probably? A Isuppose

so.

Q And he frequently came to the store? A Yes sir.

Q And he wanted to get introduced over to the Bradley house, is that right.

Q And you introduced him? A I did.

Q There were three of them, were there? A Yes sir.

Q And you introduced him to all of them? A Yes sir, I did.

Q And he delivered packages over there for you? A He wanted to go over there and I let him go over, for he was willing, that is right.

Q How many times did he deliver packages there? A Not many times.

Q About how many, would you say, in the month he was there?

A Five or six or seven times, maybe.

Q Might be eight or ten? A I would not say it.

Q What? A I could not say.

Q He was there every day? A Yes sir, and in the evening.

Q You know that he went over there quite a number of times?

A Yes sir, I do.

Q And he delivered those packages up the back stairway? A Yes sir, up the back stairway.

Q And he got a little better acquainted with Mrs. Crowe than the rest of them? A Yes sir.

Q And took herout to the theater? A Yes sir.

Q He said he was a gambler, did he? A That is what he said

to me that morning.

Q Did he tell you where he gambled and how? A He did; he told me down in Arbor View or some place, playing with the soldiers, and went out on Central Avenue where the soldiers were h nging around there. He told me he did not have to work that he could make money without working.

Q You know that he could make money without working? A That is what he told me.

Q You believed that of course? Were there soldiers down that way where he said? A Yes sir.

Q You know the soldiers were there? A Yes sir.

Q And he said that he gambled nights and slept days?

A That is what he told me.

Q Yes, and you naturally believed that? A Well, yes, I did.

Q And he talked with you about going into the grovery and liquor store with you? A Well, he did. He was out about a week or ten days from the city--

Q And he talked about your taking a partner and taking him in?

A About opening up a new place, yes, and taking him in.

Q Now, when did you hear about something being wrong with some milk over there at Bradley's place? A Yes sir.

Q When was that? A Some time before the explosion.

Q You think, I believe you said, about a week before? A Yes, within a week.

1341

Q Do you remember who you heard it from? A Mrs. Bradley

telephoned over to me to come over there.

Q You had not sold the milk? A Not that milk.

Q Did you sell milk too? A When she runs out of milk she used to send over and get milk from me, but she bought milk from the milkman.

Q And she telephoned over that there was something wrong with the milk? A Yes sir.

Q And you went over? A Yes sir.

Q And you tasted some of the milk? A I tasted of the milk.

Q And you did not exactly like it? A I don't know as I swallowed it or not, but I was sick for a night or two.

Q You got well all right? A Yes sir.

Q And you tasted that over at the Bradley house? A I did.

Q And you took it over to the store? A Yes sir, she was going to empty it out in the sink, and I told her she better have it analyzed.

Q Did you take some back with you? A No sir.

Q Who did? A I don't know; somebody did.

Q You don't know who brought it there? A No, I don't know if it was my clerk.

Q Wasn't you afraid some of the customers would drink that?

Q No sir, I had it put back where nobody would get it.

Q Was it setting on the counter? A No sir.

Q You did not mark it so anybody would get it? A It was not there for sale.

Q You tell people about it? A I suppose I did.

Q You could not have kept a secret like that for meny days?

A No, I guess I must have said something about it.

Q Talked with Barry about it when he came in? A I guess I did.

Q Asked him to taste it? A I am not sure whether I did or not.

Q You are not surewhether he tasted it or not? A I would not let anybody taste it.

Q Did he tell you what he thought about it? A No, not that I know of.

Q You heard about its being analysed? A No, I heard what I heard hereyesterday that is all.

Q You heard it before that? A I did not hear what became of the milk afterwards.

Q You heard what was in it? A Yes.

Q You have not lived all this time without hearing that there wasstrychnine in that milk? A I heard it since I got here.

Q And you heardit beforeyou came up here? A No sir.

Q You just knew there was someting wrong with it? A Yes sir, it slipped out of my mind I guess, I don't know.

Q But you knew it at the time any way? A No, I did not.

Q Why did you say to have it analysed? A The milk tasted like there was something in the milk and I told her she better have it analysed.

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Q That was because you thought something had been put in the milk? A Sure.

Q And you did think so? A Yes sir.

Q And you told her so? A Sure, I told her I thought something was the matter with themilk.

Q That was a generalmatter of discussion? A I don't know whether it was or not.

Q You don't know whether it was or not? A No, I don't, sure.

Q Now, after that milk matter it was a week or thereabouts before anything happened at the house, was it? A How?

Q It was a week or about that? A Something like that, yes.

Q Before anything happened to the house? A Yes sir.

Q And you had seen Barry most every day? A Yes, every day.

Q Still coming around to see you in the evening? A Yes sir, every evening.

Q And still attending to his business of gambling by night as you supposed, and sleeping by day? A I suppose so.

Q And you say you saw him the night before this explosion?

A Yes sir.

Q Where did you see him? A At eleven o'clock there in my store, when I got back from lodge.

Q Where was it you saw him with the valises? A About eight o'clock in the evening when I was going to lodge.

Q Where was that? A The next corner below.

1344

Q Did he take a street car? A Yes sir.

Q Going which way? A Going towards the Ferry.

Q And the last you saw of him at that time he was taking that street car and going that way? A Yes sir.

Q With his two valises? A Two grips, one was a valise and I don't know what the other was.

Q And at eleven o'clock he was back at your store? A Yes sir, he told me he was coming back to see me before he go.

Q He did not have his grip or valise with him then? A No.

Q Did you have much talk with him? A I don't think I did because we always closed up at eleven or twelve o'clock.

Q And you were keeping your store open until that time?

A Some times we kept open later.

Q The front part of this house was pretty well demolished, was it? A Yes sir.

Q Blown out into the street? A No sir, not blown out, but pieces were blown out.

Q What became of the glass? A I don't know.

Q Scattered around? A I suppose so.

Q On the sidewalk and street? A The sidewalk was filled with glass,-- the windows were busted.

Q Didyou see Mr. Bradley? A I saw him on the sidewalk trying to pick himself up.

Q He was on the sidewalk? A Lying down on the sidewalk, yes sir.

1345 Q His house came up close to the street, did it? A Yes sir.

Q And the porch was back of that? A About eight feet, I guess.

Q How far would the house probably be back of the sidewalk?

A Even with the door, about eight feet.

Q And that was taken up by the porch and the steps? A Yes sir, about seven or eight feet.

Q MR. DARROW: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q Now, you say you went to Mr. McFarland's with Mr. Hawley; which Mr. Hawley do you mean? A Ed. Hawley.

Q And you went there to satisfy yourself with reference to the--

A Expenses.

Q You say this building in which Mr. Bradley resided was four flat or three flat? A Three flats.

Q And how many stories was it when considered from the back end of the building? A I don't understand the way you mean.

Q Was the building upon a level country or a hill? A No sir, it was a hill,-- a four story, considering the back of the building.

Q Mr. Darrow asked you something about what you was saying to Mr. Barry after he came back after the explosion; do you

recall the conversation with Barry? A I don't understand,-- yes, I do; I asked him how it was,-- he told me he was going away at eight o'clock in the morning, and how it was that he was there at that time and he said he was on the car and he heard the report and he sa w the people running up the hill and he got off the car and come up there to see what it was.

Q How long did he lingerabout there after you had this talk with him? A I could not say,-- only a few minutes that I know of.

Q And that is the last you ever saw of him in San Francisco?

A That is the last I ever saw of him.

Q Was there anything said between Orchard and yourself as to the cause of the explosion? A I don't remember whether it was or not. Of course it was the general talk around there.

Q You don't remember whether it took place with Orchard direct or not? A I hardly think it did take place with Orchard direct.

Q You spoke about the front of this building being shattered and the bottom being shattered, etc? A Yes sir.

Q What do you mean by the bottom of the building was destroyed-- explain that. A The marble-- the steps going up to the porch are marble, and they were pretty well smashed up, and so was the floor; they were made of tiles, I guess, and they were smashed down, and the woodwork was broke in all directions.

Q As I understand, the marble steps and the-- A Yes sir.

Q And the tile floor is what you speak of when you say it was broken up? A Yes sir.

Q And how were the walls? A They were all broke in.

Q How? A You could hardly see the shape of the building any more.

Q What proportion of the building was affected by the explosion?

A All the front.

Q Now, this tile floor, was that on the inside of the building?

A No sir, that is on the outside, from the door.

Q Outside frm the door? A Yes sir.

Q How far from the door was the tile floor broken up or mashed? A Right close to the door.

Q On the outside as well as the inside, or just outside?

A I don't think there was any tiles inside.

Q Then the tiling was simply on the outside? A Yes sir.

Q Now, the marble, where was that, outside or inside? A Outside.

Q And how far on the outside did the breaking extend? A Oh, I guess all along then steps was all busted.

MR. BORAH:, That is all.

RE-CROSS EXAMINATION

BY MR. DARROW:

Q All the steps were broken? A Yes sir, I think so.

1359 Q And the front clear down to the ground? A Well, the front,

you know-- I don't think it was damaged much, but the steps and the tiles were all smashed.

Q You did not examine the inside of the house? A No sir, I did not have anything to do with the inside of the house.

Q Now, lets see whether I have got this McFarland matter right: You went down to Mr. Hawley's office and saw his son? A No, I saw him on the street.

Q And you wanted to know how much money you was to get? A No, , I wanted to know who was going to put up the expenses?

Q And you had to go to McFarland to find out? A He said, "We will go down and see Mr. McFarland."

Q And you went down there? A Yes sir, and I don't know how we arranged it, but if I needed any money to go up to Mr. Hawley.

Q Mr. McFarland told you that? A Yes, the two of them together.

Q You saw Mr. Hawley and he took you down to McFarland?

A Yes sir.

Q And McFarland told you that if you needed any money to go back to Mr. Hawley? A That is what they both told me.

Q Is that all that McFarland said about it? A That is all. I have not seen him since.

MR. DARROW: That is all.

MR. BORAH: That is all now, if your Honor please. We have to leave that branch of the testimony for a day or

so until some other witnesses get here.

THE COURT: Very well, call your next witness.

MR. BORAH: We will call Mr. McClaughry.

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HULL McCLAUGHRY, being called as a witness on behalf of the State and being first duly sworn, on oath testified as follows.

DIRECT EXAMINATION
BY MR. BORAH:

Q What is your name? A Hull McClaughry.

Q Where do you reside? A San Francisco, California.

Q How long have you resided in San Francisco? A The last fifteen years.

Q What is your business or occupation? A Assistant postmaster.

Q Of what place? A San Francisco.

Q How long have you been assistant postmaster of San Francisco?

A I was appointed, I think, on January 9th, 1904.

Q Are you at this time in possession of part of the records and archives of that postoffice? A I am, yes sir.

Q What have you in your possession there? A I have a registry bill and lock book record, and main office to station bill

Q book and a delivery bill book of registry records.

Q Are those the books and records and archives of the postoffice as kept in the regular course of business covering such transactions? A Yes sir.

1351 Q As those records are supposed to cover? A Yes sir.

Q Have you-- do those records disclose any transmission

of a letter from one J. Wolff to J. Dempsey?

MR. DARROW: Well, wait. What do they disclose, would be better.

MR. BORAH: I will change the question.

Q State whether or not they disclose anything in reference to a letter transferred from J. Wolff to J. Dempsey? A They do, yes sir.

Q You may refer to the first record which deals with that matter. A The first record--

MR. DARROW: Wait a minute, I object. You are going to introduce the record?

MR. BORAH: Yes.

Q What is the first record you have in reference to the matter?

A It is called a pouch bill.

Q What is that pouch bill and what service does it have in the transmission of a letter, what does it show generally?

A The pouch bill is a list of registered packages, pouches or packages, received from a train by a postoffice, in this particular case from--

MR. DARROW: Now, wait a minute. If you want to introduce a pouch bill, let him--

THE COURT: He was describing it, as I understand.

MR. BORAH: We have a right to show what this is.

Q Have you stated fully the services of that document with reference to the transmission of registered letters? A I

think I have, yes sir.

Q And this is the original, is it? A That is the original. It is made in duplicate and that is an original.

MR. DARROW: Are both of them here?

THE WITNESS: No sir, the other is a carbon.

MR. DARROW: And the other?

THE WITNESS: This is the original.

THE COURT: What is that answer?

THE WITNESS: This is the original.

MR. BORAH: You may look at this, if you desire, Mr. Darrow.

The book was handed to Mr. Darrow and was examined by counsel for the defendant.

MR. DARROW: May I come around and ask him in regard to this?

MR. BORAH: Yes sir.

The witness explained to Mr. Darrow and Mr. Borah such portions of the book as they desired in an undertone conversation not heard by others.

Q You may state what the number "4903" upon the,-- wait until I mark this for identification. Will you mark this?

The exhibit was marked State's Exhibit "L" for identification.

THE COURT: What is the letter?

MR. PHILPS: Letter L.

Q Referring to State's exhibit "L" what do the figures "4983" have reference to? A That indicates the number of the registered package envelope received at the San Francisco office on August 13 from Ogden and San Fran train No. 3, from Denver, Colorado; the registered package envelope being postmarked "August 10th."

Q What is the next document which you have identifying this letter? A It is the office record on to which was transferred the record upon the pouch bill.

Q What is this book which you have in your hand called?

A It is called a from main office to station bill book.

Q Now, turn to the item which you identify as the item referred to in Exhibit "L" for identification? A Yes sir, here it is.

Q On what page do you find that item? A It is on page 1 of bill 132 registered mail, from main office to station K. That record shows that registered package.

MR. DARROW: No, never mind that.

Q MR. BORAH: I will have this page marked for identification, and this is Exhibit "M" for identification.

Q Now, referring to exhibit "M" for identification, you may state what the service of that book is with reference to transmitting a registered letter; what service does it have in the department-- what does it show? A It is a record entered to show that registered letter from Denver.

MR. DARROW: No, no, I object to that.

Q What does it show with reference to a registered letter?

A To registered mail generally?

Q Yes. A It shows the contents of the various packages--envelopes received in the San Francisco office and their destination, that is, from the main office to the station.

MR. RICHARDSON: You don't mean the contents of the letter?

THE WITNESS: No sir, the contents of the envelope--an official envelope.

Q You say this shows a destination at the station? A Yes sir, it shows it was sent to a street and number at station K.

Q This is one of the books regularly kept in the course of business in the office? A Yes sir.

Q What would be the next step in reference to the delivery of that package? A The procedure?

Q Yes, in procedure of delivery? A After this record is entered here the registry is dispatched with this bill to the station.

Q And where is that record which would show its carrying this to the station? A This is the record itself.

Q Is this the record which shows the signature of the man who received the package? A No sir.

Q I want to get to that record now. What is the book which you now have in your hand? A This is called the retrial or station delivery book.

1355 Q And state generally what the object and purpose of that record

is and what it shows? A The registered letters are entered on this record by number and address, and the addressee upon the delivery of the letter receipts for the letter upon this book.

Q State the page upon which appears the reference to the registered letter with which we began in exhibit "L"? A These pages are not numbered but it appears under date of August 18, 1904.

MR. BORAH: I will have this marked as an exhibit. It is exhibit "N" for identification.

Q Have you any other book-- referring to State's exhibit "N" for identification, you may state under what date appears the delivery of the letter which was referred to in State's exhibit L.

MR. DARROW: Does not the book show that?

MR. BORAH: Yes sir.

MR. DARROW: I object to it then.

Q You may read it from the book then.

MR. DARROW: I object to that. It has not been offered in evidence yet. Let me examine it.

Counsel examined Exhibit "N".

Q Now, I will ask you if exhibits "L", "M" and "N" constitute the entire postoffice record with reference to the receiving and delivery of the package heretofore referred to through the postoffice in San Francisco, California? A Practically, yes

sir. But the registry package envelope in which the letter was received has been destroyed.

Q When was it destroyed? A Destroyed, I presume, within the year following the receipt.

Q What is the custom of the postoffice with reference to the destruction of such matters? A The law provides that at the end of one year such records may be destroyed, and they are destroyed in the presence of an inspector by the postmaster.

Q Are these the original documents? A These are the original records of our office.

MR. BORAH: We now offer Exhibit "L".

MR. DARROW: We object on the ground that it is incompetent, immaterial and irrelevant and in no way connected with the defendants-- with this defendant.

THE COURT: I understand you offer that for the purpose of showing the transmission of a registered package frm J. Wolff, Denver--

MR. BORAH: To J. Dempsey.

THE COURT: To J. Dempsey, San Francisco.

MR. BORAH: Yes sir.

THE COURT: It may be admitted. The objection will be overruled.

MR. DARROW: We will save an exception.

MR. BORAH: I desire to read this to the jury, that portion which relates to this particular matter. Under the

head of description of registered packages, pouches, sacks and cases, appears the number "4983"; under the heading, post marked at, appears the words "Denver, Colorado"; under head of date of postmark it says-- which would be referring back to the beginning of the document, "August 10, 1904." Under the date of name of postoffice address, appears at the time, "San Francisco, California;" and the ditto lines with reference to the particular package.

We now offer in evidence thatportion of exhibit "K" upon page 1 of bill 132 which refers to the transmission of the letter heretofore identified by exhibit "L". We offer this as exhibit "M".

MR. DARROW: We object to that on the ground that it is incompetent, immaterial and irrelevant, and in no way connected with the defendant.

THE COURT: The objection is overruled.

MR. DARROW: Save an exception.

MR. BORAH: Under the head of main office number, I read, "28948;" under the words, whence received, "Denver, Colorado;" under the words, date of mailing, "8th month, 10th day;" under the words R. P. E. are the figures, "4983;" under the words, registry number of billing office, appears the words "7271;" under the words name of addressee, "John Dempsey;" Jno; under the street and number appears, G. W. Hotel."

135M

Q I will ask you if you know what " G. W." refers to?

A Yes sir.

Q What? A Golden West.

Q And upon what street, if you know, is Golden West hotel?

A It was at the corner of Ellis and Powell.

MR. BORAH: I now offer in evidence State's exhibit "M", or that portion of it which relates to the package heretofore referred to in exhibits L and M.

MR. RICHARDSON: To which we object.

MR. DARROW: Before that is offered we want to object on the ground that it is incompetent, immaterial and irrelevant and in no way connects this defendant; and also the further objection that there is no evidence in the case to show that any one by that name received any registered package, and there is nothing in this book which purports to contain a receipt that any one by that name got it from the office, and as to this, if my objection is overruled, I don't want it read but I want the jury to examine the book.

MR. BORAH: We expect the jury to examine the books.

MR. DARROW: Well, I suppose any one can read that name?

MR. BORAH: I don't suppose the man who wrote the name intended that anybody should read it.

MR. DARROW: He probably has intended it since he got religion.

1359

MR. BORAH: Religion has different effects on different

people, you know, brother Darrow.

THE COURT: The objection willbe overruled.

MR. DARROW: Note an exception.

Q Under the word name there was "John Dempsey;" under the head street and number, "Golden West Hotel;" under the head office number, "25943;" under the words, signature of person towhom delivered or other disposition, appear the words-- what do you read there?

MR. DARROW: Don't; Mr. Witness, if you can read it, from the signature itself, but not from anything else. I object to it anyway. The witness is no more competent to read it than anybody else, and the book is the best evidence.

MR. BORAH: The book is in evidence. We will pass it up to the jury.

MR. DARROW: You may pass it up to them, Mr. Borah.

THE COURT: Is it marked, gentlemen, so that the jury can understand which one is marked?

MR. HAWLEY: Yes sir, it is marked.

THE COURT: You checked it, did you, gentlemen?

MR. DARROW: Yes sir, we checked it.

THE COURT: Gentlemen, you must make your examination of these exhibits individually without consulting each other in reference to it. If any juror at any time wishes to ask any question in reference to this evidence you may do so.

1360 The book was then passed to the jury and examined by them as to the signature and entries.

Q How does the addressee finally get the package? A It is delivered to him.

Q Suppose he is a stranger? A He must be identified.

Q To whom is he identified? A The clerk making the delivery.

Q Can he get thepaskage without being identified?

MR. DARROW: We object to that. You mean, whether there is a rule. He cannot say whether anybody can do it or can not do it, for they might break in and take it.

Q Under the rules of the postoffice can he get the paskage without beintg identified? A No sir, he cannot.

Q Who was the party, if you know, who delivered this package-- the postoffice employe?

MR. DARROW: We object. Now, does he know from his remembrance or from the book? A I know from my knowledge of the office at that time, the assignment of the employes.

MR. DARROW: We object to that on the ground that it is not the best proof and it is shown by-- the witness is askedif he knows and he can only know it from remembrance.

MR. BORAH: That is the only way he can know anything.

MR. DARROW: Oh, no, he may know it from a record.

Q Do you know who the employe was who delivered this package? A No sir, I don't.

MR. BORAH: That is All. Now, these documents, if your Honor please, are the original documents of the office and the department does not desire that they be returned here, and we

desire, if counsel will consent to it, that we have photographic copies made of these pages and then the original can be returned hereto any time if it becomes necessary.

MR. RICHARDSON: We think that is all right.

THE COURT: The order may be made accordingly.

MR. BORAH: You may cross examine.

MR. DARROW: I want to make a motion to strike this out on the ground that it is incompetent, immaterial and irrelevant and in no wiseconnected with this defendant.

THE COURT: The motion will be denied.

MR. DARROW: We will save an exception.

CROSS EXAMINATION

BY MR. DARROW:

Q Who came for you to come up here to Boise? A Mr. Wilson.

Q Isthe your superior officer? A No sir.

Q Who is he? A A Pinkerton detective, I understand.

Q In the San Francisco office? A Yes sir, he served a subpoena on me.

Q Did he examine the books? A Not to my knowledge.

Q You don't know about that? A No sir, I don't know about it.

Q Who looked these matters up for you? A Why, thefirst knowledge I had of this matter was the call of Mr. Wilson with a subpoena duces tecum and he referred to these records.

Q You are still in the postoffice? A Yes sir, but now I don't know of my own knowledge what Mr. Wilson know of it, or where he got his information from.

Q You knew that the subpoena did not have any validity at all?

A I did, yes sir.

MR. DARROW: That is all.

FRANK ISAACS, being called as a witness on behalf of the State and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q What is your name? A Frank Isaacs.

Q Where do you live? A San Francisco.

Q What is your business or occupation? A Registry clerk in the main postoffice.

Q Where were you residing in August, 1904? A San Francisco.

Q What was your businessor occupation there? A Carrier's registry clerk, station K.

Q What did station K cover? A The station was located at the corner of New, Montgomery and Mission streets.

Q And what was your position there? A Carrier's registry clerk.

Q What were your duties-- what did you have to do as such registry clerk? A I handled all registeredmail deliveredby the carriers of that office; all registered matter to be returned, forwarded or delivered at the window.

Q State's exhibit "N" handed to the witness--

THE COURT: What is that, the delivery book?

1365 MR. BORAH: Yes sir, it is the delivery book.

Q You may state whether or not you recognized and identified that book?

MR. DARROW: The book?

MR. BORAH: Yes, the book.

A That is the window delivery book at station K.

Q What did the party to whom the package was addressed have to do with that book? A He had to identify himself or satisfy me that I was delivering it to the addressee.

Q Was that package from John Dempsey, Golden West Hotel, 25948, to some one, was that delivered under your supervision.

MR. DARROW: We object. Has he any remembrance of it? I object on the ground that he has not yet said that he remembers anything about it.

MR. BORAH: I will withdraw that.

Q Was this kept in the regular course of business? A Yes sir.

Q When would the signature be entered in reference to the time he got the package? A He had to sign for it before I delivered it to him.

Q At the same time it was delivered? A Yes sir.

Q And when you received a package what was the first thing you did at your station? A Filled it to the carrier.

Q You may state whether or not you have any recollection of this package being delivered to the party to whom it was addressed there.

MR. DARROW: That is, this particular package.

1366

A I cannot recall it particularly.

Q You may state whether or not after examining this recordyou can refresh your recollection so as to say whether or not it was delivered to that party? A No sir.

MR. DARROW: I object to that.

MR. BORAH: He has answered, no sir, so I guess it won't hurt anything.

Q I will ask you whether or not the party to whom that was addressed could get it without being identified?

MR. DARROW: To that I object. ALL he can do is by what he has testified to.

Q Was there any rule of the postoffice by which he could get it except hewas identified if he was a stranger? A Yes sir.

MR. BORAH: That is all, you may examine.

CROSS EXAMINATION

BY MR. DARROW:

Q Who came to see you about coming up here? A I was called to the officeof the postoffice inspector.

Q Was he the only oneyou saw? A No sir, there was a Pinkerton man there, Mr. Wilson.

Q Which one saw you first? A They were both in the office at the same time.

Q You found the postoffice inspector and a Pinkerton man there?

1366 A Yes sir.

MR. DARROW: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q Did the fact that you were subpoenaed by the Pinkerton change the record any? A How is that?

Q Did the fact that you were subpoenaed by a Pinkerton change the record any? A No sir.

MR. BORAH: That is all.

RE-CROSS EXAMINATION

BY MR. DARROW:

Q It did not change your testimony any either, did it?

A No sir.

Q And you don't remember anything about it but the record?

A No sir.

MR. DARROW: That is all.

PEARL MOORE, being called as a witness on behalf of the State and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q What is your first name? A Pearl.

Q Miss Pearl Moore? A Yes sir.

Q Where do you reside? A Denver, Colorado.

Q How long have you resided there? A About 14 years.

Q Where wereyou residing in August, 1904? A Denver, Colorado.

Q Where were you working and what were you doing in Denver at that time, if anything, in reference to the postoffice department? A I was employed as a substitute.

Q As a substitute for what - in what position? A Why, I substituted in the money order department and in the registry department.

Q In whoseplace wereyou employed? A They weremaking changes in the office at the time and I was put in to fill up the vacancy.

Q What is the book which you have in your possession, Miss Moore?

A It is the registry book we used at that time.

Q What does that registry book show, in a general way, in reference to the party who desired to send a registered letter?

A It shows at what time the parcel was sent and by whom.

Q Can you refer me to the entry of a registered letter from J. Wolff, Denver, Colorado, to J. Dempsey? A Yes sir.

Q You may refer to it if you will.

Witness designates the entry on the book.

Q You may state under what number upon the register the entry of the registered letter from J. Wolff to J. Dempsey appears?

A 7271.

Q We asked that this-- well, is this the registry book that was kept in the regular course of business in the postoffice?

A Yes sir.

Q In which the names of parties sending letters were registered from day to day? A Yes sir.

Q Whenever they came in? A Yes sir.

Q Is this the original book? A That is the original book.

Q MR. BORAH: You may mark the page under date of August 1o? 1904, for identification. This will be exhibit "O".

Q Referring to State's exhibit "O" for identification, you may state whose writing it is under 7271 which you have referred to? A It is my own writing.

Q And what was your position in the postoffice at the time you made this entry and what were your duties? A I was substituting as registry clerk.

Q And as registry clerk, when a party came in to the office to make an entry, what did you do? A They were obliged to have

their own name and address and the name and address of the party to whom the letter or parcel was sent.

Q You are sure that is your handwriting and you made that entry?

A Yes sir.

Q In the discharge of your duties as clerk? A Yes sir.

MR. BORAH: We pass that up for your examination.

MR. DARROW: You offer that?

MR. BORAH: I do now.

MR. DARROW: We object to it on the ground that it is incompetent, immaterial and irrelevant and in no way connects this defendant with this case.

THE COURT: Let me look at it, Mr. Borah.

The book was presented to the court.

THE COURT: The objection will beoverruled.

MR. DARROW: Note our exception.

THE COURT: Yes sir, it may be admitted.

MR. DARROW: We object to it admission and will save an exception.

MR. BORAH: This will be marked exhibit "G".

THE COURT: Note an exception, Mr. Stenographer.

MR. BORAH: The portion of the page introduced in evidence --

MR. DARROW: You may just as well read that, Mr. Borah.

MR. BORAH: (Reading):

"No. 7272 P.O.Denver, Colo.

Receipt for registration _____

190_____, from J. Wolff, 1725 Stout St. --

Q. Is that Stout Street? A. Yes sir.

MR. BORAH: (Continuing reading):

"Addressed to John Dempsey, San Francisco, Calif.

1 Class postage" --

Q. Does that mean first class? A. First class.

MR. BORAH: (Continuing reading):

" Postage prepaid.

Postmaster per M."

Q. Do you know who was doing business at 1725 Stout Street, Miss Moore, at the t time? A. I think Mr. Pettibone had his store there.

MR. BORAH: Now we ask to have the same arrangement with reference to photographing.

MR. DARROW: Very well.

MR. BORAH: I don't suppose it is necessary to take time to exhibit it now if we are going to have a photograph.

You may cross examine.

1371

CROSS EXAMINATION

BY MR. DARROW:
Q. Are you in the postoffice still? A. Yes sir.

Q. How long have you been there? A. I was put in, that is I had my appointment last June.

Q. How long have you been connected with the postoffice?

A. Since 1908.

Q. How long have you lived in Denver? A. Fourteen years.

Q. By whose request did you come up here? A. Why, I don't know as anyone's request.

Q. That is, you came without anybody asking you, you mean?

A. A Pinkerton.

Q. Who was the Pinkerton? A. Mr. Prettyman.

Q. How long have you known him? A. That was my first acquaintance with him.

Q. How long? A. That was my first acquaintance with him.

Q. That was your first acquaintance with him? A. Yes sir.

Q. Did he tell you that Mr. Pettibone used to have a store on Stout Street? A. He did not.

Q. Did you meet him more than once, Mr. Prettyman? A. You mean after that?

Q. Yes. A. Yes.

Q. In reference to this matter? A. Yes sir.

Q. How many times? A. I was over there, I was at his office once to make arrangements.

Q. You mean to find out about the money? A. Naturally.

Q. That is what you mean by making arrangements I suppose?

A. And as to when I was to leave.

Q. How long have you been here? A. Since the 15th of May.

Q. 15th of May? A. Yes sir.

MR. DARROW: I guess that is all.

C. L. HARRAH, 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. Harrah? A. Colorado City.

Q. What is your business? A. Mill man.

Q. What? A. Mill man.

Q. For whom are you working? A. U. S. R. & R. people.

Q. Who are the U. S. R. & R. people? What do those letters stand for, what is the full name of the company, if you know?

A. Colorado City Reduction and Refining Company.

Q. Where were you residing, Mr. Harrah, in October, 1903?

A. In Victor, Colorado.

Q. What was your business or occupation at that time? A. Mining.

Q. In what mine? A. The Vindicator.

Q. What was your business in the Vindicator mine, what part of the work in the mine were you doing? A. Running a cage.

Q. Did anything occur in the Vindicator mine about that time which you now recall, in reference to an accident? A. Yes sir.

Q. Did you have any experience as a cager there at that time, which you recall, unusual? A. I did.

Q. You may state just what happened and what you saw and heard, and what experience you had about October 23rd, 1903.

A. Well, it was just supper time, we was getting ready to go out; I had sent all the men out but myself. I was staying on the pump station and a man come up to me, I thought he was one of the miners --

1373 MR. DARROW: Hold a minute now. I object on the ground

it is incompetent, irrelevant and immaterial, does not connect this defendant in any way.

MR. BORAH: This is in reference to this Vindicator matter which has been testified to by Orchard.

MR. DARROW: I suppose so.

THE COURT: The objection will be overruled, under the statement of counsel.

MR. DARROW: An exception.

Q. You may go ahead, Mr. Harrah, and tell what you saw and heard. A. Well, I called this man to come back and get on the cage to go to supper. He didn't come back. I picked up a candle stick and went back up the drift to see what was the matter with him that he didn't come out, and I run onto him up there and he shot at me. I went back to the shaft and went out.

Q. Did you see more than one party there? A. No sir.

Q. How far away from the cage did you follow him before he shot at you? A. Between a hundred and three hundred yards I think.

Q. Were you working at the Vindicator at the time of the explosion? A. No sir.

Q. Were you there at that time, about the time of the explosion when McCormick and Beck were killed? A. I wasn't working on the Vindicator.

Q. Were you at the Vindicator about that time? A. No sir.

Q. Did you go down in the Vindicator after the explosion? A No sir.

1374 Q. Did you see McCormick and Beck at all -- A. I did.

Q. -- after they were killed? A. Yes sir.

Q. Where did you see them? A. At the Victor undertaking department at Victor.

Q. Did you see the mine after the explosion? A. Yes sir.

Q. How soon after? A. I seen the mine, the top workings, the next day.

Q. Did you go down to the 8th level? A. I did inabout three months afterwards.

Q. Oh, I have the wrong note then. You didn't see it until some three months afterwards? A. No sir.

MR. BORAH: You may cross examine.

CROSS EXAMINATION

BY MR. DARROW:

Q. Mr. Harrah, where do you live now? A. At Colorado City, Colorado.

Q. And you are working for the smelter company? A. The reduction works.

Q. Is that the smelter company? A. No -- yes, it is, but it is not a smelter. It is a reduction works to treat the low grade ore.

Q. One of Senator Guggenheimer's companies, isn't it?

A. I couldn't say about that, sir.

Q. Well, how long have you been working there? A. I have been there off and on for the last five years.

Q. You are just a regular workman there, are you? A. Yes sir.

Q. And you used to work at Victor? A. Yes sir.

Q. How old are you? A. Thirty years old.

1375 Q. When did you work at Victor? A. 1903 and 4.

Q. That is all the time you worked there? A. Yes sir.

Q. When did you quit in 1904? A. Just a little while before the Independence depot blowed up.

Q. When did you begin in 1908? A. About the first of October I believe, something like that.

Q. You were working during the strike I suppose? A. Yes sir.

Q. Whereabouts? A. At the Vindicator.

Q. You werenot a member of the Union? A. No sir.

Q. And never were? A. No sir.

Q. Where did you come from before you went to Victor?

A. Before I went to work at the Vindicator?

Q Yes. A. At Colorado City.

Q. Has that always been your home? A. No sir.

Q. Where did you come from before that? A. From Oklahoma.

Q. Well, now, how long did you run this cage, how long were you a cage man? A. About two weeks there.

Q. Is that all? A. Yes sir.

Q. What was you doing before and after? A. I went to running another cage afterwards.

Q. How long? A. Three months, two or three months.

Q. What was you doing before? A. Top man on the Vindicator.

Q. For how long? A. A week or ten days.

Q. What was you doing before that? A. Working for the U.S.R.M. & R. people at Colorado City.

Q. How long were you over there at Victor altogether, just about two months? A. About two months and a half the first time.

Q. You were sent over there and sent back, weren't you? A. No sir.

Q. You just happened to go over, and come back? A. Yes sir.

Q. Is that right? A. I happened to go over there, yes sir.

Q. Didn't anybody ask you to go? A. No sir.

Q. Anybody working with you at this time you speak of when something happened in the Vindicator? A. They had all gone out to supper but me.

Q. You were there alone? A. Just waiting for the cage to go out.

Q. And you were running a cage up and down? A. Yes sir.

Q. How far down is the last level? A. A thousand feet, ten hundred.

Q. That would be the tenth level? A. Yes sir.

Q. And you rode on the cage and were going up that trip, is that right? A. I was waiting for the cage to go up for supper time.

Q. You were not in charge of the cage? A. Yes sir; I ~~[illegible]~~ sent the men out and I was waiting to go out myself.

Q. After the men got out you were going out? A. Yes sir.

Q. Did you give some signal to the top? A. Yes sir.

Q. And you had given the signal? A. Yes sir.

Q You were alone on the cage? A. No, the cage hadn't come to me yet.

Q. When it came to you I mean? A. Yes sir.

Q. Before that you were alone on the tenth level, weren't you?

A. No sir.

Q. Who else was there? A. The tenth level?

Q. You started from the tenth level when you went up, didn't you?

A. Yes sir.

Q. Was anybody else there? A. Yes sir, on the tenth.

Q. Who? A. The rest of the boys that was working there.

1377

Q. And they got on the same cage at the time, did they?

A. Yes sir.

Q. At this particular time you speak of? A. This particular time is on the 800-foot level.

Q. I know, but you started from the tenth, didn't you? A. Yes sir.

Q. Did the other fellows get ~~[illegible]~~ on that cage at that time?

A. Yes sir.

Q. Who got on? A. The boys that was working there on the tenth level.

Q. What were their names? A. Well, I couldn't tell you.

Q. How many of them? A. About eight.

Q. Can't you tell any of them? A. No, I don't believe I could.

Q. Don't know one name? A. No.

Q. Didn't you know the fellows? A. Not many of them.

Q. Did you know any of them? A. Yes, I know one of them.

Q. What was his name? A. Jap Taylor.

Q. He got on there, did he? A. Yes sir.

Q. Where is he now? A. I don't know. He got on at the 900-foot level.

Q. You don't know anybody who got on at the tenth? A. No sir.

Q. When did you last hear of Jap Taylor? A. The last time I seen him was 1904.

Q. Where did you see him? A. Vindicator.

Q. At this place this time? A. Yes sir.

Q. You never saw him since? A. No sir.

Q. Nor heard of him since? A. Yes sir.

Q. Where? A. Here in Boise.

Q. Since you came here? A. I heard of him since I came here, yes sir.

1378

Q. Have you talked with him? A. No sir.

Q. Do you know whether he is here? A. No sir.

Q. You don't know? A. I haven't seen him since I have been here. I have heard of him.

Q. From whom did you hear of him? A. Charley Johnson.

Q. Who is he? A. One of the boys that worked on the Vindicator.

Q. At that time? A. I aint sure whether he worked there or not.

Q. Have you heard or do you know anything about where this man Taylor is? A. No sir.

Q. Well, you got up to the ninth level and took on Taylor: Anybody else? A. Yes sir, one more man.

Q. Who? A. I can't call his name.

Q. Can't tell any of the names? A. No.

Q. Did you get anybody on the 8th level? A. Yes sir.

Q. Who? A. I got a whole cage full there.

Q. Well, can you give me the names of anybody? Do you remember anybody who got on there? A. No sir, I do not.

Q. You can't give the name of anybody that got on at the 8th, is that right? A. That is right.

Q. Did you get anybody on the 7th? A. No sir.

Q. Or on the 6th? A. No sir.

Q. How many people did you have by the time you got up to the 6th level? A. I had twenty-four.

Q. And the only name you know or can remember is Taylor, is that right? A. That is right.

Q. You knew a good many of those men, didn't you? A. Not many of them.

1379 Q. You knew a considerable number of them, didn't you? A. No sir.

Q. Well, do you know how many you did know? A. One was all that

I know of in the crowd at that time that I can call to mind now.

Q. You said awhile ago you knew some of them, didn't you?

A. Well, I did at that time but I don't right now.

Q. What I am asking you is how many you knew then? A. One.

Q. You have just said you knew more at that time, haven't you? Don't you understand my question? A. Yes sir, I understand it all right and I am trying to answer them the best I can.

Q. Tell me how many men you knew at that time? A. One man, that is all, just one.

Q. Didn't you answer me that at that time you knew more of them?

A. I did, but I can't call them now.

Q. Now I want yu to understand me. I don't want to take any advantage of you. At that time you knew more of the ~~[illegible]~~ men but you can't think of their names now, is that right.

Q. Well, now, I understand you. And you can't tell me now --

A. No sir.

Q. -- about how many men you knew at that time? A. No sir.

Q. Now if you don't understand my questions, you just let me know.

A. All right.

Q. You stopped at the 6th level, did you? A. No sir.

Q. Where did you stop? A. Eighth.

Q. Where was it that you say this shooting occurred? A. On the 8th level.

Q. How do you remember that? A. Because we wasn't working no levels above it that night.

Q. It was on the last level where they were working? A. Yes sir.

Q. You are sure about that, are you? A. Yes sir.

Q. And you got a number of men from there? A. Yes sir.

Q. About how many? A. Twelve.

Q. And you thought you left somebody? A. Yes sir.

Q. What did you say by way of having left anybody? A. We had been working twenty-six men, -- that is the way it come up about -- and that night there was just twenty-four, and the two men, I thought I had left them down and I hadn't, I had overlooked them; that is the way.

Q. You thought you had overlooked two men? A. Yes sir.

Q. As a matter of fact you hadn't overlooked anybody? A. No sir.

Q. They were all there? A. Yes sir.

Q. And did you see anybody or was it just because you thought you had overlooked two men? A. He came right up to the shaft, that man did.

Q. A man came up to the shaft? A. Yes sir.

Q. Could you recognize him? A. No sir, I don't believe I could.

Q. Could you tell how he was dressed? A. No sir.

Q. You saw nobody else? A. No sir.

Q. And then what did you do? A. I started to follow him to see why he wasn't coming out to go to supper.

Q. And in the meantime the cage stood there, did it? A. Yes sir.

Q. With these twenty-four men on? A. No sir.

Q. How many? A. They had all gone out to supper.

Q. You was there alone with the cage? A. Yes sir.

Q. And how far did you follow him? A. Between one hundred and three hundred yards I should think.

1381 Q. Did you have any light? A. Yes sir.

Q. What? A. A candle stick.

Q. Any other light there? A. At the station there was an electric light.

Q. I suppose you had a ~~candle~~ candle in the candle stick of course?

A. Yes sir.

Q. And that was lighted? A. Yes.

Q. Well, there was no other light in the shaft, was there, or in the tunnel? A. No sir, not after we got out of the shaft.

Q. And you went 300 yards away? A. No sir.

Q. One hundred to three hundred, didn't you say? A. Between a hundred and three hundred, yes sir.

Q. You may have gone three hundred then? A. Yes sir, I might.

Q. And three feet to a yard, that would be from three hundred feet to a thousand, wouldn't it, that you went away from this light? A. Might have been something like that.

Q. Was the path crooked or straight? A. It aint very straight.

Q. It isn't very straight? A. No sir.

Q. Can't you come any nearer than saying between three hundred feet and a thousand? A. I never measured it, no sir.

Q. And that is the reason you can't come any nearer? A. No sir.

Q. Now you got in that distance, you couldn't see this fellow, I suppose, in front of you? A. I didn't see him, no sir.

Q. Could you see him? A. No sir.

Q. Could you tell how far off he was? A. Why, yes, I could tell how far he was off when I run onto him.

Q. Did you shout to him? A. Did I what?

Q. Shout to him, holler to him? A. At the shaft I did, yes sir.

Q. After you started in? A. No sir, not until I run onto him.

Q. Did you run right onto him? A. Yes sir, about two feet of him.

Q. Did you say anything? A. No.

Q. Did he say anything? A. No sir.

Q. You couldn't see excepting with the candle there in the dark, could you? ~~Ar~~ Didn't see his face? A. No sir, I didn't see his face.

Q. Was you that close to him when he shot? A. Yes sir.

Q. He didn't hit you? A. I don't think he did, no sir.

Q. Aren't quite sure about that? A. Yes sir.

Q. Well, what did you do after he shot? A. I got back to the shaft as quickly as I could.

Q. Didn't shoot back? A. I didn't have anything to shoot with.

Q. Did you speak? A. No sir.

Q. Did you holler? A. No sir.

Q. You walked back or run? A. I run.

Q. Did he say anything? A. No sir.

Q. What did you do when you got back to the shaft? A. I got on the cage and went up.

Q. Then what did you do? A. I went and told the boys about it.

Q. Who did you tell? A. The ~~negro~~ boys working in the mine.

Q. What boys? A. The miners that was there.

Q. What is their names? A. I couldn't tell you.

Q. What? A. I can tell the shift bosses name.

Q. Can't tell any of the names of the boys whom you told you

1388 got shot at? A. No sir.

Q. The first time anybody ever took a crack at you with a pistol?

A. No sir.

Q. It wasn't? A. No sir.

Q. Was it pretty near the first time? A. No sir.

Q. You never was in the war, were you? A. No sir.

Q. Where had you been shot at so much? A. Down in the Territory.

Q. So it didn't amount to much being shot at? A. I wasn't expecting it at that time.

Q. But it didn't excite you any? A. Oh, not much.

Q. But you told it to the boys and you don't know who you told it to? A. I told it to Dan McConnolly who was the foreman there.

Q. Seen him in Boise? A. No sir.

Q. Do you know where he is? A. No sir.

Q. Where is the last time you ever saw him? A. In Victor.

Q. Is that the last you ever heard of him? A. Yes sir.

Q. When, that time you were working there? A. Yes sir.

Q. And he was the foreman? A. Yes sir.

Q. Did you tell it to anybody else? A. I told it to Campbell.

Q. What Campbell is that? A. The superintendent of the mine.

Q. What is his first name? A. I couldn't tell you.

Q. When did you tell him? A. The next morning I think.

Q. And do you know where he is? A. No sir.

Q. Did you tell it to anybody else? A. Yes sir.

Q. Who? A. McCormick.

Q. Anyone else? A. No sir.

Q. That is all you ever told it to? A. Yes sir.

Q. You didn't report it to the chief of police or the officers?

A. No sir.

Q. Or have anybody arrested or look for anybody?

A. I did not, no sir.

Q. Well, what time of day was that? A. Ten o'clock at night.

Q. Ten o'clock at night? A. Yes sir.

Q. You reported it that night? A. Yes sir.

Q. Did you go back down to find out who it was?

A. I did after a while.

Q. The same night? A. Yes sir.

Q. Who with? A. I can't call the boys; there was a cage load of us went back down.

Q. A cage load of you? A. Yes sir.

Q. How long afterwards did you go back? A. About eleven o'clock.

Q. You can't give me the names of anybody who went with you, is that right? A. That is right.

Q. Were they working there that night at that time? A. Yes sir.

Q. Did you get off at this level and go and follow it out?

A. Yes sir.

Q. Did all the boys get off? A. I can call one of the boy's names now.

Q. What was his name? A. Jappody.

Q. What is his first name? A. That is all I know. I don't know his first name.

Q. Where did you hear of him last? A. I left him there in the Creek.

Q. What is that? A. I left him there in Victor.

Q. Did all of these fellows go out to the 6th level to see if they could find this man? A. Yes, we looked around there some.

Q. Did you go out into the shaft or level? A. Yes sir.

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Q. Got candles? A. Yes sir.

Q. You didn't find anybody? A. No sir.

Q. Did you make any report to the box about it? A. Yes sir.

Q. That night? A. Yes sir.

Q. To whom? A. To McConnoly and McCormick.

Q. To McConnoly and McCormick? A. Yes sir.

Q. Do you know where McConnoly is? A. No sir.

Q. Did you continue working there? A. No sir.

Q. Was that your last day? A. It was at that time, yes sir.

Q. For how long? A. Until in April, 1904.

Q. April, 1904? A. Yes sir.

Q. Well, when was this date? A. October 23rd, 1903.

Q. And did you go away from Victor at that time? A. No sir.

Q. Where did you go then? A. Down to the Golden Cycle mine.

Q. But so far as you know that is the only search that was made about this shooting? A. No sir, they had some soldiers in there as soon as we come out and they went all through the mine.

Q. You didn't tell us about that before?

MR. BORAH: He wasn't asked about it.

Q. They went down ahead of you, didn't they? A. No sir, they didn't.

Q. Well, when did they go down? A. As soon as us boys came out.

Q. That same night? A. Yes sir.

Q. The soldiers were around there at that time, weren't they?

A. Yes sir.

Q. All around the mine? A. They was up at the Independence.

Q. Weren't there soldiers down around this mine? A. None that I seen.

Q. How far is the Vindicator and Independence apart? A. About two blocks I think.

Q. And the soldiers were around guarding both those mines, weren't they? A. I don't know; I never seen them.

Q. Didn't see the soldiers around there? A. No sir.

Q. How did you know they went down the mine? A. I seen them.

Q. Then you did see them at that time? A. Yes, I seen them in the shaft house going down.

Q. How many? A. Well, I don't know how many.

Q. Well, about how many? A. Ten or twelve, maybe fifteen or twenty; I don't know just how many.

Q. And they didn't find anybody so far as you knew? A. No sir.

Q. And the elevator hadn't come up again, had it, or gone down again, do you know? A. The cage?

Q. The cage? A. No sir.

Q. The soldiers went right down after that? A. After we did, yes sir.

Q. And that is all you know about this fellow, or all the investigation you made? A. Yes sir.

Q. And it is allyou know about it? A. Yes sir.

Q. Did this man only shoot onceof~~xxxxxxxxxxxx~~ A. He shot twice.

Q. Or couldn't you tell how many shots? A. Twice.

Q. Right close together? A. Pretty close together.

Q. And when you was within two feet of him: And then there were no marks on your clothes of any kind? A. No sir.

Q. Neither of powder nor ball? A. No sir.

Q. Now this other fellow who was doing the shooting, did he have a candle ~~xxxxx~~ he was running along? A. No sir.

Q. He did not? A. No sir.

Q. He was going in the dark? A. I never seen him but once --

Q. You didn't see any light did you? A. -- after he left the shaft.

Q. You didn't see any light? A. No sir, no light at all.

Q. So, so far as you know, he was in the dark entirely?

A. Yes sir.

Q. And you didn't hear him until you ran onto him? A. No sir.

Q. You can hear a man quite a ways in a vacant level like that, can't you? A. I generally could, yes, but that time I didn't.

Q. That is the only time you ever knew of when you couldn't, isn't it? A. Yes sir.

Q. And you were going to follow this man up when he took a shot?

A. Yes sir.

Q. And looking for him and got clear up so you ran against him?

A. No, I wasn't looking for him at all.

Q. That is what you were going after, wasn't it? A. Yes, I was going back up in the drift where them machine men were at work up there.

Q. On account of this man that you saw? A. Yes sir.

Q. And you got clear onto him before you heard a thing? A. Yes sir.

Q. Well, now, when did anybody talk with you about this matter lately? A. About the 10th of May I think.

Q. 10th of May? A. Yes sir.

Q. Of this year? A. Yes sir.

1388 Q. Where? A. Down at the mill.

Q. In Colorado City? A. Yes sir.

Q. Was that the first? A. Yes sir.

Q. You hadn't thought of it from that day until the 10th day of May? A. No sir.

Q. Who saw you? A. Some United States deputy.

Q. What was his name? A. I couldn't call that neither.

Q. How did you know he was a United States deputy? A. He told me he was.

Q. So of course you believed him? A. Yes sir.

Q. Did he tell you what a United States deputy was? A. Yes sir.

Q. What did he say a United States deputy was? A. A United States deputy to go and subpoena fellers to appear in court and the like of that and look after outside work.

Q. So he told you he was a United States deputy whose business it was to subpoena fellows and look after outside work?

A. Yes sir.

Q. And didn't give you his name? A. Yes sir.

Q. What did he say his name was? A. I couldn't call it just now.

Q. Is your memory poor on names? A. Yes sir.

Q. What did he look like? Would you know him if you would ever see him again? A. Yes sir.

Q. Have you ever seen him again? A. I aint sure that I have.

Q. Well, then, you don't know whether you would know him or not, do you? A. Yes sir, I know I would know him.

Q. But you don't know whether you have seen him again or not?

A. Not since I came out here I didn't.

Q. Did you see him after the 10th day of May when he came down

1389 to see you? A. No sir.

Q. Why did you say you didn't know whether you had or not?

A. I haven't seen him out here.

Q. Have you seen him anywhere after you saw him at Colorado City?

A. No sir.

Q. He came to the mill where you were working, did he? A. Yes sir.

Q. How long did he stay? A. About ten minutes.

Q. Talked with you about this affair that you have been telling about? A. Yes sir.

Q. Told you he wanted you to come to Boise? A. Yes sir.

Q. Did he come on the train to Colorado City? A. He come on the street car from Colorado Springs he said.

Q. From Colorado Springs? A. Yes sir.

Q. What time of day did he come there? A. Four o'clock in the evening.

Q. Did you work again after he left? A. Yes sir.

Q. Who did you next talk with about it? A. Mr. Hawley I think.

Q. Did you see anybody in Denver? A. Yes sir.

Q. Well, who? A. Prettyman or some such name as that.

Q. Prettyman, wasn't it? A. Something like that.

Q. The one this girl told us about? A. Yes.

Q. Did you forget Prettyman when you skipped from Colorado City to Mr. Hawley's office? A. I went up to see him, that is all.

Q. Why didn't you tell me when I asked you? Was that because you knew Prettyman was a Pinkerton detective and youwanted to cover it up? A. There wasn't nothing to it at all to amount to anything.

Q. Was that the reason that you skipped from Colorado City when I asked you the next man you had talked with and gave me the name of Mr. Hawley? A. No sir.

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Q. What was the reason? A. Because it didn't amount to anything I didn't think..

Q. Are you the fellow who is to pick out something and say whether it amounts to anything? A. You asked who I next talked to.

Q. Who did you next talk with, I don't care whether it amounts to anything or not in your opinion, who did you talk with next after you left Colorado City, after this man saw you at Colorado City? A. Prettyman was the next man.

Q. Where did you see Prettyman? A. Tabor Grand in Denver, Colorado.

Q. Hotel -- Tabor Grand Opera House? A. Yes sir.

Q. At his office, wasn't it? A. Yes sir.

Q. What office was it at? A. At his office I said.

Q. Do you know what his office is? A. Yes sir.

Q. Why didn't you tell us? Why didn't you tell us what office you saw him at?

MR. HAWLEY: Why don't you ask him?

MR. BARROW: I want to see how long he will dodge, that is the reason.

MR. HAWLEY: He isn't trying to dodge. You are the one who is dodging.

Q. Do you know what office you saw him at? A. Yes sir.

Q. What? A. At the Pinkerton detective office.

Q. Now why didn't you tell us and get through with it?

A. Because you didn't ask me them kind of questions, I didn't take it that way, that is the reason.

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Q. You are sure you didn't take it that way? A. No sir.

Q. Wasn't that just the way you did take it? A. No sir.

Q. How did you come to go to the Pinkerton detective office?

A. Because the deputy told me to go there and see him.

Q. You mean this man who came to Colorado Springs and told you he was a United States deputy told you to go to the Pinkerton detective office? A. Yes sir.

Q. That is what I supposed? A. Yes sir.

Q. How long did you stay at thePinkerton detective office?

A. About five minutes.

Q. And talked with Mr. Prettyman about it, did you? A. Yes sir.

Q. Anybody else? A. No sir.

Q. And talked about coming to Boise? A. Yes sir.

Q. And about what you had seen and heard? A. Seen and heard when?

Q. At Victor? A. No sir.

Q. You only talked about that with the man at ColoradoCity, is that right? A. Not ~~with~~ there, at Colorado City.

Q. Well, did you any? A. He asked me if I was the cager--

MR. BORAH: Wait a minute.

MR. DARROW: I won't wait a minute.

MR. BORAH: You will wait a minute.

MR. DARROW: Oh, no, I won't.

MR. BORAH: I will ask to let the witness be permitted to answer the question.

MR. DARROW: He will be permitted to answer it just as I ask it.

THE COURT: You will permit the witness to answer the question.

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MR. DARROW: I will permit him to answer them just

exactly as I ask them, your Honor, and if I can't get them answered that way I will take an exceptionto it. He has no right to answer it in any other way except in the way I ask it.

THE COURT: Go on and ask your questions, Mr. Darrow.

MR. DARROW: Will you read that question.

THE COURT: Mr. Borah, if you have got any objections to make, make your objections and the court will pass on them.

Q. You only talked about that with the man in Colorado City, is that right? A. Yes sir.

Q. Did you get any money anywhere? A. Yes sir.

Q. Where? A. In Denver, Colorado.

Q. Both places-- Colorado City do you mean? A. No sir.

Q. In Denver how much did you get? A. I got carfare out here.

Q. I asked you, sir, how much money you got? A. $27.50.

Q. Is that all? A. Yes sir.

Q. Is that all you have had? A. Is that all I have had?

Q. From the Pinkerton office or anybody in connection with this case? A. I drawed my mileage since I got outhere.

Q. How much? A. $90.

Q. And you have had $27.50 back there and $90 here so far, is that right? A. That is right.

Q. Going to get any more? A. I don't know, sir.

Q. Now since you came here you have seen Mr. Hawley? A. Yes sir.

Q. Talk about this case? A. No sir.

Q. What did you see him for? A. I seen him to see what arrangement he had made for us fellows up here.

Q. Arrangement about what? A. Rooms and where we would board and things like that. Mr. Prettyman told me to see him about

that.

Q. Talk with him about anything else? A. No sir.

Q. Have you said anything to him about your testimony or anything else? A. Yes sir.

Q. That is what I asked you about. A. He told me --

Q. No, I don't care what you have told him, I want to know whether you have said anything to him about your testimony or has he said anything to you? A. No sir.

THE COURT: Mr. Witness, watch Mr. Darrow and answer his questions.

Q. Now have you seen Mr. McFarland since you came here?

THE COURT: Mr. Darrow, it is twelve o'clock now, and we will take an adjournment.

The court has noticed on several occasions demonstrations from the audience here that must be stopped in the future, demonstrations either approving or disapproving of anything that transpires during this trial; and if they are continued some action will be taken by the court to prevent it, even it is necessary to clear the room.

Thereupon the court cautioned the jury, and the jury retired in the custody of the sworn bailiffs.

The defendant was remanded to the custody of the sheriff.

Recess until 1:30 P. M.

Boise, Idaho, Friday, June 14th, 1907.

1:30 o'clock P.M.

Parties met pursuant to adjournment.

The clerk called the names of the jurors and announced that all were present.

WITNESS C. L. HARRAH on the stand.

CROSS EXAMINATION CONTINUED

BY MR. DARROW:

Q. Mr. Harrah, I asked you the last thing whether you had seen Mr. McFarland since you came here: Have you? A. Yes sir.

Q. How many times? A. Once or twice?

Q. Don't you know which? A. I never spoke to him that I know of.

Q. I didn't ask you that. I asked you whether you didn't know whether it was once or twice? A. No sir, I don't.

Q. When was the last time you saw him? A. I couldn't tell that either.

Q. Well, where? A. On the street some place.

Q. Who pointed him out to you? A. Mr. Nichols pointed him out to me one day.

Q. Did he introduce you to him? A. No sir, he didn't.

Q. Who is Mr. Nichols? A. A friend of mine in Colorado City.

Q. Where else did you see him? A. On the street.

Q. Anywhere but on the street? A. No sir.

Q. Have you talked with him at any time? A. No sir.

1395 Q. Have you talked with anybody here in reference to this case

excepting the lawyers? A. No sir.

Q. You say you came from Oklahoma to -- A. To Colorado, yes sir.

Q. When did you come? A. 1901.

Q. What did you do in Oklahoma? A. Farming.

Q. When you came did you come direct to the mines of Colorado or to the smelters or reduction works? A. No sir.

Q. Where did you come to? A. I went out on a ranch out east of Colorado Springs.

Q. When was the first you went to work there for the Reduction company or the smelter company or the mines? A. The spring of 1903.

Q. In the spring of 1903? A. Yes sir.

Q. How many men did the cage hold? A. Twelve men.

Q. Was it a double or single -- A. A double deck.

Q. You mean hold twelve all together? A. Yes sir.

Q. Six on each deck? A. Yes sir.

Q. Then when you took up twenty-four men you went more than once?

A. Made two trips, yes sir.

Q. The last trip you took how many men from the lower levels?

A. Twelve men from 10 and 9.

Q. How many from 10 did you say? A. I think there was nine on 10 and three on 9.

MR. DARROW: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q. Mr. Hurrah, you were asked if you told Mr. Campbell about this shooting the next morning. You said you did, to Mr. Darrow?

1396 A. Yes sir.

Q. Who was Mr. Campbell with reference to the mine? A. He was superintendent of the mine.

Q. I believe you stated also to Mr. Darrow that you ceased working there in a day or two afterwards? A. Yes sir.

Q. Did your ceasing to work there have any connection with this interference which you had had?

MR. DARROW: I object to that. How is that re-examination? Objected to, your Honor, as incompetent and not re-direct examination.

THE COURT: Objection overruled.

A. No sir.

Q. How long was it after you had the talk with Mr. Campbell until you ceased work? A. I aint sure whether it was that night or not.

Q. Well, did the fact that you had reported to Mr. Campbell have anything to do with Mr. Campbell's discharging you?

MR. DARROW: I object to that as incompetent, not re-direct examination.

THE COURT: What is the purpose of it?

MR. BORAH: Mr. Darrow's cross examination, I take it, was for the purpose of showing the unlikeliness of this accident, and we propose to show that the incident was reported and that the investigation was such as not to satisfy the manager, and he thought that this boy was fooling him and he discharged him.

MR. DARROW: Now what he is calling for is practically the statement of Mr. Campbell, which he couldn't do. That is not re-direct examination, is not competent, and I object to it

on the ground it is not competent and is not re-examination.

MR. BORAH: We make the offer and let the court rule on it.

THE COURT: I think I will sustain the objection, Mr. Borah.

Q. Was this mine at the time of the incident which you have spoken of one of the mines where they had gone out on a strike?

A. Yes sir.

Q. You were working there as a non-union man? A. Yes sir.

Q. Did you see any soldiers about the mine during the day prior to the time of the incident which you have narrated?

A. I did not, no sir.

MR. BORAH: That is all.

QUESTIONS BY MR. DARROW:

Q. What time were you working there during the day?

A. I was working on night shift, went on at six o'clock.

Q. You were sleeping during the day, weren't you?

A. Why, yes sir.

Q. Didn't see any soldiers in your sleep? A. No sir.

MR. DARROW: That is all.

QUESTIONS BY MR. BORAH:

Q. Did you see any soldiers at any time about the mine during the day or the night when you went to work? A. No sir, I did not.

Q. Were ~~you~~ there any soldiers there to your knowledge at that time prior to this incident immediately around the mine?

MR. DARROW: I object. He said he didn't see any.

1398 THE COURT: Objection overruled.

MR. DARROW: Exception.

A. Not around the mine, no sir.

MR. BORAH: That is all.

QUESTIONS BY MR. DARROW:

Q. How far from the mine were the soldiers? A. Well, somewhere in the neighborhood of a block and a half or two blocks.

Q. That is, you saw them a block and a half or two blocks?

A. Yes sir.

Q. And that is as close as you did see them at that time?

A. Yes sir.

MR. DARROW: That is all.

MR. BORAH: That is all, Mr. Harran.

CHARLES JOHNSON, a witness on behalf of the people, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q. What is your name? A. Charles Johnson.

Q. Where do you reside, Mr. Johnson? A. Independence, Colorado.

Q. What is your occupation or business? A. Caging.

Q. What do you mean by caging in a mine? A. Tending to the cage in the mine, under ground.

Q. In what mine? A. Vindicator No. 1, No. 1 shaft.

Q. Where were you working in October, 1903? A. At the Vindicator.

Q. Vindicator mine? A. Yes sir.

Q. The same mine? A. Yes sir.

Q. What were you doing there at that time? A. Caging.

Q. Were you at that mine at a time an explosion occurred in the mine? A. Yes sir.

Q. Where were you at the time of the explosion? A. Eighth level.

Q. On the 8th level? A. Yes sir.

Q. What were you doing at that time? A. I hadjust sent up a load of dirt or ore, whatever you may call it, and then I was waiting for the cage to come back to send up some more.

Q. On what level did the explosion occur? A. Sixth level.

Q. How long had you been working in that mine at that time?

A. I worked there -- let's see, it will be seen mx be eight years all told that I was there off and on.

Q. What was the result of this explosion, if you know, with reference to the mine or to having injured anyone?

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A. I didn't know until I got up on the 6th level what the result

was.

Q. When you got up on the 6th level what did you find out?

A. I found out on the north side of the shaft, as I call it north -- it aint quite north, I guess, but so far as I can say -- the shaft was blown in all around the shaft on both sides and one end, and right in the north side of the shaft -- a three compartment shaft there the whole flooring was shot up all around the shaft, especially in the middle compartment, close to that post between the middle and second compartment, there was a deep hole there I should judge about four feet to the bottom, and then sloping down towards the shaft, it was deepest right there by the shaft and then sloped up some toward the drift or what you might call it from there.

Q. And what else did you find there with reference to the bodies of any persons? A. The superintendent was laying right down in that hole about ready to fall into the shaft, and my purpose was to try to get him out of there as soon as possible.

Q. Who was in the shaft? A. McCormick, the superintendent; he wasn't in the shaft, but he was laying mostly ready to fall in. His head was laying right on the side of the shaft and his body was out the other way towards the drift from the shaft.

Q. In what condition was he with reference to injuries?

A. His legs, more especially one, I don't remember which it was, from the body down was all shot to pieces, and the other from the knee down was nothing but little rags and bones hanging

together, just enough to hold it together, that is all.

Q. How about the other body? A. The body of the other party, I don't know, I didn't see -- he was laying on the other side of the shaft about, I should judge, about ten feet, but he was stretched out right on his back and I never touched him or done anything to him whatever because I couldn't see anyway that I could better his position whatever.

Q. But you did see the body? A. Yes sir, I went over to him. I heard him groaning there and I went over there.

Q. Can you give me the date of this occurrence? A. The 22nd of November, 1903, I think so, either that or the 21st, and I think it was the 22nd.

Q. Were you a union man at that time? A. No sir, not at that time, no.

Q. Was this mine one of the mines where the workmen had gone out on a strike? A. Yes sir.

Q. What class of men were working in the mine at that time, union or non-union? A. Non-union.

Q. Where had these men been brought in from, if you know?

A. Well, some come from the Coeur d'Alenes and ~~been~~ from Missouri; what is that mine there, that lead mine there?

Q. Joplin? A. Yes.

Q. About what time in the day did this explosion occur, if you know? A. Around eleven o'clock, either ten minutes or maybe a few minutes -- a few minutes before or a few minutes after. I couldn't say exactly, but it was close to eleven o'clock.

Q. You say it was on the 6th level? A. The 6th level.

1402 Q. Was there any work being done in the 6th level? A. No sir,

hadn't been any for two years that I know of before.

Q. Did you know Sherman Parker? A. Yes sir.

Q. Did you know him at that time? A. Yes sir.

Q. Did you know Bill Easterly or William Easterly?

A. I knew him only by sight. I didn't know him exactly personally, I know him by sight.

Q. Did you know him at that time by sight? A. Yes sir.

Q. Had you been a member of the union? A. Yes sir.

Q. Do you know whether or not Easterly was at that time?

A. I don't know whether he was at that time or not.

Q. Do you know whether he had been or not? A. He was up to the strike that I know, because I seen him in union hall.

Q. Prior to the time of the strike which you speak of had this man been a union man or a non-union man? A. A union man.

Q. What did you have to do in order to work there?

MR. RICHARDSON: We object to that as immaterial, irrelevant, incompetent, don't make any difference what he had to do. Haywood can't be held responsible for what he had to do in order to work there, couldn't possibly show any connection with him.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q. I am speaking now with reference to the question of unionism or non-unionism: What did you have to do in order to retain your position in the mine? A. I had to join the union.

Q. What did you have to do with reference to continuing your work in the mine in order to show that you were a union man?

1403

A. I had to go down there and get a card and show that card on

the 7th of each month when the secre tary of the different unions come around the shaft house.

MR. BORAH: You may cross examine.

MR. RICHARDSON: We move to strike out all of the testimony of this witness as immaterial, irrelevant and incompetent, neither sustaining nor tending to sustain any connection whatever of the defendant with the transaction and is non-corroborative upon any material matter that was testified to by Mr. Orchard, not the corroboration intended by the statute. The corroboration intended by the statute is not that which corroborates the story but that which tends to establish a connection between the accomplice with the defendant on trial.

THE COURT: Motion denied.

MR. RICHARDSON: Note our exception.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. You say you had been working in the Vindicator for a considerable period of time? A. Yes sir.

Q. The shaft has a station at each level? A. Yes sir.

Q. Is this station a sort of a room that is cut out around the shaft? A. Yes sir.

Q. And these compartments that you speak of are in the middle of this station? A. Practically so, yes.

Q. Here was the hole that goes down in the center of the earth which is called the shaft? A. Yes sir.

1404 Q. In which there is a three-compartment elevator or cage as it

is called? A. It is only one cage but it is a three-compartment shaft.

Q. One is a manway, is it? A. Well, the center compartment is only used for pipes and things like that.

Q. And then there is one compartment used for the cage?

A. Yes sir.

Q. To carry the men up and down on? A. Yes sir.

Q. And to carry the ore up and down on? A. Yes sir.

Q. Or the supplies down and the ore up. And then what is the other used for? A. For a manway.

Q. Then there is a station cut out around at each level? A. Yes.

Q. Which makes a sort of a room there? A. Yes.

Q. Now is there anything between the station and the drift that runs off from the station into the mine or into the vein?

A. No sir.

Q. Nothing whatsoever? A. No sir.

Q. No rail, no door nor anything of that kind there? A. Oh, yes, right in front of the shaft is what they call the guard rail, or whatever you call it, yes.

Q. Is that where you get off of the cage? A. Yes sir.

Q. You have to lift up the guard rail in order to get out of the cage into the station? A. Yes sir.

Q. Now does the drift at that station run off in a straight direction into the mining region? A. Well, it does for a ways but I never was in there.

Q. You never went off into that drift? A. No sir.

Q. For any distance whatsoever? A. No sir.

Q. There is no rail nor anything which bars the entrance from

the room, that is the station, off into the drift? A. No sir.

Q. Now that drift was used for some purpose at that time, wasn't it? A. No sir, not that I know of.

Q. Didn't the company keep its powder stored in that particular drift? A. There was no powder there that I know of.

Q. Did you have anything to do with the powder? A. No sir.

Q. You don't know where the powder was gotten from? A. What was used in the mine at that time when I was there was taken out from the powder house, the powder warmer as it is called, all the time. There was nothing kept below at all.

Q. Was each day's shift of powder taken from this powder warmer, or did you take down enough for the entire day each shift?

A. Each day there was taken down enough from that powder warmer.

Q. Did you go down with it at that time? A. Yes sir, on my shift.

Q. You never knew or heard of there being any considerable amount of powder in that drift or stored in that drift? A. I wasn't working there right away after the mine was started up.

Q. You was not? A. No sir.

Q. You don't know then but what the company did keep a large amount of powder down there in those unused drifts, stored it there? A. All I heard was when I come back to work there that there had been some kept on the 8th level, that is all.

Q. There had been some kept on the 8th level? A. Yes, but it wasn't there then.

Q. Did you work on the 8th level? A. Yes sir, I worked on all the levels, that is from 7 down.

1406 Q. And did you work on all parts of the level? A. All around the

shaft, yes.

Q. The levels run off from these stations, didn't they, different levels? A. Yes sir.

Q. Or drifts off on the vein? A. Yes sir.

Q. And different veins in different directions? A. Yes sir.

Q. On this 8th level how many drifts were there which run off from the central station? A. Two; one they called the north and one the south.

Q. Had you never stopped on this 6th level at all? A. No sir.

Q. Was it on the 6th level where the explosion occurred? A. Yes sir.

Q. How large a room was this station which was outer and the compartment shaft? A. Well, I should judge it would be about -- let's see -- about fifteen feet, probably twenty, that is on each side of the shaft.

Q. Did it go clear around the shaft? A. No, not clear around, just on one end there it went around but the other end was clear up to the shaft.

Q. Cut out a room partly around the shaft then, that was about fifteen feet wide at the widest place? A. Probably twenty, I don't know.

Q. Probably twenty? A. Yes.

Q. Was that the place where the drift went on off into the mine where you got the ore? A. It went from there, yes.

Q. And that was the place that was right opposite this guard rail? A. Yes sir.

Q. When you opened up the guard rail you looked right on in the drift? A. Yes sir.

Q. That is, you would if it had not been dark there? A. Yes sir.

Q. And there was no wall or anything between the guard rail and the end of the drift which was on into the mine? A. No sir.

Q. And that drift, you don't know how far in it was but it appeared to be in as far as you could see? A. As far as you could see, yes.

Q. And probably farther? A. I don't know how far, I never was in there.

Q. The ore bodies had been exhausted in that drift and in the higher drifts? A. Yes sir.

Q. And you were on down below working ore bodies below? A. Yes sir

Q. You say this was in October of 1904? A. 1903.

Q. In October, was it? A. Not October, but November, 22nd of November.

Q. I understood you to say to Mr. Borah it was October, but you meant November, did you? A. November I meant;if I said October I didn't mean it.

Q. How long were you working there at that time? A. I started there the 23rd of October.

Q. That is, to work for the Vindicator people? A. Yes sir.

Q. And how long did you remain there working? A. I remained there until I come here.

Q. You don't know what the occasion was for anybody going to that drift on the 6th level at that time, do you?

A. Yes sir, I do.

Q. What was the occasion? A. They talked about starting a new drift from the 6th level to catch an ore body what we were working on on the 7th level.

Q. And that was the reason why Beck and McCormick went there, was it? A. Yes sir, the same morning they said they were going in to look at that place.

Q. What time of the morning was it that this explosion occurred?

A. Close to eleven o'clock.

Q. About eleven o'clock in the afternoon? A. Yes sir.

Q. And you had heard them talk about going in on that level before you went on shift? A. No sir, I heard it about an hour before they came down.

Q. Were you up at the surface an hour or two before they came down?

A. No sir, they were both down, the superintendent and the shift boss came down in the morning and talked more or less.

Q. And when the explosion occurred you went directly there and saw what you have stated, did you? A. Yes sir.

Q. Was there anybody else there when you went to this drift?

A. On the 6th level you mean?

Q. Yes. Did anybody get there before you did? A. No sir, I was the first one.

Q. You was the first one there? A. Yes sir.

Q. And when did you first know that you were coming here as a witness? A. Last fall.

Q. Who came to see you about it? A. A man by the name of Floyd Thompson.

Q. Secretary of the Mine Owners' Association? A. I think he is, yes.

Q. Of the Cripple Creek district? A. Yes sir.

Q. Was then and is now? A. I suppose he is; I don't know.

Q. Did anybody else come to see you? A. No sir, not at that time.

Q. Has anybody come later? A. Yes sir, about the 10th of last month Mr. Carey, I think his name is, came to see me.

Q. Nobody could work on this mine unless he carried a card of the Mine Owners' Association at the time you speak of?

A. Not up until the strike I said.

Q. Well, I say after the strike occurred, then you had to have a card of the Mine Owners' Association, did you not?

A. Not at that time.

Q. You did afterwards? A. Some long time afterwards.

Q. But you were forced to repudiate your connection with the Western Federation of Miners in order to work in this mine?

A. Well, there was nothing said about it either way when I started to work there then, not at all.

Q. You did cease to be a member, didn't you, anyway? A. Yes sir.

Q. In order to hold your job on the Vindicator mine or to get a job on the Vindicator mine? A. I ceased to be a member. There wasn't a word said from one side or the other about it that I know of.

Q. Well, you say that Mr. Carey talked with you about coming here? A. Yes sir.

Q. Mr. Carey is the superintendent of the Pinkerton detective affairs at Denver, isn't he? A. Yes sir.

Q. When did you first see him? A. Earth of last month.

Q. And where was that? A. Independence.

Q. Did he come down there to see you? A. Well, I don't know if he came down on purpose to see me, but he came into the room.

Q. You were living at Independence then and arayet, are you?

A. Yes sir.

Q. And he came and talked to youabout your testimony, did he?

A. Didn't talk about the testimony because he had that. I give the testimony at the coroner's inquest right after the explosion occurred, so he didn't ask me anything about that at all.

Q. You were one of the witnesses at the coroner's inquest?

A. Yes sir.

Q. Had Floyd Thompson talked with you about your testimony?

A. Not at all, only he knowed all about it.

Q. When Mr. Carey came to see you he came to see you to get you to come up here, did he? A. Yes sir.

Q. What did he say? A. He just asked me if I had any objection to coming.

Q. Was that all that he said? A. That is practically all;That is all I remember of him saying.

Q. You told him you had no objections to coming? A. No, I didn't know of any objections.

Q. No objections whatever, and so when the time came you got on the train and came up here at your own expense, did you?

A. I went down to Denver on my own expense.

Q. Went down to Denver on your own expense? A. Yes sir.

Q. And then went up to the Pinkerton office ? A. Yes sir.

Q. Did they tell you from Denver when to come? A. They telephoned from Denver up to the mine.

Q. For you to come on up to Denver? A. Yes.

Q. And then you went to Pinkerton headquarters in Denver, did you?

A. Yes sir.

1411 Q. Did you see Mr. Carey there? A. No, he wasn't there.

Q. Did you see Mr. Prettyman there? A. I don't know what his name was.

Q. You got your word to come from the superintendent of the mine, Mr. Campbell? A. Not from the superintendent. It is Mr. Chivarri who was the superintendent, Ed. Chivarri.

Q. He is the superintendent of operation of the mine, is he?

A. Yes sir.

Q. And he came to you and told you that you should come to Denver to see the Pinkertons because they wanted you to come up here?

A. He told me he had telephoned from Denver and they wanted me to come down right away.

Q. Down to the Pinkerton headquarters? A. Yes sir.

Q. And it was in accordance with the direction of the superintendent of operation of the mine you went down to Pinkerton Headquarters? A. Yes sir.

Q. And they gave you some money to come up here on? A. Yes sir.

Q. And you came up here as a witness? A. Yes sir.

Q. When did you come? A. A week ago today.

Q. Did you go to see Mr. McFarland when you got here? A. No sir, I don't know him.

Q. Have you talked with him at all about your testimony?

A. No sir, I don't even know him.

Q. Don't even know him now? A. No sir.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

1412 BY MR. BORAH:

Q. Mr. Johnson, did I understand you to say that you testified

before the coroner's inquest? A. Yes sir.

Q. How soon was that held after the explosion? A. The day after, on the 6th level in the mine.

Q. Held on the 6th level? A. Yes sir.

Q. Was your testimony taken down, do you know? A. Yes sir.

Q. Did you find any fire arms in the place of the explosion on the 6th level? A. No sir.

Q. Did you see any? A. No sir, I didn't look. I didn't take time to look for anything only to try to get McCormick out of this place and climb to the surface and notify the Foreman about it.

Q. Did you climb from the 6th level to the surface? A. Yes sir.

Q. Who did you first notify? A. Well, when I came up there was four men working in the blacksmith shop. They all came out of there --

Q. Do you know their names? A. Yes sir, one of them name was -- I know him well but I can't call the name at the present time.

Q. Call the name of anyone whom you can remember. A. One of them is -- his first name is Joe but I don't know his last name; and then there was Bill Shayne, he was then master mechanic in the mine, I think the first one that I spoke to was him when he came out, and then there was Mr. McCormick's two step-sons, they came out there, they was working in the machine shop.

Q. What position in the mine did McCormick hold at this time?

A. He was superintendent.

Q. What position did Beck hold? A. He was shift boss.

MR. BORAH: I believe that is all.

MR. CORES EXAMINATION

BY MR. RICHARDSON:

Q. Does your pay at the mine go on while you are up here in Boise?

A. No sir, they didn't say nothing about that whatever.

Q. You don't know whether it goes on or whether it doesn't?

A. I am pretty sure it don't because if it did I should think they would have said so. They told me I would get the mileage and then the witness fee, whatever it would be, up here.

Q. But you were directed to come up here by the mine boss, or superintendent of operation at the mine? A. He didn't tell me I had to come or anything about it. He only told me that they telephoned up from the agency down there that I should come down. That is all he said.

Q. He told you that and then you went down? A. Yes sir.

MR. RICHARDSON: That is all.

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

DIRECT EXAMINATION

BY MR. BORAH:

Q. What is your full name? A. -- J. H. McIntire, Joseph Hiram.

Q. Where do you live, Mr. McIntire? A. Ogden City, Utah.

Q. How long have you resided in Ogden? A. Since 1901.

Q. What is your business or occupation? A. Well, I have been working for the Southern Pacific company since that time.

Q. In what capacity? A. As a special officer most of the time.

Q. Were you working for the Souther Pacific in the capacity of a special officer in June, 1903? A. Yes sir.

Q. As a special officer what did you have to do, what were your duties? A. Well, it was to make arrests whenever it was necessary.

Q. Did you make any arrests about June 3rd, 1903, as such special officer? A. Yes sir.

Q. Where were the parties whom you arrested, where did you find them? A. Well, they were generally in the yards, came in in cars from the west.

Q. Where were the two parties that you arrested on June 3, 1903?

A. They were in a car that came in on a train from the west, California.

Q. What was the condition of the car in which they were found?

A. Well, it was, as near as I remember it was loaded with green fruit and the car was sealed up. There was two men in the car, and when they opened the car for ventilation, why --

MR. DARROW: I object to this. I object to it on the ground it is incompetent, irrelevant and has no bearing on this case.

MR. BORAH: I will state briefly, it is not for the purpose of proving the arrest, but you remember there has been some evidence introduced here that Mr. Haywood sent Mr. Adams on a mission in 1903 to California and that he had to send them some money to Ogden to get them back. We propose to show it is not only in corroboration of Orchard but as the act and declaration of one of the conspirators.

MR. DARROW: Suppose he sent him some money at Ogden, suppose that is all true, what has that to do with the charge against Mr. Haywood of committing this murder in Idaho?

MR. BORAH: Of course it only has to do with the fact that we are undertaking to prove here a general conspiracy.

THE COURT: The objection will be overruled.

MR. DARROW: We want to take an exception.

THE COURT: The exception will be noted. Proceed, Mr. Borah.

Q. You say these parties were sealed in the car? A. Yes sir, as near as I can remember.

Q. What did you find on these parties, if anything?

MR. DARROW: To that we object on the ground that it is incompetent, irrelevant and has no connection with this case, what they found on these parties, no proof of any conspiracy that is charged, or any crime for which the defendant stands here on trial.

THE COURT: Objection overruled.

MR. RICHARDSON: An exception.

Q. You may state what you found upon these parties? A. When I took them from the car I found that they were armed with revolvers.

Q. MR. DARROW: I object to that.

Q. What did you find on them in the nature of firearms?

A. I found two revolvers, Colt's revolvers as near as I remember.

MR. DARROW: I object to the t as immaterial.

Q. What kind of fire arms did you find? A. They were Colt's revolvers, as near as I remember.

Q. How many? A. There were two.

Q. And how many individuals, how many persons did you take out of the car? A. Two men.

Q. And did you afterwards find any other firearms? A. Yes sir, that is the police officers did when I took them to the police station.

Q. Were you present? A. Yes sir.

Q. What did they find? A. They found two more revolvers in their overcoats.

Q. Where did you take these parties to? A. To the police station.

Q. In Ogden? A. Yes sir.

Q. Did these parties give you their names? A. Yes sir.

Q. What were their names? A. One was A. T. Williams and Steve Adams, were the names that they gave me.

Q. What did you do with these parties finally, what disposition did you make of them? A. Well, I charged them with trespass and turned them over to the police authorities.

1417 Q. Have you seen Adams since that time? A. Not until this morning. I seen him this morning.

MR. BORAH: We would like the sheriff to bring up Mr. Adams.

(Sheriff complies).

Q. You may state who that individual is with reference to the party that you had arrested at Ogden? A. Well, that is the man that I took to be Mr. Adams, Steve Adams.

Q. Who was the police officer to whom you turned Mr. Adams over, what was his name, if you remember? A. The gentleman is here, but I can't call his name right now.

MR. DARROW: If you have got the name, give it to him.

Q. Mr. Snyder, was it? A. Yes sir.

MR. BORAH: You may cross examine, Mr. Darrow.

MR. DARROW: Your Honor, we make a motion to strike out the testimony of this witness on the ground that it is incompetent and irrelevant and has no bearing whatever upon the charge for which the defendant is being tried.

THE COURT: The motion will be denied.

MR. DARROW: Note an exception.

CROSS EXAMINATION

BY MR. DARROW:

Q. You are a special agent of the Southern Pacific?

A. Yes sir, I was at that time.

Q. How long were you special agent? A. From May, 1893, until 1907, April, 1907, somewhere about there.

Q. Your business, among other things, was lookingafter fellows who were stealing a ride on the cars? A. It was mainly to keep

1418 thieves from breaking into cars, and protecting the yards and

Q. And anybody who was riding on the cars without a ticket, I suppose? A. No sir, I had no instructions to that effect at all.

Q. Well, I didn't say instructions, I said business? A. No.

Q. Are these the only men who you ever found stealing a ride?

A. No sir.

Q. It isn't a very unusual matter out west, is it? A. No.

Q. Going through from the Pacific to the Atlantic, or in other directions, from the Atlantic to the Pacific, was it? A. No.

Q. You often find men sealed up in freight cars, don't you?

A. Not very often, once in a while we did.

Q. These are not the only men you ever saw? A. No.

Q. I take it out therein that western country these were not the only men armed with a revolver? A. No.

Q. That is true, isn't it? A. Yes sir.

Q. You saw these two men who evidently had been coming through in a freight car and you arrested them and searched them and took them to the police station, didn't you? A. I didn't see them until I was called for that purpose.

Q. Well, you did see them at some time? A. Yes.

Q. Took them to the police station and charged them with trespassing, that is, trespassing on the property of the railroad company by riding without a ticket, I suppose? A. Yes sir, riding ina loaded car.

Q. Riding in a loaded car? A. Yes sir.

Q. Was that a partof the charge, riding in a loaded car?

A. Well, we considered that trespass. We hardly ever made arrests without it was riding in cars that had been broken into or something of that kind.

Q. If they were riding in an empty freight car you would let them ride? A. Hardly ever bothered them.

Q. You kept them awhile and found out that they had revolvers and one of you gave them $5 and let them go, didn't you?

A. No, not that I know of.

Q. Don't know about that? A. I don't know whether it was $5or more, don't know anything about that.

Q. Gave them something, didn't you? A. Not that I know of.

Q. You don't know about that? A. No sir.

Q. Did you hear about it at the time? A. Well, I heard that they got money, but I didn't know anything about it.

Q. From one of you officers, that is what you mean, isn't it?

A. I heard that they had got money, but I don't know where it came from at all.

Q. What I mean is from one of your officers? A. No, I never heard that they got any from one of my officers.

Q. Then you don't know anything about that at all? A. No sir.

Q. How long were they down there in jail? A. Well, probablya day or two I couldn't say about that.

Q. Then they were let go? A. Yes sir.

Q. You didn't follow them out of town, did you? A. I understood that there was --

Q. No, that is not it. You didn't follow them out of town?

A. No sir, I had nothing more to do with them.

Q. That is all you saw of them? A. Yes sir.

MR. DARROW: That is all.

H. T. SNYDER, 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. Snyder? A. In Ogden, Utah.

Q. What is your business? A. I am jailer, city jailer.

Q. What was your business in that city in June, 1903?

A. City jailer.

Q. Did you have anything to do with some parties who were turned over to you at that time by Mr. McIntire? A. Yes sir.

Q. Did the parties state their names? A. Yes sir.

Q. What names did they give? A.- A. D. Williams and Steve Adams.

Q. Was there any charge lodged against them? A. A charge of trespassing.

Q. Have you the book in which that charge was made? A. Yes sir.

Q. Was it made at the time? A. Yes sir.

Q. While the parties were present in court? A. Yes sir -- well, this was before court, this is when they were brought in at 4:30 in the morning.

Q. It was when they were first brought in? A. Yes sir.

Q. They were present, were they? A. Yes sir.

Q. What did you finally do with reference to these parties -- anything as city jailer? A. Yes sir, I locked them up after they had been searched.

Q. What was found upon them, if you know?

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent, not sustaining nor tending to sustain any charge for which this defendant is on trial.

THE COURT: Objection overruled.

MR. RICHARDSON: Exception.

MR. DARROW: We object to the whole testimony on the same ground.

MR. RICHARDSON: There is some question as to whether the motion to strike covers the objectionable testimony. That is the reason we do it, if your Honor please.

Q. You may state, Mr. Snyder, what was found upon them.

A. They had two Colt's revolvers apiece and a pair of field glasses is all I remember, and then they had some other little trinkets that I don't remember of.

Q. What finally became of the parties so far as you as a magistrate was concerned? A. I locked them up, but of course they were tried at ten o'clock.

MR. DARROW: He was not the magistrate.

MR. BORAH: City jailer.

THE WITNESS: I was city jailer. I locked them up and they were tried at ten o'clock and sentence suspended.

MR. BORAH: Will you turn to your book, the portion of which refers to this matter.

(Witness complies).

Q. Is this the book in which the entry was made at the time the parties were there? A. That is the original entry, yes sir.

Q. Was Mr. Adams and Mr. Williams in court when this was made?

A. No, they were in the city jail. This is when they were first brought in that this was made.

Q. Were they present when you made this entry? A. Yes sir.

Q. In the jail instead of being in court? A. Yes sir.

Q. This is simply your record of arrests, and so forth, in the jail? A. Yes sir.

Q. And they were present when this was made? A. Yes sir.

Q. What does this last sentence refer to that is abbreviated?

A. Sentence suspended.

Q. Where did the parties go when they left your place of residence or where they were being kept? A. I don't know where they did go to.

Q. Who did you turn them over to? A. I didn't turn them over to anyone. They were in jail, you know, remained there until they were taken out for trial.

Q. Who took them away from you? A. Well, I don't know who it was took them out to court.

Q. Do you know in whose company they left your jail?

A. No, I do not.

MR. BORAH: We offer the entry which has been referred to in this book, on page 76, in evidence.

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent, as not proper evidence in any sense of the word, and no entry of that kind could be introduced simply because it was made in the presence of the parties.

THE COURT: I will hear from you upon that, Mr. Borah.

MR. BORAH: I will withdraw the offer. I am a little in doubt myself.

You may cross examine.

CROSS EXAMINATION

BY MR. DARROW:

Q. Mr. Snyder, are you still jailer there? A. Yes sir.

Q. You came up here from Ogden, did you, on this business?

A. Yes sir.

Q. When did you leave Ogden? A. I left there Sunday afternoon.

Q. Don't know how long you are going to stay I suppose?

A. No sir, I do not.

Q. Who got you to come? A. Mr. Thiele.

Q. Mr. Thiele is the western manager of the Pinkerton agency, isn't he? A. I believe he is, yes sir.

Q. I suppose he told you who he was of course? A. Yes sir.

Q. Did he come down there to Ogden to see you? A. Yes sir.

Q. When did he come? A. About a week I think before we started, something near that.

Q. Did he ask you what you knew? A. We already knew, it seems he had been there to look up these matters before.

Q. This was his second trip down there? A. This was his second trip.

Q. He had examined your hotel register before that time? A. Yes.

Q. So he was all ready when he talked to you? A. Yes sir, I presume so.

Q. Did you come along with him? A. No sir, I came about a week after.

Q. I suppose he didn't tell you you would have to come? A. No sir

Q. You were connected with law matters and knew they couldn't bring you from Ogden to tell this story? A. Yes sir, I knew that.

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Q. How long did he stay when he came there? A. Why, I don't know just how long he did stay. I think he was there two days. My recollection is that he was there two days.

Q. Two days? A. I think that was it. I wouldn't be positive.

Q. He wasn't with you all of the time? A. No sir.

Q. How much did he pay you for this job? A. He gave me $20 for my expenses.

Q. $20 for expenses? A. Yes sir.

Q. Besides a ticket? A. No.

Q. He didn't pay for your ticket out of the $20? A. No, I paid for the ticket out of the $20.

Q. And you have drawn your pay up here from the state of Idaho, besides? A. Yes sir, I have got my mileage.

Q. How much is that? A. $90.

Q. Do you know whether you are going to get any more? A. I presume I shall.

Q. Do you know how much? A. $2 a day I guess.

Q. You don't know how long that will run yet? A. No, I don't.

Q. And where are you stopping? A. I am rooming at the Angelus rooms I think it is.

Q. Mr. Thiele provided you a place to stop I suppose?

A. No, Mr. Hawley; Mr. Hawley's son took us around there.

Q. Have you called on Mr. McFarland yet? A. No sir.

Q. Or he on you? A. No sir.

Q. Well, these fellows came to your boarding house there and after that they were taken out before a justice of the peace; What were they fined, $5 or $10? A. No, sentence was suspended and they were allowed to go.

1425 Q. And then they went away? A. They went away.

Q. You gave back the arsenal they had, the revolvers and the field glasses? A. Yes sir.

Q. And they left? A. And then they left, yes sir.

Q. Give them any money, did you? A. No sir.

Q. Somebody there did, didn't they? A. I don't know.

Q. That is the last you ever saw of them until you got to Boise?

A. That is the last I saw of them, yes sir.

MR. DARROW: That is all.

MR. BORAH: Have you seen Mr. Adams since you came into the city? A. Yes, I ~~saw~~ saw him this morning down here in the yard and then as he came in here.

MR. BORAH: That is all.

J. F. PENDER, a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q. Where do you reside, Mr. Pender? A. Ogden, Utah.

Q. What is your business? A. City detective.

Q. How long have you been city detective at Ogden?

A. Going on sixteen years.

Q. You were then in June, 1903? A. Yes sir.

Q. Did you have anything to do with a couple of parties who were arrested in June, 1903, in Ogden for travelling on a train, or trespass? A. A couple of parties?

Q. Yes. A. Which parties do you refer to?

Q. The two parties which have been referred to here as Steve Adams and Mr. Williams? A. Yes sir.

Q. Where did you first come in touch with the parties?

A. In the city prison.

Q. Did you have any talk with Mr. Adams? A. I did.

Q. You may state what that conversation was.

MR. DARROW: We object. A statement of Mr. Adams is not competent evidence in this case, your Honor.

MR. BORAH: This is a declaration of a co-conspirator, if your Honor please.

MR. DARROW: A coconspirator in what?

THE COURT: To what effect, Mr. Borah?

MR. BORAH: We propose by this conversation to connect him with it directly, with this defendant, by reason of this conversation and the transaction which took place with this

party in reference to the defendant.

MR. RICHARDSON: The naked statement of a co-conspirator would not be sufficient -- it must be upon a matter that has relation to the thing which they are carrying out and the process of carrying out that thing which is the conspiracy. Every statement that is made by a co-conspirator is not necessarily evidence and is not evidence.

THE COURT: The court will overrule the objection.

MR. RICHARDSON: Note our exception.

A. State the conversation?

Q. State the conversation which you had with Mr. Adams?

A. Mr. Adams left word --

Q. Just state what he said to you. A. Mr. Adams wanted to know if I was a Mason. I told him I was. He asked me if I could do anything for him. I asked him what the charge was. He stated it was trespass. I told him that if the charge was no greater than trespass and if the company property had not been damaged, that I would look into his case and see what I could do for him. So I investigated on the books and found there was no charge only trespass against him and went and seen the judge, the municipal judge, and told him that there was a gentleman in jail --

Q. You needn't state what you said to him. What did you next do when you got to Adams? A. I got Mr. Adams out of jail.

Q. Then where did you and Adams go and what did he say to you?

A. Mr. Adams asked me if I would go with him to the Western Union Telegraph office to identify him. I told him I would.

I went there, told the manager that if he called -- if he sent a telegram and if money came that he was the man that I identified as Steve Adams. That ends all that I know about it.

Q. What did Steve Adams do there in your presence in regard to sending a telegram?

A. He got a blank telegram -- he had written it out on the desk--

Q. And what did the telegram say, how was it addressed?

MR. RICHARDSON: We object to it as incompetent, immaterial and irrelevant.

MR. BORAH: We propose to show now, if your Honor please, that Mr. Adams wrote out this telegram to the defendant.

MR. RICHARDSON: Suppose he did. The telegram would be the best evidence of it.

THE COURT: You may show to whom it was addressed but not the contents of that telegram.

MR. BORAH: You may answer.

A. - W. D. Haywood, Denver, Colorado.

Q Was this conversation which you had with Mr. Adams in reference to sending money beforeyou went to the telegraph office or while you weren on the way there? A It was before, I think, with officer Burke and Snyder.

Q Did Mr. Adams say anything to you in his conversation as to whom he was going to send to for money?

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

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A Not until we got to the telegraph office.

Q Then what did he say?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant.

THE COURT: The objection will be xx overruled.

MR. RICHARDSON: Note our exception.

A W. D. Haywood, Denver, Colorado.

Q Did you see any of the fire-arms which the parties had on them? A I did.

Q What were they?

MR. DARROW: Haven't you proved that yet? A

A Each one had two Colts, 38 caliber on 44 frame guns, Mr. Adams and Mr. Williams.

Q Without stating the contents of this telegram-- you need not state the contents of it, but I will ask you if you saw the telegram and read it? A I did.

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Q Could you give the contents of the telegram, if you were permitted to do so, from your memory? A Yes sir.

MR. BORAH: Now, if your Honor please--

MR. DARROW: Ask your question and see whether we object to it.

MR. BORAH: How is that?

MR. DARROW: Ask your question first and see whether we will object to it.

Q You may state.

MR. RICHARDSON: Of course it is not competent.

MR. BORAH: I think it is competent, because the telegram is outside the jurisdiction of the court.

MR. RICHARDSON: That would be a good way to make anything competent.

Q You may state the contents of that telegram.

MR. RICHARDSON: We object to it as incompetent, immaterial and irrelevant, not the best evidence, and not binding upon this defendant.

MR. BORAH: We call upon the defense to produce the telegram.

MR. RICHARDSON: It is a well known rule of law that they cannot wait until the time of trial and in the middle of a trial, and when they undertake to introduce secondary evidence to call up on us for the production of a telegram

1131 which they have never advised us about.

THE COURT: Have you made any attempts to procure this original?

MR. BORAH: Yes, we have, and we are still waiting to introduce the testimony as to what became of the original; we can wait, if you like.

THE COURT: I don't think you have laid the proper foundation yet for the introduction of this. I will, sustain the objection.

Q When you speak of Ogden you mean Ogden in the State of Utah? A Yes sir.

Q Was it at Ogden in the State of Utah that this telegram was written out? A Yes sir.

Q In the Ogden office, in Utah, that it was purported to be sent? A At the Western Union office in Ogden, yes sir.

Q You did not take any copy of the telegram? A I did not.

Q And you have no means of access to it? A No sir.

MR. BORAH You may cross examine for the present.

CROSS EXAMINATION

BY MR. DARROW:

Q You are a detective? A Yes sir.

Q And have been a detective for 16 years? A In the employ of Ogden City.

Q Have you ever done any detective work anywhere else? A No sir.

Q That is the only position you occupy, is it? A Yes sir.

Q How is that? A Yes sir.

Q And you are now a detective? A Yes sir.

Q You discovered this man in jail? A Yes sir.

Q And he was charged with trespass? A Yes sir.

Q That was not avery remarkable or unusual incident, was it, for a detective in so large a city as Ogden? A No sir.

Q And you learned he was a Free Mason and you were one and he had not been charged with anything but trespass and so you tried to help him out, and that was about all there was to it?

A That was about all.

Q And you gave him a five dollar bill to help him along?

A No sir, I gave him two.

Q Well, that showed your good will as much as if it had been five, and you begged him off? A Yes sir.

Q They did not send him to thepenitentiary or anything for trespass? A No sir.

Q How happened you to come here, do you know? A I was notified by Mr. Thiele.

Q He is a brother detective, or a detective at last? A I presume so I don't know much about him.

Q Of course fter 16 years' experience you could tell a detective easily, couldn't you? A Yes.

Q And you haven't any doubt but that Mr. Thiele is a detective?

A No sir.

Q So you came right along with him? A Yes sir.

Q How much money do you get out of it? A I get twenty dollars to pay my railroad fare.

Q And how much since? A Ninety dollars.

Q And you kind of think you have something more coming?

A Yes, I think so; I think there will become witness fees here.

Q I supposeyou visited the chief detective, McParland? A I did not.

Q Haven't you met him yet? A I have met him casually, but not on anything connected with this trial.

Q I mean as one member of the craft? A No, I met him accidentally.

Q Here in Boise? A Yes sir.

Q More than once? A I met him in the restaurant, in the cafe where we eat, twice, but had no conversation with him.

Q You detected who he was easily enough? A I have known Mr. McParland for years.

Q In business? A Yes sir, through reputation.

Q And you spoke to him? A Yes sir.

MR. DARROW: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q Have you seen Mr. Adams sinceyou came into the City?

A I have.

Q Was it the party who came into the court room a minute ago?

A Yes sir, only he is not so fleshy as he was then.

MR. BORAH: That is all.

G. H. HACKETT, being called as a witness on behalf of the State, and being first duly sworn, on oth testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q What is your name? A G. H. Hackett.

Q Where do you reside? A Boise, Idaho.

Q What is your business? A The local managerfor the Western Union Telegraph Company.

Q How long have you beenthe local mangar? A In this office here about 4 years.

Q Are you also the State agent for that company? A The statutory agent, yes sir.

Q The statutory agent? A Yes sir.

MR. DARROW: Is his name included in this list?

MR. BORAH: Yes, haven't you got it?

MR. HAWLEY: It isen there.

MR. RICHARDSON: All right then, go on.

Q You, as such State agent, you have charge of the business of the company here in this State? A Yes sir.

Q I will ask you, if you will, to produce a telegram which was sent from Spokane to Thomas Hogan in the fore part of January, 1900? A I believe this is it (producing a telegram

to counsel).

MR. BORAH: I will ask to have this marked for identification.

The telegram was marked State's Exhibit "P" for identification.

MR. DARROW: You said State Manager, didn't you?

THE WITNESS: Yes sir, State manager.

MR. DARROW: We will object to it on the ground that it is not competent and is not proven.

Q You may state whether or not this is the original telegram as filed with your company, that you have produced as exhibit "P"? A As far as I can say, it is.

MR. RICHARDSON: It don't answer anything, and we move to strike the answer out as incompetent, immaterial and irrelevant.

THE COURT: That motion will be denied.

MR. RICHARDSON: Note our exception.

Q State from whom you received this? A From our Manager at Spokane.

Q Who is your manager at Spokane? A A. D. Campbell.

Q Is this the telegram which is produced in answer to the subpoena duces tecum that we served on you? A Yes sir.

MR. BORAH: We will not offer this at this time because I will have to go farther with the identification, but we will leave it as an exhibit.

THE COURT: What is the numberor letter of that?

MR. PHELPS: Letter P.

Q You may state, Mr. Hackett, what the rule and custom of your company is with reference to keeping telegrams or destroying telegrams after a certain period of time?

A After six months they are destroyed. We are allowed to keep them for 17 days after that for adjusting error sheets, but otherwise they are destroyed.

Q Is that a regular rule and custom of the company? A Yes sir.

Q How long has that been a rule and custom of your company to your knowledge? A Well, I have been with them about 30 years and it has always been that rule.

Q Then under that rule and custom any telegram sent in 1903 to to the Company would be destroyed? A It would be destroyed, yes sir.

Q Yes, carried by the company-- anything carried by the company?

A Anything in their files, filed with them.

Q In the way of a telegram? A Yes sir.

Q How about applications for payment of money, is there any record after six months? A Yes , they are kept on hand.

Q Where are they kept? A In the office where they originate.

Q I will ask you to produce for our inspection, Mr. Hackett, the record showing the application for the payment of money at Ogden, Utah, on June 3rd, 4th and 5th of 1903.

A I am not able to produce that; it is not in my hand.

Q You are the State agent for this State? A Yes sir.

Q For the Western Union Telegraph Company? A Yes sir.

Q Have you made any effort to get that? A Not personally; our Superintendent, I believe, made an effort, yes, I can say I made an effort.

Q There is such a record in existence? A I understand there is.

MR. DARROW: Now, we object to that.

MR. BORAH: I asked if such a record is kept.

Q If there is an application to pay money through the Western Union Telegraph Company that record is kept?

MR. DARROW: I object to that; the witness says that he understands there is. I don't think the witness understood the question.

Q I will ask this, if there is such a record— if such a record was kept at the time would it still be in existence?

A I say these applications are kept in the office. We make an impression copy of them, and after a time those are destroyed; so far as I know they are not kept, but the original is sent into the Company withour monthly reports and the receipt taken at the other end is kept on file. I have got them here on file for four years back, I believe.

Q If money was sent from Denver to Ogden where would that receipt be— at what office? A At the paying office.

Q This office? A Why, it should be at Ogden.

1439 Q And where would the original records of that payment be?

A I could not tell you. I send them in to the Superintendent at the end of the month and I don't know what disposition is made of them.

MR. BORAH: We ask that the Western Union Telegraph Company be required to produce its record under date of June 3rd, 4th and 5th, 1903, showing the payment to any one, if any, at Denver, Colorado.

THE COURT: Isn't that pretty broad, Mr. Borah?

MR. BORAH: I will limit it to the payment of money on the application of Steve Adams at Ogdon, Utah.

THE COURT: The court will make such order.

THE WITNESS: I can only say that in this case I suppose it would be our attorney, to send him that order; it would take some time to get it I suppose.

MR. BORAH: I am willing that the order shall be made that the witness produce it in a certain time or be punished for contempt. This is a corporation of course, and has its office here in this city.

THE COURT: The court will make the order, and you may prepare it, Mr. Borah.

MR. BORAH: That is all for this witness. You may cross examine.

MR. DARROW: That is all now.

MR. BORROW: I want to recall Mr. Fender.

J. F. PEHNER, being recalled as a witness on behalf of the State, and having been heretofore duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q I now ask the witness to state the contents of the telegram which Mr. Steve Adams wrote out on June 3, 1906, to William D. Haywood.

MR. DARROW: To that we object on the ground that it is incompetent, immaterial and irrelevant, and it is not the best evidence.

THE COURT: I will hear you upon that proposition.

MR. BORAH: I suppose your Honor will want to hear me on the authorities, and I will bring those up in the morning, and I will let the witness go again until I can produce the authorities to your Honor. That is all.

CHARLES E. BALDWIN, being called as a witness on behalf of the State, and being first duly sworn, on oath testified as follows.

DIRECT EXAMINATION

BY MR. BORAH:

Q What is your name? A CharlesE. Baldwin.

Q Where do you reside? A Denver, Colorado.

Q What is your business or occupation? A I am at present, when I am home, working for a catering company, O. P. Baur & Company.

Q Were you residing in Denver in 1903 and 1904? A Yes sir.

Q What wereyou doing at that time? A I was running an express of my own.

Q Do you know Harry Orchard? A No sir, only as I have seen him here in the court room.

Q You did not know him at that time? A No sir, I did not.

Q Did you know Lyte Gregory? A I did.

Q Do you remember the occasion of the death of Lyte Gregory, about the time he was killed? A Yes sir.

Q Did you see him that evening prior to his death? A I did.

Q Where did you see him?

MR. RICHARDSON: We object to any testimony whatsoever in regard to the death of Lyte Gregory, as in no wise connected with this defendant, and incompetent, immaterial and irrelevant.

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THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A What was the question?

Q Read it, please.

The question was then read.

A I saw him at the corner of Third Avenue and Santa Fe.

Q In the City of Denver? A In the City of Denver.

Q Who was with him at the time you saw him? A A man by the name of N. A. Floyd and himself was the only ones I recognized in the room that I knew.

Q And at whose place of business was Lyte Gregory that night?

A I think the man's name was Carey; he runs a saloon.

Q With whom did Gregory go into the saloon, if you know?

A He was in there when I went in.

Q What was he doing? A He was playing cards in the bar room.

Q With whom? A With Mr. Floyd and some other parties that I was not acquainted with.

Q State whether or not he afterwards left that open bar room?

A He did.

Q Where did he go? A In an inner room just through the partition in the same building.

Q What did he go to doing in there? A Playing cards.

Q How long did he remain there? A I should think he was in there about two hours fra the time he went from the saloon in there.

Q About what time did he leave the saloon that night, if at all? A Not far from eleven o'clock; I could not say to the minute.

Q Who went out with him? A I went out with him.

Q How far did you go with him? A As far as the door.

Q How long was it after you left him at the door until you heard of his death? A Perhaps twenty minutes.

Q When did you next see Gregory, or his body? A Well, I should think perhaps fifteen minutes after I heard of it; I would not say just the number of minutes.

Q Where did you see his body? A Laying on the ground where he was shot.

Q And where was that with reference to the building were you were? A He started up Third Avenue to go to the Lawrence street car which is on South Water Street and that is just two blocks from the saloon, and he had went one block and just crossing the alley in the next block when he was shot.

Q Did you go to him after he was shot? A I went and looked at him as he laid on the ground, that is all.

MR. BORAH: You may cross examine.

CROSS EXAMINATION

BY MR. DARROW.

Q You are working in a candy store, you say? A No sir, I am
1444 working for a catering store, driving a team.

Q How long have you worked for them? A I have worked for them since about the middle of February, I think.

Q What did you do before that? A I drove for Mr. Herbert on his catering wagon.

Q How long did you work for him? A About six months.

Q Then, what before that? A I was driving an express of my own.

Q How long did you do that? A About five years--nearly fiveyears.

Q You had a horse and wagon? A Of my own, yes sir.

Q And weremoving trunks and things like that, I suppose?

A Yes sir.

Q And that is what you were doing at this time you speak of, is it, when Gregory was killed? A Yes sir.

MR. DARROW: Your Honor, I don't suppose it is necessary with every witness, but I have not moved to strike out the testimony of this witness.

THE COURT: Make your record, if you want to, Mr. Darrow.

MR. DARROW: We move to strike out the testimony of this witness ~~tx~~ on the ground that it is incompetent, immaterial and irrelevant and has no bearing on the issues in this case or connects the defendant with it.

THE COURT: The motion will be denied, and it may have the same effect as if it had been made before the cross

examination was commenced.

MR. DARROW: Very well, we will take the exception that we have taken with the others.

Q Mr. Baldwin, were you acquainted with Gregory? A I had met him once before I met him in the saloon, and he was pointed out to me as being Mr. Gregory.

Q You hadn't any close acquaintance with him? A No sir.

Q And you were in the saloon thereyourself that night for several hours? A I was.

Q Who else was there? A Mr. Floyd and Mr. Gregory were the only parties I was acquainted with aside from the man who ran the saloon.

Q There were a number of others there? A Yes sir, the bar room was full.

Q You don't know who else was there? A No sir, I could not call them by name.

Q Did you livenear there at the time? A I lived at that time at 1722 Humboldt.

Q How far is that? A It must be two miles and a half, I guess.

Q Now, you say you saw Mr. Gregory in there about two hours or more? A Yes sir.

Q He was drinking some and playing cards? A Yes sir.

Q And I suppose everybody in there had been drinking some, and you included? A I took a drink when I got in; that is what

I went in there for.

Q And you stayed there two or three hours? A Yes sir.

Q You don't remember who you visited with? A I don't remember their names, no.

Q I suppose you would not remember how many times you took a drink? A No, that would be rather impossible that evening, I think.

Q And after a while Mr. Gregory went out? A Yes sir.

Q And you heard something had happened? A Yes sir.

Q About twenty minutes later, about, you said, you went out? A Yes sir.

Q And you found him dead? A I did.

Q Did you see anybody around him? A Quite a crowd.

Q Did you know anybody that you saw there? A Well, Mr. Floyd was with me and the police department was there, but I don't know their names.

Q Floyd was the only man whose name you know? A He was the only one I was acquainted with there.

Q Well, who got you to come here? A Mr. Pettiman spoke to me just before I come here.

Q Who is he? A He is a Pinkerton detective there—the Superintendent I think.

Q Where did you see him? A He came over to Mr. Baur's to see me.

Q How did you talk with him? A Perhaps five minutes, or ten

minutes.

Q Did you go to his office? A Not at that time.

Q Did you afterwards? A I did the day I come away.

Q Who did you see there? A Mr. Pettiman.

Q Anybody else? A Not that I know of, that I know.

Q Did you get some money? A I got my ticket and some money.

Q How much did you get? A $22.25.

Q And your ticket? A And my ticket.

Q And you get how much more here? A $90.

Q And you expect some more still? A I think I am entitled to it.

Q Had you known Mr. Prettymen or any of the rest of the detectives? A I nevermet the man to my knowledge until he came there to my wagon to speak to me.

Q And you had never been in the Pinkerton office at that time?

A I had, yes sir.

Q You knew where it was? A Yes sir.

Q He asked you to go there I suppose? A Yes sir.

~~Darrow:~~

MR. ~~BORAH~~: That is all.

MR. BORAH: That is all, Mr. Baldwin.

THE COURT: Call your next.

JOSEPH C. HOUSTON, being called as a witness on behalf of the State and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH.

Q What is your name? A Joseph C. Houston.

MR. BORAH: I think we are in a position where it will be pretty difficult to proceed this evening until we get some connecting testimony which is not here yet.

THE COURT: Where is it?

MR. BORAH: The witness is supposed to be on the way, but if I had a few minutes I could send to my office and get some of this documentary evidence which we could possibly use. I don't know whether we could or not until we lay the foundation for it, however. These witnesses come from some distance and it is not desired to get too many of them here at one time.

THE COURT: We have gone pretty slow today.

MR. BORAH: I think we have gone quite rapidly.

THE COURT: I shall expect you to move a little more rapidly.

MR. DARROW: We are liable to run against this same

1449 proposition, and consequently we do not object to it.

THE COURT: If you have any other witnesses here that you can go ahead with you may proceed.

MR. BORAH: We have not, though I apprehend that connection cannot be made until we get the other parties here.

THE COURT: Are the bailiffs here? If not, call them.

Thereupon the bailiffs were sworn, the court gave the jury the statutory admonition, the jury retired in charge of the bailiffs, the defendant was remanded to custody, and court was adjourned until 9 o'clock A. M., June 15th, 1907.

ADJOURNED.

Boise, Idaho, Saturday, June 15, 1907.

9:00 o'clock A. M.

Parties met pursuant to adjournment.

Minutes of session of June 14th, 1907, read by the clerk and the same were signed by the court.

The clerk called the names of the jurors and announced all present.

MR. BORAH: I want to call Mr. Pender, if the court please.

J. F. PENDER, being recalled as a witnesson behalf of the State, and having been heretofore duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH.

MR. BORAH: If your Honor please, I desire to say just a word to the court in regard to the admission of that statement or declaration of Mr. Adams at Ogden., and as to its admissibility. It is the only question I desire to ask, and we are not asking the court, if your Honor please, to admit this strictly upon the theory that it is a telegram imparted by one to another in the first instance. Your Honor will remember

that it has been testified here in this case that the defendant has stated that he sent Mr. Adams upon a certah mission, and to a certain place and that Steve Adams was on that mission and was then returning. You will remember also that it was stated that he said at Ogden, Utah, he had to take care of this particular matter. We claim therefore that sufficient ground has been laid for the consideration by this court of the proposition that Adams was a party to this conspiracy and that being true the act or declaration of a co-conspirator is admisable of course, against the other, and that being true it is also a fact that whatever knowleige one of the co-conspirators possessed was the knowledge of all the others. This is introduced for the purpose of bringing home knowledge to this defendant and to show an act or declaration in the progress of this transaction which we denominate the conspiracy, and we take the position that it would make no difference whatever whether Adams had made an oral statement to this witness here or had written it out.

THE COURT: The court has no doubt about the admissibility of this testimony if you have laid the proper foundation for the admission of secondary evidence.

MR. BORAH: I will cite an authority or two upon that proposition.

THE COURT: The question is whether you must not exhaust your remedy to produce the original.

MR. BORAH: We are seeking to introduce it solely as the declaration of a co-conspirator, but later we will undertake to connect that proposition and introduce it for another purpose, but we claim that it is admissible now as a declaration of his associate, whether it ever reached him or not, and only in that sense. I wish to call your Honor's attention just a moment, in a very late case that appears in the advance sheets: "Appellant laid much stress upon the fact that all the evidence relative to Connolly's having money shows a knowledge on the part of Kincaid only, and that this was acquired by Kincaid before the defendant arrived in Visalia. The existence of the conspiracy being shown it must be presumed that the knowledge of all the conspirators was brought into play in the execution of the joint undertaking. The individual knowledge of each is imputed to all, and it is not material when or how this knowledge was acquired, provided it was before the consummation of the crime. The purpose of the robbery was to wrongfully obtain money, and evidence tending to show that the defendant knew that Connolly had money would show a motive for the crime. The jury being satisfied of the existencof the conspiracy had a right to presume that the defendant had the same knowledge and information relative to Connolly having money upon his person that Kincaid was shown to have had."

Now, the point in relation to that, if the conspiracy existed then the knowledge of Steve Adams was the knowledge of the defendant. Now, it would not make any difference whether

it ever actually reached the defendant or not, because whatever declaration he made or what ever writing he put forth or whatever act he was guilty of, that was the act and declaration of the defendant in this case and we therefore would not be compelled to call upon the defendant for it because it is not a matter that we have shown or propose to show at this time actually reached him. We propose to show that later. But I desire to read this:

"The copy offered was identified as a true copy of the original by Rohr, by Lee, and, substantially, by Kemble, the bookkeeper of the plaintiff company at St. Joseph. The evidence of A. F. Washington, who was manager of the office of the plaintiff company at St. Joseph, Mo., where the dispatch in question was delivered, shows that the original messages are kept in the office where received for six months, and are then sent to Chicago and destroyed. The evidence of Jack Ludin, who succeeded Washington as manager of the plaintiff's office at St. Joseph, shows that the original message was not in the St. Joseph office, and not under his control; that original messages are kept in the office where received for transmission six months, and are, by the rules of the company, then sent to Chicago and destroyed. It is true, he says he did not see the original message in question in this case destroyed. But he says the rules of the company require them to be destroyed at the end of six months after received. The original message in this case

was delivered to the company January 12, 1885, and the depositions of Roher and Lee, who identified the copy, and to which said copy was attached as an exhibit, were taken more than fourteen months afterwards. We think the foundation for the admission of the copy was sufficiently established and that the copy was properly admitted in evidence."

Now, that disposes of the original, and whenever we show that under the rules of the company they have been destroyed, and that the original copy was never in our possession and besides all that, it is not introduced, if your Honor please, for that purpose; it is simply introduced as a declaration of Mr. Adams. In other words, suppose that Steve Adams had written out a statement and handed it to this witness concerning his relations, we will say, with Mr. Haywood, under the rule that the declaration of one co-conspirator is that of another, we would be entitled to introduce it, and while this happened to be written out as a telegram, it was the declaration of a co-conspirator, and that we desire to introduce in evidence in this case.

MR. RICHARDSON: Suppose it was the declaration of a co-conspirator,-- handle it upon that ground, if you please,-- it was nevertheless a declaration given in writing and that cannot be shown other than the writing itself produced or it is shown that that writing has been destroyed. Now, the case cited, if I understand it, is simply this, that a conspiracy was entered

1455 into, which was proven by two or more persons to rob another,

and it was found after the robbery had been committed that one of the persons engaged in that conspiracy had the money on his person which had been taken from the person robbed. It was said that the fact that money was found upon him was admissible as against his co-conspirator for the reason that there was no money found upon the co-conspirator. It seems to me that that is not applicable to the case at bar at all. There the robbery was committed in accordance with the conspiracy; there the property was found upon one of the conspirators, which is an entirely different proposition and has nothing to do with the rule of primary or secondary evidence. Now, yesterday, I announced a rule of law which your Honor seemed to concur in, and if there is any doubt about it I can prove that that is the rule by a number of authorities. A declaration of a co-conspirator is never admissible in evidence against a co-conspirator unless it is with reference to the carrying out of the conspiracy agreed upon. It is something which must be done or said in pursuance of the conspiracy. Now, if your Honor please, the matter complained of in 1893, at the time that this telegram is supposed to have been sent, in 1903, I should have said, is supposed to be a conspiracy with reference to a trip which Mr. Adams made to a mining camp in California where there was a strike on, where he was to aid and assist someember of the Western Federation of Miners with regard to that strike which was then on at that camp. On his way back, after the whole thing was over and no violence or any-

thing of that kind had been committed-- the whole thing was entirely completed-- taking what they say with reference to it to be true, on his way back, while he was beating his way back on a freight car, back to Denver; he became stranded and he telegraphed to Haywood for some money. Now, if your Honor please, there wasnothing in that in furtherance of a conspiracy at that time-- there was nothing in carrying out the conspiracy if one existed for, the conspiracy, if one existed had been entirely abandoned at that time, and any statement or declaration made in the telegram, or anything else by one of the alleged conspirators at that time, would not be binding in evidence upon this defendant at this time in an independent transaction.

Now, it seems to me that if I am correct upon that rule of law, and your Honor said I was yest erday, thereis not any possible ground upon which this offered evidence can be introduced. The statement made, whatever it was with respect to a conspiracy which had been abandoned, would be simply a mere declaration or recitation-- a mere narration which would not be admissible in evidence under any circumstances.

Now, take the other case, on the admission of secondary evidence there, there was there an attempt to get theoriginal telegram; there was an introduction of a rule of the company as to the destruction of the original telegram; there was proven that that had fallen under the rule and that no one knew of the existence of any condition to the contrary and then they sought to

prove an identified copy of that telegram. It seems to me that this condition does not exist here. Here there is no attempt to obtain the original telegram. There is no showing whether it was subject to the rule or not. Thereis no showing of knowledge upon the part of any one that this telegram was not an exception to the rule, and here they introduce a man here in 1907 ~~who~~ to testify to his remembrance of the contents of the telegram and I submit that the law does not permit the introduction of a man's remembrance of the contents of a writing under any such circumstances as that.

THE COURT: The court has already stated that it has no doubt of the admissibility of this testimony if the foundation has been properly laid.

MR. BORAH: This primary evidence, if it ever became primary evidence, is not in our possession and never was, and we will not be able to show at this time until other evidence comes in at least, that it was ever in the possession of the telegraph company. Counsel and possibly the court misunderstood me in this respect. We are in a position of undertaking to show the statement of a co-conspirator, a written declaration. It is simply to show a declaration of a co-conspirator who is not under our control, who possibly may havenever sent the telegram and who we are not bound to show ever did send the telegram.

Q Did you see the telegram filed, Mr. Fender? A I did not.

1458 Q As I understand, you simply saw him write it out? A I in-

troduced him to the cashier and I told the cashier that if he called for the telegram or money order that he was the man, and I walked out.

Q Did you remain until he sent it? A I didnot.

THE COURT: The court will overrule this objection and will admit this testimony alone as the declaration of Mr. Adams, and for that only.

MR. RICHARDSON: Note our exception.

Q You may state, if you can, the contents of that statement.

A What was written in the telegram?

Q Yes sir. A W. D. Haywood, Denver, Colorado. I am in trouble, send me seventy-five dollars at once. Steve Adams.

MR. BORAH: You may cross examine.

CROSS EXAMINATION BY

MR. RICHARDSON:

Q Was that all that Mr. Adams said to you at that time?

A Yes sir.

Q And that was written down in the telegram? A Yes sir.

Q Say anything about where he had been or what he was doing?

A No sir, not to me.

Q Or how he came to be in a freight car? A No sir.

Q Or why he was beating his way? A Yes sir.

Q He said that he was out of money? A Yes sir, that he was

out of money and that it was easier to go in that way than to go on a passengertrain.

Q He was beating his way because he was out of money? A Yes sir.

Q That was substantially all he said to you? A That was all.

Q You ascertained from the inquiry that you made that no injury had resulted to the freight car or the consignment of goods that was in it? A Yes sir.

Q And there was not any condition which existed that showed he was doing anything except justwhat he said he was doing?

A No sir.

Q And that was the reason you took compassion on him and loaned him the two dollars? A I gave him two dollars.

Q But that was the reason that you took compassion on him and gave him that two dollars? A Yes sir.

Q And also freely vouched for him at the telegraph office for the sending of this telegram? A Yes sir.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q Was this telegram written out after you had gottenhim out of trouble? A Yes sir.

MR. BORAH: That is all.

JOSEPH C. HOUSTON, being called as a witness on behalf of the State, and being again sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH.

Q What is your full name? A Joseph C. Houston.

Q Where do you reside? A Denver, Colorado.

Q What is your business? A Assistantcashier of the First National Bank.

Q Of Denver? A Of Denver.

Q Do you know William D. Haywood? A I do.

Q Does the Western Federation of Miners do business at your bank? A They do.

Q That is, the organization? A Yes sir.

Q How long have you been assistant cashier? A Since January, 1906.

Q Do you know Mr. Haywood's signature? A I do.

Q You may state in a generalway what the papers are which are handed you? You need not state the contents of them.

A They are drafts on New York,-- First National Bank drafts on New York.

MR. BORAH: I think, as these are all drafts from the same party to the same party, I will put them all together

and introduce them as one exhibit.

THE COURT: How many are there?

MR. BORAH: There are five, I think, if your Honor please,-- six. I will have them marked for identification only.

The exhibit was marked State's Exhibit "Q" for identification.

Q You may examine exhibit "Q" and state upon what bank these drafts were purchased?

MR. RICHARDSON: They show for themselves, don't they?

MR. BORAH: I simply want to identify them in a general way for the purposes of introducing them.

A The Mechanic's National Bank of New York, National Bank of Commerce, Mechanic's National Bank of New York, National Park Bank, New York, National Bank of Commerce, First National Bank and Mechanic's National Bank.

Q Were those sent out to your bank-- were they purchased at your bank? A Yes sir.

Q You may state, if you know, whose signature is upon the back of all the exhibits marked exhibit "Q" for identification, that is, the signature which you know? A W. D. Haywood's signature is on five of them, and James Kirwan is on one of them.

Q Who was W. D. Haywood at the time he signed those-- at the time he sent them? A Secretary and Treasurer.

Q Of what? A The Western Federation of Miners.

MR. BORAH: We will offer those in evidence as exhibit "Q".

MR. RICHARDSON: I would like to examine them half a second first.

Counsel for the defense examined the exhibit.

MR. RICHARDSON: Didn't you get one in here that you don't want?

MR. BORAH: I don't know.

MR. RICHARDSON: Look at that one and see; I don't know, but you said they were all to the same party.

MR. BORAH: I will take this out and that will leave five.

MR. NUGENT. No, there are six here and that would be seven.

MR. RICHARDSON: To State's exhibit "Q" we desire to objectfor the following reasons: The contents of exhibit "Q" are incompetent, immaterial and irrelevant; they are not connected with this case or with this transaction; they do not purport upon their face, or anywhere else, to show any connection whatsoever with any one who had any connection whatsoever with the killing of ex Governor Steunenberg and they are of no force or effect upon any issue presented by this indictment.

Now, I call your Honor's attention to what they are: The first is a New York draft evidently purchased from the

First National Bank of Denver and drawn on the First National Bank of New York, June 26th of 1905. Perhaps I better call them in theorder as they are drawn. The first one is a draft for $93.20 drawn by the First National Bank of Denver on the Mechanic's National Bank of New York and payable to William D. Haywood, and it is endorsed, payable to L. J. Simpkins; it is endorsed by L. J. Simpkins and deposited in the Webber bank of Wardner, Idaho; that is dated June 7, 1904. The second one is $62.50 which was drawn on January 18, 1905 by the First National Bank of Denver on the National Bank of Commerce of New York, payable to the order of William D. Haywood, Secretary and Treasurer, and by him endorsed to the order of L. J. Simpkins, and endorsed by him and deposited in the Webber bank of Wardner, I daho. Of course it has been transferred through several other banks from that bank. The third one is for $218.30; it is dated June 26th, 1905; evidently paid by James Kirwan, assistant secretary and treasurer, drawn on the First National Bank of New York and by Kirwan endorsed to the order of L. J. Simpkins and by him endorsed and evidently deposited or cashed by the Exchange National Bank of Coeur d'Alene, Idaho. The next is for $115.60, drawn on October 20, 1905; is payable to W. D. Haywood, Secretary and Treasurer, drawn by the First National Bank of Denver on the National Park Bank of New York, and by Haywood endorsed payable to L. J. Simpkins, and then endorsed by L. J. Simpkins and then after-

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wards endorsed by one Frank Tibals and by him evidently deposited or cashed in the Exchange National Bank of Spokane, Washington. The next is for $100.00 drawn payable to Haywood on the Mechanic's National Bank and by him endorsed to the order of L. J. Simpkins, and then it is endorsed, I should suppose for the purposeof identification by Park J. Addington.

THE COURT: What is the date of that? A

Q It is dated December 2, and then there is a hole punched through the next figure; there is evidently another figure there, some time after the 20th, or the 20th, of 1905; and is then endorsed by L. J. Simpkins and was evidently cashed or deposited in the Spokane and Eastern Trust Company at Spokane, Washington. The rubber stamp is very dim on that and I may not have it right. The next is for $166.35, drawn January 17, 1906, by the First National Bank of Denver on the National Bank of Commerce of New York, and is to the order of William D. Haywood and by him endorsed to the order of L. J. Simpkins; and it is endorsed, L. J. Simpkins, by Mathilda Simpkins, with the word, wife, in brackets, and evidently cashed or deposited in the Traders National Bank, Spokane, Washington. We therefore think that these are immaterial, incompetent and irrelevant.

THE COURT: What is the purpose of that, Mr. Borah?

MR. BORAH: The purpose is to show the relationship which existed between Mr. Haywood and the man whom we claim

was-- and the evidence so far shows directly, was connected with this affair. Mr. Haywood was sending this as the Secretary and Treasurer of the organization which we claim was behind this matter. We hope later to establish it for another purpose. It is always permissible where you claim that parties were members of a conspiracy to show any relationship which may have existed between them to show that they came together for this particular purpose.

MR. RICHARDSON: I do not understand it to be a rule of law that a fact may be shown from which a remoteinference may be obtained and another fact exists. The evidence of the fact itself is the fact which can be shown. If thisis competent it would be just as possible to connect anybody with whom the Federation has dealings with this conspiracy, because I have no doubt that this witness will testify that it is the common custom for the Federation to get drafts there nearly every day in the week, and that is especially true in the case of a man connected with the organization as an organizer or a member of the executive board where funds have to be transferred to them.

MR. BORAH: We claim that the evidence has connected Mr. Simpkins with this directly, and that these drafts cover the period during which the conspiracy existed and during which-- the time in which he was receiving money sent to Mr. Orchard.

MR. RICHARDSON: The drafts haven't any tendency to show that they had any connection with such a matter as is

being inquired about here.

THE COURT: The court will admit these drafts, and the objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. BORAH: Now, you may mark them for identification. We have asked that a bunch of twenty-one drafts be marked for identification as exhibit "R".

Q Exhibit "r2 handed witness, and you may state from what bank these drafts were purchased-- at what bank? A At the First National Bank of Denver.

Q And you may look over them and state whetherer not the signature of Mr. Heywood appears upon the back of each one of them as secretary and treasurer of the Western Federation?

A Yes sir, they are.

Q As secretary and treasurer of the Western Federation?

A Yes sir.

MR. RICHARDSON: Where do you see anything there that shows the Western Federation? You say that is there.

THE WITNESS. There is nothing on the drafts.

MR. RICHARDSON: That is what he is asking you.

Q Do you know of your own knowledge that he was secretary and treasurer of the Western Federation? A Yes sir.

MR. BORAH: I will not offer these at present, but you may look them over.

MR. DARROW: These postoffice witnesses, have they gone

back?

A MR. BORAH: No, I don't think they have.

MR. DARROW: There is one question that I omitted to ask which I would like to ask them.

MR. HAWLEY: I think part of them have left; I think Miss Moore has gone.

MR. DARROW: Ifyou will inquire and have any of them that are here, have them come in; there are only two, Miss Moore and the man who kept the book at the other end.

MR. BORAH: You may cross examine this witness.

MR. RICHARDSON: I suppose your object and purpose is to introduce these?

MR. BORAH: Not at the present time, until we get more and further connection.

CROSS EXAMINATION

BY MR. RICHARDSON.

Q You are the exchange teller at the First National Bank in Denver? A I am not.

Q What position do you hold? A Assistant cashier.

Q Were you exchange teller at the time these drafts were drawn?

A No sir.

Q You were assistant cashier at that time? A No sir.

1468 Q What were you doing then? A I had charge of the collections.

Q So far as you are personally concerned you know nothing about thesematters except that they are the records of the bank-- is that the idea? A Yes.

Q You never drew one of these drafts? A No sir.

Q Now, in the usual course of business Mr. Haywood would come in there with his check on your bank? A Yes sir.

Q And give you a list of the drafts he wanted that day? A Yes sir.

Q And that check would be left with the list of names,-- would be left with your exchange teller? A Yes sir.

Q And when the time came that the teller could get them out Mr. Haywood would return and get those drafts? A Yes sir.

Q And that is a daily occurrence in your bank with the Western Federation of Miners, or with Haywood as Secretary and Treasurer of that organization? A Yes sir.

Q And has been so for many years? A Yes sir.

Q And all these drafts--thousands of those drafts are bought by Mr. Haywood every year for different parties all over the country? A Yes sir.

Q So that these which you have segregated out here represent only a very small fraction of the business transacted by Mr. Haywood precisely the same way as the business which obtained these drafts? A Yes sir.

Q The Western Federation of Miners has been a depositor in your bank for many years? A Yes sir.

Q And Mr. Haywood himself as secretary and treasurer usually transacts the banking business in person? A Yes sir.

Q And when he is out of town Mr. Kirwan takes his places and attends to it? A He does.

Q And acts in the same capacity as Mr. Haywood acts when he is there? A Yes sir.

Q And that is all you know about the matter? A That is all yes sir.

MR. RICHARDSON: That is all.

MR. BORAH: That is all.

THE COURT: Mr. Borah, have you identified those checks sufficiently?

MR. BORAH: These last?

THE COURT: Yes, those that you have presented last.

MR. BORAH: We have not offered them in evidence yet; we expect to identify them further. We have simply put twenty-one together and had them marked exhibit "R".

Is Mr. Schoulenberg in the room?

THE COURT: Has he been subpoenaed?

MR. BORAH: Yes sir. I will call Major Naylor.

N. A. NAYLOR, being called as a witness on behalf of the State and being first duly sworn, on oath testified as follows.

DIRECT EXAMINATION

BY MR. BORAH.

Q What is your name? A N. A. Naylor.

Q Where do you reside? A Victor, Colorado.

Q What is your business? A I am assistant secretary of the Mine Owners Association.

Q How long have you resided at Victor? A About 12 years.

Q Did you know during your residence there Mr. Harry Orchard?

A I did not, no sir.

Q Did you know Steve Adams? A Yes sir.

Q Sherman Parker? A Yes sir.

Q W. F. Davis? A Yes sir.

Q Do you remember the occasion of the explosion at the Vindicator mine? A Yes sir.

Q In 1903? A Yes sir.

Q Can you give us the date of it? A About November 21 or 22.

Q 1903? A 1903, yes sir.

Q Where were you at the time of the explosion? A When the explosion occurred I must have been in camp Goldfield.

Q What was your position then? A Serving as a Major with the National Guard of Colorado.

Q Did you go to the scene of the explosion shortly after its occurrence? A I did, yes sir.

Q You may state more in detail what you found there in reference to the mine and the condition of themine.

Q When I arrived at the mine, I judge---

MR. RICHARDSON: I want to register an objection to that as incompetent, immaterial and irrelevant and not tending to connect the defendant in any way with the charge here.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

THE WITNESS: I arrived at the mine about twelve o'clock or within a few minutes of it, with a detail of men, and a few moments after I arrived the cable came up without the cage. They put on a cage and I went down on the cage and made an investigation of the station and the surroundings down there.

Q What did you find there with reference to finding the bodies of any parties? A There was two bodies on the station. When I got down there I found one, the body of McCormick lying on the north side and Beck on the south side. I knew them both personally.

Q What positions did they occupy in the mine? A Mr. McCormack was superintendent and Mr. Beck was a shift boss.

Q What was the condition of them? A They were very badly mutilated, particularly about their legs. Their legs were nearly all gone in both cases.

Q Did you find any firearms, or parts of firearms, or anything of that nature there? A Some of the men that were on the station--

MR. RICHARDSON: No, he asked him if he found anything.

Q Did you find any? A I found parts of firearms and saw more.

Q Did you preserve those parts of the firearms which you found.

A Yes sir.

Q Have you got them now? A I have, yes sir.

Q You may produce them.

Witness produces the exhibits.

Q Whereabouts did you find these? A These were found on the station,-- the parts I found I will show you: These two pieces I found (handing two pieces to counsel), and these other pieces were found by other parties.

Q Did you get them there at the time? A I got those pieces at the time.

Q How soon were you upon the scene after the explosion occurred?

A Well, as near as I know, about 30 minutes.

Q Who went down ahead of you? A I know that Mr. Holman went down ahead of me.

Q Anybody else? A Three or four were there when I got down.

1473 Q Where did you find these two pieces purporting to be pieces

of firearms that you have produced? A I found those on the station against the east wall.

Q Were they fastened to the station? A No sir/

Q Who handed you thesecotherpieces that you speak of? A Mr. Holman handed me one and somebody else the other.

Q Can you pick out the piece that Mr. Holman handed you?

A The long piece.

Q This one (holding up the exhibit)? A Yes.

MR. BORAH: Mr. Reporter, can you fix this so we can identify them?

THE COURT: You better put a tag on them, Mr. Borah.

Q Exhibit "T" handed to the witness; you may state now-- exhibit "T" for identification-- if that consists of the material which you found yourself at the time you went down in the shaft? A Yes sir.

Q Where did you find it? A Found it against the east wall and probably eight or ten feet back from the shaft.

Q On whatlevel? A The 600 feet--- the 6th level.

Q And how near the scene of the explosion, or was it at the scene of the explosion? A It was right at the scene of the explosion.

Q How near the bodies of the two parties who were killed?

A These were found within six or eight feet of where McCormack's body lay.

1474 MR. BORAH: We offer this in evidence.

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant and not sufficiently identified and having no connection with this defendant, and having no tendency to show that he is guilty of the killing of Governor Steunenberg.

THE COURT: I will overrule the objection.

MR. RICHARDSON: Note our exception.

Q Exhibit "S" handed to the witness; where did you get that?

A That was handed me by Mr. Holman.

Q Where was he when he handed it to you? A On the station.

Q At this same time that you found the other material? A That same time and same place.

Q On what level? A The 600 foot.

Q And how near the bodies of these parties? A Within six or eight feet.

Q Did you see him pick it up? A I didnot.

Q It was handed to you at that time? A Yes sir.

Q Is Mr. Holman in town? A Yes sir.

Q You may state if you know where these pieces of metal came from? A They was handed to me at the same time and as a place, I don't recollect by who though.

MR. BORAH: We ask to have this marked as an exhibit.

The article was marked exhibit "W" for identification.

Q How soon did you get possession of exhibit W after you arrived at the sixth level? A Very shortly after I got down there.

Q Was it while you were still up on the ground making this investigation? A Yes sir.

Q You may state if you know where this piece of wire came from?

A I took that off of the safety bar that crosses the shaft; that was wrapped around the end of the bar.

Q I wish you would describe this safety bar and what serviceit has and where it is situated? A The safety bar is as a rule-- they vary in sizes from--

MR. RICHARDSON: Why not describe this safety bar, that is what he asks you.

THE WITNESS: I will. This safety bar was probably three inches in thickness and four and a half inches in width, or five inches; it lets down over oneside of the shaft to prevent crossing--

Q A person leaving the cage, would they have to raise this bar? A You could duck down and go under it as you would to go under that table, but ordinarily they raise the bar up.

Q Where did you find this? A It was wrapped around one end of the bar.

Q And you have had it in your possession since, have you?

A Yes sir.

MR. BORAH: You may mark this also, if you please.

The article was marked exhibit "V".

MR. BORAH: We offer in evidence exhibit V.

MR. RICHARDSON: We object to exhibit V as incompetent,

immaterial and irrelevant, not connected with this defendant in any way nor tending to show that he killed Governor Steunenberg.

THE COURT: It may be admittedin evidence. The objection is overruled.

MR. RICHARDSON: Note our exception.

MR. BORAH: We offer at this time exhibit "S" also.

MR. RICHARDSON: We object to exhibit "S" as not properly identified or connected with this defendant or with the killing of Governor Steunenberg, and as incompetent, immaterial and irrelevent.

THE COURT: I understand this was handed to him by another party who is here.

MR. BORAH: Yes, he is here and I will call him later.

THE COURT: I don't think it is necessary to pass upon that now, if the other witness is here.

MR. BORAH: Very well.

Q Who was the manager of this mine at thetime of the explosion?

A Mr. Campbell.

Q What is his first name? A Frank Campbell,-- I don't know what his initials are.

Q How was this mine being operated at that time, as a union or a non-union mine? A Non union labor.

MR. BORAH: You may cross examine.

CROSS EXAMINATION

BY MR. RICHARDSON.

Q You said you were a major of the militia in Colorado? A Yes sir.

Q When did you become major of the militia of Colorado?

A In March, 1902.

Q Were you occupying that position then, prior to August 10th 1903? A Yes sir.

Q Were you called into the field that year? A Yes sir, in 1903.

Q At what time? A September, 1903.

Q Septemberof 1903? A Yes sir.

Q Where wereyou living at that time? A At Victor.

Q Was Victor your home? A Yes sir.

Q How long had it been your home? A At that time seven or eight years.

Q Was there a company of militia at Victor prior to the time they were called into the field? A Not at that time, no sir.

Q But you were a major in the Colorado National Guard although there was no local troop at your home? A That is right, yes sir.

Q And when the militia was called into the field you were called in as major and acted in that capacity? A Yes sir.

Q So you were a major of militia in the field at the time you examined this Vindicator explosion? A Yes sir.

Q Where was your camp with reference to the Vindicator shaft?

A Probably a mile from there.

Q Was there a camp of militia anywhere near the shaft?

A There was a detail of men at Hull City, probably 500 feet from the shaft.

Q What did that detail consist of? A A sergeant and twenty men, I think.

Q Who was the sergeant? A His name was Cooper.

Q What were they detailed to Hull City for? A They were guarding the Hull City property.

Q Do you recall who any of the men were in that detail? A No sir, I don't.

Q Now, the Hull City property is at the present time a part of the Vindicator property? A Yes sir.

Q At that time it was a separate property and adjoined the Vindicator, didn't it? The two properties lay side by side.

A The shaft houses are about 500 feet apart.

Q Those two properties are the two principal properties in that vicinity, and were at that time,-- isn't that right?

A Two of the principal ones there, yes.

Q Did you detail these men to guard that property? A No sir.

Q They were detailed for that purpose? A Yes sir.

1479 Q And they were there and on guard as much for the Vindicator

property as well as the Hull City property? A No sir.

Q There was no trouble on the Vindicator property? A No trouble there.

Q Was there any trouble about the Vindicator people at that time paying their assessment to the Mine Owners Association? Do you know anything about that? A No sir, not to my knowledge.

Q Do you know about four soldiers being detailed to go out and shoot up the Vindicator shaft house, and return to camp as quickly as possible? A No sir, I don't. I seen a statement in the paper regarding something of that kind.

Q You did not know anything about that? A No sir.

Q Well, were the Vindicator people in arrears in their assessment to the Mine Owners Association? A Not that I know of.

Q You are assistant secretary of the Mine Owners Association?

A Yes sir.

Q And the owners of the properties all contribute to the mine owners association there in order to keep up their association?

A Yes sir.

Q According to the output of the various mines? A Yes sir.

Q And they did at that time, did they not? A I don't know, I was not connected with the Mine Owners Association at that time.

Q There was a mine owners association there? A I don't know, I was not connected with the association at that time.

Q And the Vindicator was connected with them at that time?

A Yes sir.

Q And A. E. Carlton was President of the Mine Owners Association at that time? A No, Mr. Colburn.

Q What office did Carlton hold? A He was a member of the executive committee, I think.

Q Who were the other officers of the association at that time?

A Mr. Hamlin was the secretary, Mr. Bainbridge, I believe, was a member.

Q Who was your secretary? A Mr. Hamlin.

Q And who was his successor in office? A Mr. Bainbridge.

Q Was Floyd Thompson an officer of the organization at that time?

A He succeeded Mr. Bainbridge.

Q Was he connected with the organization in an inferior capacity at that time? A Not to my knowledge.

Q When this explosion occurred you went down there to look at it as you have stated? A Yes sir.

Q After looking at it did you engage in any deportation of the members of the union? A No sir.

Q You have an intense animosity, have you not, Mr. Naylor, against the members of the miners union? A No sir, I have not.

Q Haven't you had during your experience down there as Major?

A No sir, I would not say so.

1481 Q You know Tom McClelland? A Yes sir.

Q And you and he were brother majors there? A Yes sir.

Q And close associates and friends? A No, I could not say that.

Q Isn't that true? A No sir.

Q Were you with McClelland when he said, "To hell with the Constitution"? A No sir.

Q Were you with General Bell when he said, "To hell with the Constitutions, we will give them post mortems?" A I was not.

Q You were not with him when he said"to hell with the constitution, we will give them post mortems instead"? A I was not.

Q You have heard of that? A Yes sir.

Q You were actively engaged in deporting members of the union?

A I was not, and never have been.

Q Did you go with the troops that deported the members of the miners union? A No sir, I did not.

Q And never had anything to do with those deportations? A I made a great number of arrests, but I did not go out on any train.

Q Were you with the troop when the arrests were made at Dunville? A No sir, I was not.

Q You did not go over on that trip? A No sir.

Q How many men did you arrest there who were afterwards deported?

A Oh, quite a number, I could not say.

Q A large number? A Quite a number.

Q Did you visit trains to keep deportees from coming back?

A No sir, I did not.

Q Did you arrest men of family? A There was men of family arrested.

Q Men who owned their own homes? A I don't know as to that, whether they did or not.

Q Men living with their families there in Cripple Creek?

A Yes sir.

Q And you wentinto their houses and searched their houses and arrested them? A No sir, I don't know of anybody's house being searched at that time; there may have been one or two.

Q Well, at any time? I want to know the general condition of affairs there at that time? A When we started out to arrest a man we generally brought him in.

Q And when you started to search a house you searched it?

A I don't know of anybody's house that was searched.

Q You knew of an order that everybody should come in and surrender their firearms? A Yes sir.

Q And you instantly made a search for firearms? A There were a few houses searched on Bull Hill.

Q And they were all members of the miner's union whose houses were searched? A I don't know as to that. They searched several blocks up there.

 Q Did you issue orders and see that they were carried into

effect, that no member of a miner's union could live in that district? A No sir.

Q Did you help carry any such orders into effect? A No, I did not.

Q You know, don't you, that every man who was member of the union was deported unless he would renounce the union and take out a card of the Mine Owners Association of which you are now the Secretary? A I don't know that all of them were.

Q Most of them? A Some of them.

Q A large number? A Yes.

Q Some who had lived in the district as long as you have?

A Some of them, yes sir.

Q And men who did not want to go out of the district but wanted to remain there? A I don't know what their feelings were in regard to that.

Q You helped carry out the orders that such men must either become a member of the Mine Owners Association and go to work or be deported from the district? A I never heard any such orders.

Q You helped carry out that sort of a program, didn't you?

A If you want to put it that way, I may have done so; I made arrests and investigations.

Q And you were working at that time not only as Major of the militia but for the Mine Owners Association? A No sir, not at that time, no.

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Q Were you made Marshal of Victor when Michael O'Connors was deposed? A Yes sir.

Q He was thrown out of office because he was thought to be friendly to the miners? A I don't know about that.

Q He was made to resign, wasn't he? A He was suspended.

Q By order of the Mine Owners Association? A I don't know about that.

Q With a statement that he would be suspended by the neck if he was not suspended the otherway? A I did not hear that statement.

Q And then you became his successor? A Yes sir.

Q And you were appointed on account of your well known hatred and animosity toward the members of the Miners Union?

A I don't think so.

Q You was appointed because it was known that you would carry out the policy which was wanted by the members of the Mine Owners association? A I don't think so.

Q You did carry out that policy? A I did not get my orders from the Mine Owners Association.

Q You do know A. M. Carlton? A Yes sir.

Q Do you know Kid Waters? A Yes sir.

Q Did he work for you? A He worked with me.

Q He was commonly known as a gun man, wasn't he?

MR. BORAH: We object to this as not proper cross examination. It is permissible, possibly, for showing any feeling that this witness might have but I did not go into

this matter at all. We simply identified a certain transaction. Anything they want to ask as to his individual animosity would be proper.

THE COURT: The court intends to give a wide latitude. What is this last question?

The last question was then read.

MR. RICHARDSON: Kid Waters worked for him.

THE COURT: The court will sustain the objection to this question.

MR. RICHARDSON: Note our exception.

Q Do you know Jim Warford? A Yes sir.

Q Did he work for you? A Yes sir.

Q What became of Kid Waters? A He died.

Q Where? A At Pueblo.

Q Do you know whereof what of?

MR. BORAH: We object to that.

MR. RICHARDSON: We want to know all the relations with theeamen.

THE COURT: What is the purpose of the question?

MR. RICHARDSON: To find out the general condition of mind that this man had toward the members of the Western Federation and the unions, of all the relations which existed between him and Kid Waters, and I want to show who he was and all about him and that whatever Kid Waters did was done by this man.

THE COURT: He may answer the question.

A He died of dropsy, as I understood.

Q Do you know Jim Warford? A Yes sir.

Q Where is he? A He is in Colorado, in the penitentiary.

Q In the penitentiary serving a life sentence?

MR. BORAH: We object to that as not the best evidence and not proper cross examination, and immaterial.

THE COURT: The court will sustain the objection.

MR. RICHARDSON: Note our exception.

Q Do you know Harry Guyton? A Yes sir.

Q How long have you known him? A Three or four years.

Q Was he working for you? A He served under me on the police force.

Q Was that right afteryou were appointed to fill the place of Michael O'Connors? A No, he went on about a year after.

Q Did you appoint him because he was a professional gun man?

A I did not appoint anybody; I had no appointing power.

Q But these men were under you on the force? A Yes sir.

Q Was he appointed for that reason?

MR. BORAH: We object to that as a question which this witness cannot go; he did not have the appointing power.

THE COURT: You can show that. Let him answer.

A I don't know why he was appointed.

Q Did you recommend his appointment? A No sir.

Q Did you know he had come into that country because he was a professional strike breaker? A No sir.

Q You knew that he had been up in the northwestern country here, in Washington or British Columbia where there was a strike on?

MR. BOPAH: We object to that as hearsay and not competent evidence.

THE COURT: Answer the question.

A Yes sir, I learned afterwards that he had been up north in different places.

Q And you knew that that was the reason he was brought down there, didn't you? A I don't know that, no sir.

Q He came from Northport, Washington, didn't he? A He came from Leadville, I think, to Victor.

Q And he came from Northport, Washington, to Leadville?

A I don't know as to that.

Q You knew, didn't you, that he was a travelling employe of the Mine Owners Association for the purpose of going where there was any trouble? A No sir.

Q Any labor trouble, and he made that his business? A No sir, I did not know of it.

Q Do you know Jack Bowman? A Yes sir.

Q What became of Jack? A He was killed by a train at Victor, I believe.

Q Where is Guyton? Still there? A Yes sir.

Q Still in office? A No sir.

Q How long since he held the office of constable there in Victor? A I think he went out on the 8th of January of this

year.

Q When was Jack Bowman killed? A In 1904.

Q Did he work under you? A Only when he was in the National Guard.

Q Did he work for the Mine Owners Association? A Not to my knowledge.

Q Were any of these men engaged in the deportation of the Western Federation of Miners? A Not that I know of.

Q Do you know Tom Hogan? A I don't know him.

Q Do you know Harry Orchard? A I don't know him.

Q You did not know him at that time? A No sir.

Q Never heard of him at that time? A Yes, I heard of Orchard at that time,-- some time along in June.

Q But you did not know him or see him? A Not as far as I now know.

Q Did you know Tom Brown? A Yes sir.

Q Did you work with him? A I never worked with him.

Q You never did? A No sir.

Q Do you know who he is? A Yes, I know him.

Q You remember of the event where Miller and Lebo lost their lives? A Yes sir.

Q That was in the control of an election? A It came off the day of election.

Q You know that this man Tom Brown was one of those men who were engaged in that matter, don't you?

MR. BORAH: We object to that as not proper cross examination.

THE COURT: The objection is sustained.

MR. RICHARDSON: Note our exception.

Q Now, were those men whom I have mentioned, Kid Waters, Jack Bowman, Jim Warford, Harry Orchard, Tom Brown and yourself, and Nelon Franklin, A. E. Carlton, Frank M. Reardon and A. T. Holman, Harry Moore, and Tom McClelland, or any of you present at a meeting which was held in Victor on the evening of the 4th day of June of 1904? A I was not present.

Q You was not present at any such meeting? A No sir.

Q Were you present at a meeting held at about that time?

A No sir.

Q Was there any agreement, any meeting or agreement or understanding between you and any of those men with regard to something that was going to happen? A No sir.

Q Was going to happen pretty shortly? A No sir.

Q As Major of the militia did you order your militia to be in readiness for instant action on Sunday evening June 5th, of 1904? A No sir.

Q Were there any other or different orders issued at that time, that were different from the regular orders that were issued at that time? A There were no militia at that time up there.

Q Did you know about any such orders being issued? A No sir.

Q Don't you know that at that time every member of your company

was ordered to be in barracks at nine o'clock on the evening of June 5th, 1904, and to have their arms and ammunition ready for service? A No sir.

Q Because something was going to happen? A No sir, some of the men of that company was blown up at the Independence depot.

Q Where were you at that time? A At home.

Q What were you doing? A I was city marshal.

Q Living at home? A Yes sir.

Q And not connected with the militia at that time? A The military were not on duty at that time. I want to correct one error there: I was not city marshal at that time.

Q What were you doing at that time? A I was closing up the affairs of themilitia and disposing of what little stuff there was left there.

Q Had the local company been entirely dismissed at that time?

A Yes sir.

Q And had gone about their usual vocations? A Yes sir, I was the only man on duty at that time.

Q Was Tom McClellad there at the time? A Yes sir, practising law.

Q Was Harry Moore there at that time? A Yes sir.

Q Any other officers of the militia there at that time?

A None that I remember of.

Q The militia had just received orders to be disbanded, had it not? A It must have been forty days previous to that.

Q Thirty or forty days previous to that? A Yes sir.

Q And you officers had not had much to do in the meantime?

A We were closing up.

Q Were you anxious to get the militia back into Victor? A No sir.

Q None in the-- A We had no reason to have them there.

Q You had no reason to have them there? A No sir, everything was very quiet.

Q Do you know K. C. Sterling? A Yes sir.

Q He was a member of the Mine Owners Association? A I don't know that he was.

Q Do you know that he was an employe of the Mine Owners Association? A He was an employe.

Q He was the chief detective? A Yes sir.

Q And was the chief detective at that time of the Mine Owners Association? A I believe so.

Q And everything had gotten very quiet at that time? A Yes sir.

Q You could not find any excuse to rid yourselves of the Western Federation of Miners, did you? A I don't know that we were looking for any excuse.

Q Do you know D. C. Scott? A Yes sir.

Q Who was he working for? A Who was he working for?

Q Yes sir, was he not working for the Mine Owners Association?

A He was working for the F. & C. C. Railway Company.

Q He was a detective? A Yes sir.

Q Did you ever see him and Sterling together? A Yes.

Q Did you ever talk with them? A Occasionally.

Q Talked with them together, did you? A I don't think I ever did.

Q Don't think you did? A No sir.

Q How long a period of service were you engaged in as a member of the National Guard of Colorado in connection with the Cripple Creek strikes? A From September, 1903, until some time in June, 1904.

Q The strike was called the10th day of August, 1903, wasn't it? A Yes sir.

Q There was no trouble between that time and the time that you was called into the field, was there? A Yes, there was plenty around there at different times.

Q Give us an instance of any trouble? A Old man Stewart was taken out and beat up and shot.

Q Who was old man Stewart? A He was a non-union carpenter working on the Golden Cycle mine.

Q He was a justice of the peace? A No, he was a carpenter; it was Hawkins that was justiceof the peace.

Q With the exception of this assault upon old man Stewart, was there anything happened prior to the calling of the militia in there? A I don't know; I believe that Hawkins, the justice of the peace was taken out and beaten up; I don't

recollect them all,-- there were several instances.

Q Give us the instances? A I gave you a couple.

Q Now, isn't it true that from the 10th day of August, 1903, until the time in September when the militia was put in there, there were only those two assaults? A No, I remember of more assaults, but that was the most serious one.

Q Now, name any others? A Well, I remember a fellow getting a beating up down in the town on Second Street in Victor. There were several,-- that is, fist fights over this trouble.

Q But, you cannot name a single name except Mr. Stewart and I suggested to you the name of Mr. Hawkins, the justice of the peace,-- other than that you cannot mention any other name?

A No, I cannot recall any more at the present time.

Q Cripple Creek at that time contained perhaps 20,000 people?

A Something less than that I think.

Q And was a typical mining camp? A Yes.

Q With a large number of single men in it? A Yes.

Q And a large, immense number of saloons like most mining camps have-- a great number of saloons for the population?

A Yes sir, there were a large number of saloons in proportion to the population.

Q And a large population of females not of the best character?

A Quite a few of them there, yes.

Q And in a period of about six weeks after this strike was called, all of the disorder you can call attention to in that

district were two assaults with some other indefinite remembrance of a few minor assaults? A That is all I recall, yes.

Q And then the troops were put in there? A They were ordered out there, yes sir.

Q The troops were ordered out? A Yes.

Q Do you know anything about an agreement being entered into between the Mine Owners Association and the Governor of the State of Colorado to put these troops in there? A I don't know anything about it.

Q You found out pretty quick what you were put in there for?

A We were there to guard the property.

Q Weren't you in daily consultation with Holman and Carlton from the time you went in there? A No sir.

Q Didn't you get your orders, or directions or suggestions from these men? A Not to my knowledge.

Q You did not? A No sir.

Q And it was a long period of time afteryou got in there before there managed to be any serious trouble gotten up between the inhabitants and the Mine Owners Association and the guards, wasn't it? A You say it was a long time?

Q Yes. A It was some time.

Q The first thing that happened down there was the spike pulling case, wasn't it? A I don't know anything about that case; I heard it spoken of as the train wrecking case.

Q Wasn't that the first thing that happened in the shape of lawlessness? A That was one of the first occurrences.

Q You people had been in there for a month before that thing happened, hasn't you? A More than that, I think.

Q Well, that occurred some time along about the 18th of November, didn't it? A It was very cold weather. I don't recollect the date.

Q It was shortly before the Vindicator explosion— about one week? A Yes sir, about a week.

Q And you know that that occurred on November 21st? A Yes, I know when that occurred.

Q You people went in there in the latter part of September?

A The first part of September.

Q The first part of September? A Yes sir.

Q The 4th day of September, was it? A Yes sir, I think it was the 4th.

Q The 4th day? A Yes sir.

Q One month and one day after the strike had been called?

A It was the 10th day of August and we went in there in September.

Q. A little less than a month. There was nothing of a serious nature happened after you went in there until this matter occurred at the Vindicator on November 21st? A. That was the first serious proposition after we went in there, if I remember correctly.

Q. Do you know about the Vindicator shaft house being shot at by parties from the outside? A. No sir, I never heard of it.

Q. Your attention was never called to that fact? A. No sir.

Q. So of course you don't know when it was? A. No sir.

Q. Never read of it in the papers? A. I did, I told you that while ago.

Q. Well, when did you read about it? A. Well, some soldier made an affidavit, I forget who; I seen it in the Miners' Magazine; I think the affidavit was published; Chase or somebody made an affidavit.

Q. That was the first you ever heard of it? A. The first I ever heard of it, yes.

Q. You didn't then know that the Vindicator shaft house had been shot at? A. No sir, I did not.

Q. Or that the company was in arrears to the Mine Owners' Association? A. I didn't know that they were.

Q. Didn't know then and don't know it now? A. Don't know it now.

Q. Well, in any event your troops were there on the 4th day of September until about the 15th day of November before any event occurred that disturbed the peace and good order of that vicinity? A. Yes sir, that is correct.

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Q. Notwithstanding the fact that the strike was on and the non-

union miners were not working unless they repudiated the union and took a card from the Mine Owners' Association?

A. That is right.

Q. Were you there when the Victor Record was demolished?

A. No sir, I was not in town.

Q. Where were you at that time? A. Canon City.

Q. Don't know who demolished that of your own knowledge?

A. No sir, I do not of my own knowledge. I never heard.

Q. Never heard? A. No sir.

Q. You know that it was demolished, don't you? A. Why, I heard it, yes. I heard that it was.

Q. You know there was a paper published there called the Victor Record? A. Oh, yes.

Q. And it was a paper that you knew was friendly to the miners, wasn't it? A. Yes, it had been all the time.

Q. Published from that standpoint? A. Yes sir.

Q. And you know that one night it was demolished, don't you?

A. I understood it was, yes; I wasn't in town.

Q. You knew it was as a matter of fact, didn't you? A. Not of my own knowledge.

Q. Did you go out of town so as to be out of town while it was demolished? A. No sir, I did not.

Q. Didn't have any idea of that kind? A. No.

Q. You knew about the looting of the union stores, didn't you, at Victor and Goldfield and Cripple Creek and Anaconda?

A. Yes sir, I heard of it.

1498 Q. Did you take part in that? A. No sir, I did not.

Q. There were four stores there that belonged to the miners'

union?

MR. DORAN: We object, if he didn't know anything about it.

MR. RICHARDSON: He said he did know about it but he didn't take part in it.

Q. Where were you when those lootings occurred? A. Well, I think I was in Victor when the Goldfield store was looted, also when the Cripple Creek store was looted.

Q. Weren't you there when the Victor store was looted? A. They didn't do but very little to the Victor store, and that was on the 6th day of June. They broke up the show cases and one thing another; and I was in town, yes.

Q. Wasn't the Victor store looted twice? A. No sir, I don't think so.

Q. Well, in any event it was looted on June 6th, wasn't it?

A. Yes.

Q. How much did they do to the Victor store on June 6th?

A. They broke up the show cases, one or two show cases, and I suppose scattered some goods around there. They didn't do much damage though.

Q. Did they carry off any goods? A. Not to my knowledge.

Q. Were you standing outside? A. No sir.

Q. Did you see it done? A. No sir.

Q. Do you know who did it? A. No sir.

Q. Do you know that A. E. Carlton led the mob that demolished the store at Victor? A. No sir, I don't.

Q. Do you know that he led the mob that demolished the store at Cripple Creek? A. No sir, I wasn't there.

Q. Do you know that he had anything to do with the demolishing of the store at Independence? A. They didn't have a store at Independence.

Q. Do you know anything about the demolishing of the store at Altman? A. They didn't have a store at Altman.

Q. Do you know anything about a store at Goldfield? A. I know where it was, yes sir.

Q. Was that store demolished? A. I never seen it after the 6th day of June.

Q. Never saw it after it was demolished? A. No; if it was I don't know.

Q. You don't know of your own knowledge? A. No sir.

Q. You werein charge of the militia, weren't you, virtually?

A. Part of the time, yes.

Q. Well, whenever Adjutant General Bell was not there you was the head man, wasn't you? A. If Colonel ~~Verdickberg~~ Verdickberg was away I was in charge.

Q. Colonel Verdickberg kept going back and forth between Denver and the district, didn't he? A. Yes.

Q. And General Bell was attending ~~that~~ to the newspapers most of the time in Denver, wasn't he? A. I don't know whether he was engaged in the newspaper business or not; he has been recently. I don't know what he was doing at that time.

Q. You know at that time he was much the same man that he is now?

A. About the same.

Q. So that virtually Mr. Verdeckberg and you had charge of the militia? A. Yes sir.

1500 Q. Now wasn't the object and purpose -- the avowed object and

purpose of you people in there to keep order between all classes? A. Yes sir, between all classes.

Q. Why didn't you do it then when these stores were being looted and when this press was being demolished? A. You understand when these stores were demolished the troops were not there.

Q. They were not? A. Only one company.

Q. Wasn't they there at the time when these stores were looted?

A. The troops had all gone home long before that was done.

Q. Well, they were there when the deportations took place, weren't they? A. They got some troops in at that time.

Q. Without any trial of any kind whatsoever they were deported, weren't they? A. They were all given a hearing all right.

Q. What were they given a hearing before, who did they have a hearing before? A. Before a commission appointed by the governor of the state.

Q. They didn't have any hearing before any court? A. No sir.

Q. And their trials took place in bunches? A. No sir.

Q. You would have a deportation of a train load of people or a car load of people about every day, wouldn't you? A. We only had a couple of those, of one hundred and twenty men as I told you.

Q. The trials consisted of this proposition, whether or not they would repudiate the Western Federation of Miners and join the Mine Owners' organization and take out a card, that is all there was of the trial, wasn't it? A. I never heard any of them tried.

Q. Well, you really don't know then whether they had any trial or not of your own knowledge? A. They had a hearing.

Q. You are mighty certain they got deported, aren't you?

A. Some of them were sent out, yes.

Q. And hundreds of them were made to repudiate the Western Federation of Miners and made to go to work for the Mine Owners' Association with a mine owners' card in their pockets against their will and without their consent? A. No sir, not that I know of. If a man didn't want to go to work of his own free will they didn't allow him to go to work. They didn't try to make him go to work.

Q. If a man could be coerced into taking out card and going to work he could stay in the district, and if he couldn't he had to "git" didn't he? A. No, not exactly.

Q. Did you wear one of those buttons "They can't come back"?

A. I never wore one of those.

Q. You saw them, didn't you? A. Oh, yes, I saw them.

Q. Lots of people there did wear them, Major? A. Oh, yes, a good many.

Q. They also had a little song, didn't they, that they used to sing that wound up with "They can't come back"?

A. I never heard the song.

Q. Didn't learn it and didn't sing it? A. I didn't know the song, I never heard it.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q. Have you worn one of these buttons bearing the inscription "I am one of the undesirable citizens?" A. I haven't seen one of those yet.

Q. You say there was some of the troops on the depot that was blown up? A. Some of the members of the local company who were working I understand.

Q. Were there some of the members of the local company on the depot on the 6th of June at the time it was blown up, you say? A. Yes sir.

Q. Who were they? A. Rector was one. I don't recall the other names now. I can get them for you if you want them.

Q. Were there any of the local company of militia killed?

A. One of them, yes; one.

Q. Any of them injured? A. Yes.

Q. Aside from this man who was killed? A. Yes.

Q. How many in all, about? A. I have forgotten the number that were thereof the local company.

Q. That depot is what is called the Independence depot explosion?

A. Yes sir.

Q. That we have had some evidence about here? A. Yes sir.

Q. Now at the time that the stores were looted that have been spoken of were the troops on duty? A. We had one local company there that was on duty in Victor.

Q. Where was that company? A. It was at Victor.

Q. Were you personally present at any of these matters that you have been asked about in regard to these stores? A. No sir, I

was not personally present at any of them.

Q. Who was old man Stewart that you say was taken out and beaten up? A. He was a non-union carpenter; he was building a fence around the Golden Cycle mine at that time.

Q. Was that after the strike was called? A. Yes sir.

Q. What aged man was he? A. Oh, quite an old man, probably sixty-five, maybe older.

Q. When did that occur? A. That occurred some time between the 10th of August and the 4th of September anyway.

Q. It was along there? A. During that time.

Q. Was he shot? A. He was shot, yes.

Q. Kill him? A. No, he recovered.

Q. You said there were some houses searched on Bull Hill: When did that searching take place with reference to the time of the Independence depot explosion? A. Oh, some six or eight months previous to that time.

Q. Were there any troops surrounding the depot or near the depot the night of the explosion at the Independence depot?

A. There were no troops on duty at that time.

Q. Had they been disbanded? A. Yes sir.

Q. How long? A. Probably forty days.

Q. How long had they been disbanded at the time of the Vindicator explosion? A. The Vindicator mine?

Q. Yes. A. They were on duty during the explosion at the Vindicator mine.

Q. Where were they with reference to the Vindicator, if any of them were around there about that time? A. Well, the nearest troops to the Vindicator ~~mine~~ mine were stationed at the Bull City; that is probably five hundred yards from there.

Q. Were there any closer that you know of than those you have spoken of being at the points you have just named? A. There were none closer to my knowledge.

Q. Do you know anything about the explosion at the Independence depot, were you there shortly after it happened? A. I was there about four o'clock, I guess, or four thirty.

Q. What did you see there, if anything, after you arrived? State in detail what you saw. A. Well, when I arrived I seen the wreck of the depot and a few pieces of bodies laying around, and I saw the wire -- I saw a wire there running out along the railroad track below the depot along the sidewalk. The wire run down to the Demonico dump and it was attached to a chair leg, the round leg of a chair.

Q. How many persons were killed there at the depot explosion? If you know? A. Fourteen I think.

Q. How many injured? A. There were several more injured, quite a few more.

Q. Were those men that were killed union or non-union men?

A. Non-union men.

Q. Did you take possession of this wire and chair round?

A. No sir, it was in the possession of the deputy sheriff who was watching it.

Q. Do you know about the time that that explosion occurred?

A. The train was due there I believe about 2:35 or 2:40, something like that, in the morning.

Q. Had most of the bodies been removed by the time you got to the depot? A. Yes, the larger part of them had been picked up and were in the car.

Q. Did you make a search as to the cause of the explosion, make any investigation? A. Why, yes, I made an investigation. About everything was blown to pieces, though, you could see nothing.

Q. Did you find anything besides this wire and the chair leg that you speak of? A. That is all I found or seen.

Q. State how the wire was fastened around the chair round, if at all. A. It was just wrapped two or three times around the chair leg and then twisted there.

Q. Where did the wire from and to what point, or where did you find it? A. It run from about the west end of the depot down the sidewalk to the Delmonico dump, the cribbing there, right along the sidetrack. It run right along the top of this cripping.

Q. About what time in the year was it that the orders were gotten for the militia to disband or that it was disbanded? A. Some time in April I think.

Q. Of what year? A.1904.

Q. And the Independence depot explosion took place in June?

A. June the 6th, 1904, yes sir.

Q. You say, I believe, that you heard the name down there of Thomas Hogan some time in 1903 or 4? A. No, I said I heard Orchard.

Q. Orchard? A. Yes.

Q. In connection with what matter did you hear of him?

A. Well, I heard of him in connection with the explosion of the Independence depot.

1506

Q. Had you known him personally or did you know him personally?

A. I didn't know him personally, no sir.

Q. What was the date of the strike in that district?

A. The date that the strike was called?

Q. Yes. A. August the 10th, 1903.

MR. BORAH: You may examine.

RE-CROSS EXAMINATION

BY MR. RICHARDSON:

Q. The militia were in the field on the afternoon of June 6th, 1904, weren't they? A. Yes sir, you bet.

Q. And they were surrounding a little platform or wagon rather from which Clarence Hamlin, the secretary of the Mine Owners' Association, was addressing the people of Victor? A. The militia was surrounding the wagon you ask?

Q. Well, weren't they where Hamling was addressing the people?

A. No sir.

Q. How far away were they? A. They were not on duty at that time at all.

Q. Weren't they? A. Not until 2:30 that afternoon.

Q. When was Hamling addressing the people there? A. Sometime about two o'clock I should judge.

Q. Sometime about two o'clock? A. Yes.

Q. Were the militia in the hall, in their own hall at that time?

A. A few of them.

Q. Did they come out while Hamlin was addressing the people?

A. No sir.

Q. How soon after Hamlin was addressing the people did they come out? A. Well, after the shooting started and the riot started they were out in a very short time.

Q. Clarence Hamlin started that riot, didn't he? A. I don't think he did.

Q. Did you hear his speech? A. Yes sir.

Q. You were there present while he was talking, weren't you?

A. Yes sir.

Q. Was there any signal arranged or agreed upon when a riot should be started, to your knowledge? A. I never heard of any.

Q. You never heardof any. Well, Clarence Hamlin was urging the people there, was he not, to go and get all of the members of the Western Federation of Miners who were still in camp and hang them, in so many words? A. Well, now, I didn't hear anything of that kind.

Q. Did you hear anything like that? A. No sir.

Q. Did you hear him inciting the people to violence against the Western Federation of Miners? A. No sir, I did not.

Q. Did you hear him say anything about driving the people over the hills who belonged to the Western Federation of Miners?

A. No sir, I did not.

Q. Did you hear him say anything about visiting punishment upon anybody? A. No, I did not.

Q. It was a peaceable, quiet, orderly speech, was it? A. He hadn't talked over three minutes when the shooting started.

Q. It wasn't directed against the Western Federation of Miners, his talk? A. Not any part of that I heard.

Q. You didn't hear any such part if there was such a part? A. No.

Q. While he was speaking there was a shot fired under the wagon that he was talking from, wasn't there? A. Just out from the wagon, ten or twelve feet.

Q. Did you see the man who fired the shot? A. No, I did not.

Q. Did you know him? A. I don't know him. I said I didn't see him.

Q. Don't know what faction he belonged there in Cripple Creek?

A. I don't know.

Q. Whether to the Mine Owners' Association or the miners?

A. I don't know.

Q. And then the militia came out the moment that shot was fired, didn't they, or almost a moment after that? A. Oh, no.

Q. How long was it before they came out? A. Some little time.

Q. The first thing they did after they got out was to riddle the Miners' Union hall with bullets, wasn't it? A. No, that wasn't the first thing they did.

Q. What did they do first? A. Well, they got the crowds off the street, tried to restore order there.

Q. And then they ran toward Miners' Union hall, in that vicinity, and commenced an assault on it, didn't they? A. No.

Q. Wasn't there a great many shots fired at that Miners' Union hall that afternoon? A. Not very many.

Q. What do you call not many? A. Eighty or a hundred rounds.

Q. You don't call that very many? A. No.

Q. Rifle shots? A. Rifle shots.

Q. Rifles held by the militia? A. Some of them; some of them by the other side.

Q. And that was the place of bombardment? A. Yes sir.

Q. If you could call eighty or a hundred shots a bombardment by the militia? A. Yes sir. Well, both sides bombarded.

Q. Both sides bombarded the Miners' Union Hall? A. No, the fellows were bombarding from the Miners' Union Hall and we were bombarding them.

Q. You were in charge of the militia, were you, that very day of the bombardment? A. No.

Q. Well, you were shooting, when you say that, weren't you?

A. I didn't have a rifle.

Q. Then you wasn't in on the shooting except as you aided and encouraged it, is that the idea? A. That is the idea.

MR. RICHARDSON: That is all.

QUESTIONS BY MR. BORAH:

Q. What was the date of the looting of those stores that you speak of with reference to the explosion at the Independence depot? A. What ~~[illegible]~~ damage was done to the Victor store was done on that day.

Q. The same day of the explosion at the depot? A. Yes.

Q. I suppose there was a good deal of excitement there at that time? A. Yes.

Q. And what was the date of this bombardment you speak of down there? A. That occurred on the 6th day of June.

Q. The same day of the explosion at the Independence depot?

A. Yes sir.

MR. BORAH: That is all.

QUESTIONS BY MR. RICHARDSON:

Q. What was the date of the looting of the Cripple Creek store?

A. That was some time later.

Q. Troops were there then, weren't they? A. In Victor, yes, one

company in Victor.

Q. What did you let them loot the stores for at Cripple Creek if you were there to preserve order? A. I wasn't serving with the troops at that time. I was acting city marshal at Victor.

Q. Didn't have anything to do with the place where the looting occurred, and don't know what the reason was the troops let them do it? A. I don't know.

Q. What was the date the looting occurred at Goldfield or the Union store? A. I think that occurred on the 6th day of June or possibly on the 7th day of June.

MR. RICHARDSON: That is all.

MR. BORAH: These disturbances seem to have started then with the explosion at the Independence depot?

A. Yes sir.

MR. BORAH: That is all.

QUESTIONS BY MR. RICHARDSON:

Q. Weren't there deportations before the Independence depot explosion? A. At one time, yes.

Q. There was a deportation as early as the month of December, 1903, wasn't there? A. Yes sir.

Q. Wasn't there more than one deportation during that period?

A. Just the one.

Q. Wasn't it while the militia were in there weren't there a number of union men taken out and stripped naked and whipped and ordered out of the district? A. I never heard of it, no sir, I know there wasn't anything such as that done. All the men that were deported in December were not members of the Miners' union.

Q. They were not? A. They were not working men at all.

Q. Wasn't Mr. White deported, who was secretary of the union at that time? A. I never knew a man named White.

Q. Wasn't there a man named White connected with the union as an organizer at that time who was among the deportees in December?

A. Not to my knowledge.

Q. Do you mean to say that you got non-union men and secured them for deportation in December of 1903? A. We sent out some men at that time, I think five or six.

Q. What were you deporting non-union men for? A. These were not either non-union men or union men. They were hangers on around the joints down below, and one fellow named Sargeant and a man named Jones run a hop joint, and I forget what was the particular calling of the other three.

Q. But you do remember that they were not miners? A. They were not miners.

Q. Nor members of the union? A. I don't think so; not miners.

Q. And you did not deport any members of the union prior to June 6th, 1904? A. Not to my knowledge.

Q. If they were members of the union you simply didn't know it?

A. I didn't know it. If any one of these five or six was a member of the union I didn't know it.

Q. You didn't know anything about any man being flogged and ordered out of the district? A. I don't think any men were ever flogged and ordered out of the district. I didn't know of it.

Q. You never heard of anything of that kind? A. No.

1512

Q. Do you know Bill Amole? A. No.

Q. A-m-o-l-e, Bill? A. No.

Q. Do you know John Harper? A. Yes sir.

Q. Do you know Tom Parfet? A. Yes sir, when I see him.

Q. Who is John Harper? A. John Harper is a gentleman who was at one time president of the union there and also had charge of the union stores.

Q. Do you know Tom Parfet? A. I know him by sight in all.

Q. How did these men come to leave the district and under what circumstances, if they did leave? A. I don't know. Harper washack and forward there up to the time they closed their store.

Q. Wasn't Parfet whipped, beaten and ordered out of the district? And didn't he go out of the district? A. I didn't see it if he was.

Q. Do you a man named Hooten? A. I don't know him.

Q. Do you know anything about his being beaten up and ordered to leave the district? A. No sir.

Q. You don't know he was a union man, of course, if you didn't know him? A. I don't know him.

Q. Tom Parfet was a union man, wasn't he? A. If I have the right man in mind he was in charge of the Union store over at Cripple Creek.

Q. Now wasn't he beaten up and ordered out of the district?

A. I didn't see it.

Q. I don't say that you did see it, but don't you know that he was?

A. I don't know about it.

Q. Never heard of that? A. I never heard of it.

1513 Q. Weren't these men whose names I have mentioned beaten up and

ordered out of the district during the time the militia were in there prior to April, 1904? A. No sir.

Q. Who gave the authority for the deportation of these men in December that you know about? A. Colonel Verdeckberg.

Q. Where did he get the names of the men from? A. The what?

Q. Where did he get the names of the men from, who gave them to him? A. At that time we had taken charge of the city and were patrolling the city and these five fellows that were taken out were simply rounders that we picked up there.

Q. Well, General Verdeckberg was in command of the militia?

A. Yes sir.

Q. And these men were citizens of the United States? A. Yes sir.

Q. And General Verdeckberg ordered them rounded up and driven out of the district, deported. A. These particular five men were taken in during the patrol duty by the militia the same as would ordinarily be done by the police force.

Q. And without trial and without any warrent or anything of that kind you people deported them? A. Yes.

Q. What business did you say these men were engaged in that you deported, these five? A. Two of them were running a hop joint down on the Row and the others were hangers on around the Row.

Q. Did you have any idea that they were union or non-union or actin regard to that matter at all? A. I don't think they ever were.

QUESTIONS BY MR. BORAH:

Q. What do you mean by the "row", or "hangers on at the row"?

A. That is the Red Light district, what is called the Row.

Q. And they were of that class of men that were deported at that time?

MR. RICKMUSON: Let the witness testify to it.

MR. BORAH: This is cross examination of ~~this~~ his witness.

Q. What character of men were they with reference to being working men or non-working men or whether they were union or non-union?

A. Well, I don't know that they were union or non-union. All we knew was they were rounders that hung on there and didn't work, and we just sent them out -- "undesirable citizens".

MR. RICHARDSON: And you determined their undesirability

A. They certainly were undesirable.

Q. You didn't call on the law to determine whether they were undesirable or not, you just pronounced sentence on them and ordered them out? A. We were working under martial law at that time.

MR. RICHARDSON: That is all.

W. H. SCHULENBURG, 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. Schulenburg? A. Spokane, Washington.

Q. Where did you reside before residing at Spokane?

A. For a year in Wallace, Idaho.

Q. What were you doing there at that time? A. On the fire department, driving a hose wagon.

Q. Were you there in March, 1906? A. Yes sir.

Q. You may state whether or not you found what purported to be a bomb at that time or about that time? A. I found one in the river, yes sir.

Q. Do you remember the date that you found it? A. The 15th day of March, 1906.

Q. In what river did you find it? A. I don't know what it is called; it is a branch of the Coeur d'Alene, but I don't recollect the name of it.

Q. Where did you find it with reference to anybody's place of business or residence so as to identify the place more particularly?

MR. RICHARDSON: We object to that as immaterial, irrelevant, incompetent, neither sustaining nor tending to sustain any connection ~~with~~ of the defendant with this case.

THE COURT: The objection will be overruled.

MR. MUGANT: An exception.

THE COURT: An exception will be noted.

1516

A. It was in the rear of the fire station in the creek, in the

water -- frozen in the ice.

Q. Was there any place of business aside from the fire station near that you could identify the place also? A. Nothing only the city jail.

Q. How far was it from the city jail? A. It wasn't over twelve or fifteen feet.

Q. How far was it from the fire station? A. From the edge of the building it might have been about that far. There was a platform built out over the swamp like that there.

Q. How far was it from the platform? A. About four or five feet.

Q. What did you do with this bomb that you found? To whom did you finally deliver it, if anybody? A. I notified the sheriff about it and he took it away in a gunny sack.

Q. What sheriff? A. Deputy sheriff Hicks, under Sheriff Sutherland.

Q. Who was the sheriff? A. Sutherland at that time.

Q. Angus Sutherland? A. Yes sir.

Q. Was the bomb loaded at the time you found it? A. Yes sir.

Q. (Showing exhibit to witness) You may statewhether or not that is the casing of the bomb which you found at that time?

A. Yes sir.

Q. And you delivered it to the sheriff? A. I kept it at the fire station until he came and got it in a gunny sack.

THE COURT: What is the number of that exhibit?

MR. BORAH: That is Exhibit J.

Q. You think then Exhibit J is the casing of the bomb which you found? A. Yes sir.

Q. Did you see it unloaded and the powder taken out? A. No sir.

Q. When it left you then what was its condition with reference to having the powder in it? A. It was full and the top end had a little board in it, fastened in there pretty tight, and it wasn't cut open there (indicating on Exhibit J).

Q. Who cut that open? A. That is, this wasn't cut open here.

Q. Did you, in digging it out of the ice, strike the bomb?

A. Yes sir.

Q. What with? A. With a fire axe.

MR. BORAH: You may cross examine.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Was there ice under the bomb when you dug it out? A. Yes sir.

Q. You stated it was wedged in the ice? A. It was frozen through the ice, to the bottom of the ice, about ten inches of ice.

Q. Water on the under side of ten inches of ice? A. Yes sir.

Q. How did you see ~~Rubyscooker~~ it then? A. I chopped the ice away; this bomb sunk to the bottom of the river, bottom of the water.

Q. After you had chopped away the ice? A. Yes sir.

Q. It was hanging to the ice before you chopped it away?

A. Well, I didn't see it at all.

Q. The river pretty deep there? A. Only about ten or twelve inches of water.

Q. You were out chopping out the ice, were you, was the reason you found the bomb? A. Yes sir.

Q You wasn't out there looking for the bomb? A. No sir, anything like that.

1518

Q. And you wouldn't have struck into it if you had known it was

there? A. If I had known it was there I wouldn't have struck into it, no.

Q. At least if you had known what it was? A. No sir.

Q. And this bomb then was not on the bottom of the stream at the time that you first saw it? A. No sir.

Q. Don't know where it had come from, nor when, nor anything about that? A. I do not.

Q. You say you live in Spokane now? A. Yes sir.

Q. Who asked you to come down here? A. Sheriff Sutherland.

Q. Never saw Mr. Thiele or talked with him about this matter?

A. No sir.

Q. You came with Sheriff Sutherland, did you? A. I come alone.

Q. That is, you came at his request? A. Yes sir.

Q. He paid you for coming, did he? A. ~~Remember~~ No sir.

Q. Or gave you a ticket? A. No sir.

Q. You came down on your own expense, did you? A. I paid my own way here, yes.

Q. But you had some arrangement with somebody of course to take care of your witness fees and your mileage, and so forth?

A. No sir.

Q. Did not? A. Not until I come into the court room and found out where I was going to get some money.

Q. You came here voluntarily? A. Yes sir.

Q. You have got some money for coming, of course? A. I have got my mileage.

Q. Who did you get that from? A. Why, I got it -- the check was ~~make~~ cashed, the draft was cashed by Mr. Hawley.

1519 Q. Where did you get the check from, or whatever it was, draft?

A. I got it from Mr. Van Duyn and then I come up here to the court house and got a draft for it there, an order.

Q. You didn't go to see Mr. McPerland about it? A. No sir, I don't know him.

Q. Haven't seen him since nor talked with him about this case?

A. No sir, I don't know him at all.

Q. Nor Mr. Thiele? A. No sir.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q. Had you been out to the place in the river where this bomb was found at any time shortly prior to this? A. Just a very few minutes before I went out there to shovel some dirt off of the ice, refuse from the station.

Q. Prior to the time in which you found this bomb had you been in the habit of going there from day to day? A. No sir.

Q. How long before this had you been there, do you think?

A. Before I dug that up?

Q. Yes, before that occasion how long had it been since you had been there prior to that time? A. I never was ever out there only just to the edge of that platform.

Q. Hadn't been cutting in the ice anyw here around there?

A. No sir.

MR. BORAH: That is all.

RE-CROSS EXAMINATION

BY MR. RICHARDSON:

Q. What time in the fall does the river there where you found this bomb commence to freeze, or did it commence in the fall of 1903?

A. 1906?

Q. I mean 1906. A. Why, it was froze over there four or five days that I noticed.

Q. Well, you dug this bomb out when? A. In the morning.

Q. What day? A. I couldn't just tell you the day, but I know it was between eight and nine o'clock in the morning.

Q. What month was it you dug it out? A. March 15th.

Q. March 15th of what year? A. 1906.

Q. Well, now, had the river been frozen over all winter?

A. No, it hadn't. It hadn't been very cold until that time in that year there.

Q. The river had been open until that time? A. It never did freeze over only just then.

Q. So if any bomb had been thrown into the water there it would have sunk to the bottom of the water at all times during that winter? A. Yes.

Q. And yet you found it wedged in the ice and above the bottom of the water? A. Yes.

Q. How deep is the river there usually? A. Well, it gets pretty deep at times and then again you can see the tailings, it gets so shallow the tailings keep moving back and forth.

Q. The depth of the water was about ten inches? A. At that time.

Q. Did you ever see any of the tailings you found down around there moving backward? A. They couldn't.

Q. If they moved they moved down the river, didn't they? A. Yes

sir.

Q. The river has quite a fall there? A. Not much, not any more than any other place.

Q. The current is very rapid? A. Yes.

Q. When you say the tailings move backwards and forwards, you mean they moved in one direction if they moved at all?

A. One side of the river to the other, that is the way the river moves there.

Q. The tendency always down stream? A. Yes sir, always down stream.

Q. About how deep did you say the river was where you found this?

A. Where I found that about ten inches, or twelve; might have been twelve inches.

MR. RICHARDSON: That is all.

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

DIRECT EXAMINATION

BY MR. BORAH:

Q. Your name is Angus Sutherland? A. Angus Sutherland.

Q. Are you an officer at this time of Shoshone county?

A. I am the deputy sheriff at present.

Q. What position did you occupy as an officer in that county in March, 1906? A. Sheriff of Shoshone county.

Q. And was such about the 15th of March of 1906? A. Yes sir.

Q. Did you at that time have your attention called to what purported to be a bomb that had been found, reported to have been found in the river? A. Yes sir.

Q. By whom was your attention called to it? A. Deputy sheriff Hicks brought the bomb to the office, to my office.

Q. What condition was the bomb in with reference to being loaded at the time that you got possession of it?

MR. RICHARDSON: We object to that, if your Honor please, as immaterial, irrelevant and incompetent, not connecting this defendant nor tending to connect him in any way with the charge of killing Governor Steunenberg.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

A. It was loaded.

Q. Did you unload it? A. Partially only.

Q. Did you open the bomb? A. Yes sir.

1529 MR. RICHARDSON: Why not let the witness tell what he did with it instead of suggesting to him?

Q. What did you find on the inside? A. Giant powder.

Q. What amount do you think? A. Oh, I should judge twenty-five pounds, between twenty and thirty.

Q. What did you do in the way of unloading it or taking out the giant powder? A. I took the top out in the first place, and removed some of the powder, discovered what it was, and afterwards Deputy Hicks unloaded the bomb.

Q. You say you took the top out: What did the top consist of?

A. A board.

Q. You may state more in detail how that board was fastened in at the top? A. The board was made the shape of the receptable and the edge crimped in, turned in on the board.

Q. The edge of the metal you mean? A. Yes sir; the edge of the metal, yes.

Q. You may statewhether or not Exhibit J shown the witness is the case of the bomb which you have been referring to in your evidence. A. That is the case.

Q. Who was present when the bomb was unloaded or partially unloaded. A.-J. L. Dun and his wife and Mr. Hicks.

Q. What did you do with this bomb finally or this case?

A. Well, I had it in my possession and I was ordered to take it to Denver.

Q. To whom did you take it in Denver? A. I took it to the Pinkerton office.

Q. And where did you take it from there? A. I took it back to Wallace from there.

Q. To whom did you show it, if anyone, in Denver aside from the Pinkertons?

MR. RICHARDSON: I cannot see the materiality of whom he showed it to, if your Honor please.

MR. BORAH: I will show it to you in a few moments if you will be patient.

MR. RICHARDSON: I should like to know it now, and I object to it as being immaterial.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

Q. Who did you see in Denver, if anyone, with reference to it?

A. Well, sir, the man's name has just escaped my memory, and I know it as well as I do my own.

MR. RICHARDSON: Why not suggest the name to him?

Q. Was it Mr. Roach? A. Mr. Roach, yes. Mr. Roach of Denver.

Q. Did you retain the bomb in your possession after you left Denver? A. Yes sir.

Q. Where did you take it from there? A. From Denver?

Q. Yes. A. I took it to Wallace.

Q. When did you deliver it here at Boise? A. On the 19th of May.

Q. Of this year? A. Yes sir.

Q. What did you do with the powder that you took out of it?

A. I gave it to a lessee and prospector.

MR. BORAH: That is all.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. At whose orders did you go to Denver? A. Mr. Hawley's.

MR. RICHARDSON: We want to move to strike out this

testimony, if your Honor please, before the cross examination, for the reasons already stated to similar testimony from other people, on those grounds.

THE COURT; The motion will be denied and an exception will be noted.

Q. Mr. Hawley ordered you to take it to Denver, did he?

A. Yes sir.

Q. And to the Pinkerton office? A. Yes sir.

Q. Who paid your expenses for taking it down there? A. I paid my own expenses at the time.

Q. And where did you get them fixed up afterwards -- did you get them fixed up? A. The State.

Q. The state paid you for it? A. Mr. Hawley, I presume, yes.

Q. You presume; don't you know? A. Mr. Hawley.

Q. You went right to Pinkerton headquarters with it, did you?

A. Yes sir.

Q. What did you go to Pinkerton headquarters for? A. I was told to go there.

Q. Who told you to go there? A. Mr. Hawley.

Q. Give you any reason why you should go there? A. I don't remember that he did.

Q. You went right to Pinkerton headquarters and who did you see there? A. I met Mr. Roach.

Q. At Pinkerton headquarters? A. Yes sir.

Q. They had sent out and gotten him in there, had they, while you were there? A. Yes sir.

Q. That was the only place you saw Mr. Roach? A. That was the only place that I saw him.

Q. Now you say Hicks unloaded this bomb partially: Were you present when he unloaded it? A. No sir.

Q. You don't know that then of your own knowledge that he unloaded it? A. I partially unloaded the bomb myself.

Q. How much of it did you unload? A. Oh, probably three or four pounds or the like of that.

Q. Then you told Hicks to do it and went off and left him, did you?

A. Well, he took it away, he took it to another part of the building.

Q. He did? A. Yes sir.

Q. And when he brought it back it was unloaded, was it? A. Yes sir.

Q. Brought you back the case and didn't bring you back the powder, is that right? A. No, he didn't bring back the powder.

Q. You didn't see Hicks unload it? A. No sir.

Q. Where is Hicks now? A. He is at Rathdrum.

Q. What is he doing there? A. He is in jail.

Q. What for? A. For killing a man.

Q. Hicks was your deputy at that time, you say? A. He was my jailer.

Q. Well, he held the office of ~~deputy sheriff~~ deputy sheriff, didn't he? A. Yes sir.

MR. RICHARDSON: That is all.

MR. BORAH: Was there anything in this case aside from the powder which you have spoken of that you remember?

A. No sir, not that I remember of.

MR. BORAH: That is all.

ALFRED J.DUNN, 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. Dunn? A. Wallace, Idaho.

Q. Were you present, Mr. Dunn, at the time of the unloading of what purported to be a bomb by Mr. Sheriff Sutherland?

A. Yes sir.

Q. You may describe what you saw, what material was taken out of the bomb, and all you know about it. A. It was in the back yard of the county jail at Wallace. I had gone in there to see this bomb again in company with my wife, and Mr. Hicks, the jailer, and another man were in the act then of removing the giant powder from this bomb.

Q. Did you make an estimate in your mind as to about the amount of giant powder which was in it? A. Yes, I had seen it before, and from my former observation and what I saw then I was able to judge.

Q. Abouthow much? A. I judge it would be about thirty pounds.

Q. Did you see the bomb before the powder was taken out at all?

A. Yes sir.

Q. How was it fixed with reference to the top? A. There was a board fitted in very snugly, very tightly in the top of it.

Q. About what time was it that this unloading of the bomb took place? A. I think it was about between four and five o'clock of the afternoon of the day it was found.

1528 Q. Do you remember the date that it was found? A. It was on March 15th, 1906.

Q. Was there anything taken out of the bomb that you recall except the giant powder? A. Nothing.

MR. BORAH: That is all.

MR. RICHARDSON: I want to make the regular motion to strike this out.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note an exception.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. How do you know it was on March 15th, 1906, it was found?

A. Well, I had occasion to make a note of the finding of the bomb in my paper there and I looked at the files of the paper which I am engaged in publishing.

Q. You were asked when the bomb was found and you said on March 15th. A. Yes.

Q. All you know about it is what somebody told you about it, wasn't it? A. No sir.

Q. Were you there when it was found? A. No sir.

Q. You didn't see it when it was found? A. Not immediately when it was found.

Q. The first time that you ever saw it was in the office where Mr. Hicks was taking the powder out of it? A. No sir.

Q. Where did you see it first? A. I saw it in the county building about fifteen minutes after it was found.

Q. You didn't consider that it was found in the county building?

A. No sir.

Q. You were told it was found somewhere else, weren't you?

1529 A. Yes sir.

Q. Q. Then all you know about the finding of it is what you were told, isn't it? A. Yes sir, so far as that part goes.

Q. You don't know where it was found? A. Only what I was told.

Q. Nor when it was found except what you were told? A. No.

Q. Well, of course in testifying you are testifying to what you know and not about what you have been told, aren't you?

A. Certainly.

Q. Then you know from hearsay only that it was found about fifteen minutesbefore you saw it? A. Yes sir.

Q. How did you come to come down here to testify? A. I was subpoenaed.

Q. By whom? A. By the deputy sheriff at Wallace, Mr. McCabe.

Q. When? A. I don't recall the exact day. I know I was subpoenaed to appear here upon the 19th of last month.

Q. Have you consulted any Pinkertons about coming here? A. No sir.

Q. Or seen any of them? A. Not for the purpose of a consultation.

Q. Not to know them as Pinkertons? A. I knew a good many of the Pinkertons, yes.

Q. Just associated with them socially? A. Yes.

Q. Haven't had any business relations with them? A. None whatever.

Q. Nor did you come here at their suggestion or request?

A. No sir.

Q. You know McFarland, I suppose? A. Yes sir.

Q. Talked with him several times since you have been here?

A. Not on the subject of my testimony.

Q. Have you talked with him? A. Yes sir.

1530 Q. Been around with him a good deal during the time you have

Q. Was McParland entertained by you socially when he was in Wallace? A. No sir.

Q. He was up there for a month or so recently, wasn't he?

A. Yes sir.

Q. And been up there two or three times before, hadn't he?

A. I don't recall his having been there only the one time.

Q. You saw him there at that time, did you? A. Yes sir.

Q. Frequently? A. Oh, I saw him, yes, frequently.

Q. Consulted with him? A. No sir.

Q. What paper is it you run at Wallace? A. The Press.

Q. The Idaho Press? A. Yes sir.

Q. And you say you was connected with the postoffice there?

A. Yes sir, I am postmaster.

Q. Any other office that you hold? A. No.

MR. RICHARDSON: That is all.

MR. BORAH: At the time that Mr. McParland was up there -- that was when he was up there as a witness in the Steve Adams case?

A. Yes sir.

MR. BORAH: That is all.

QUESTIONS BY MR. RICHARDSON:

Q. Wasn't McParland up there before he was a witness in the Steve Adams case? A. I heard that he was. I didn't see him.

Q. He was up there at the time of the Steve Adams preliminary, wasn't he? A. I understood he was.

Q. Were you there at that time? A. Yes sir.

Q. But you didn't see him? A. I didn't see him.

1531

Q. You were running a paper at that time and reporting that case, weren't you, the preliminary? A. No, I was not per-

sonally.

Q. Your paper was? A. Yes, the paper was.

Q. You know what was in your paper? A. Yes, I understood he was there.

Q. You read your own paper, don't you? A. Yes sir.

MR. RICHARDSON: That is all.

CHARLES T. ROACH, a witness on behalf of the People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BORAH:

Q. What is your name? A. Charles T. Roach.

Q. Where do you reside, Mr. Roach? A. Glenwood Springs, Colorado.

Q. What is your business? A. I am a plumber and tinner.

Q. Where were you residing in April and May, 1904?

A. In Denver, Colorado.

Q. And in April and May, 1905? A. In Denver, Colorado.

Q. What were you doing there at that time in 1905? A. I was in the plumbing business.

Q. Where was your place of business? A. 1905?

Q. Yes. A. 1661 Court Place.

Q. Denver, Colorado? A. Yes sir.

Q. Do you know Harry Orchard? A. I do not.

Q. Or Thomas Hogan? A. No sir.

Q. Were you solicited by anyone to do a piece of work about that time, April or May, 1905 with reference to making a tin basket or box or something, or a metal box? A. Yes sir.

Q. Did you do the work for him? A. I done the work for him.

Q. Would you know the piece of work that was made at that time if you would see it? A. Yes sir.

Q. You may state whether or not an order was given to you about that time for a piece of work, referring to it as a bucket to use for plant purposes.

1533 MR. RICHARDSON: We object to this as immaterial, incompetent and irrelevant, not connecting nor tending to connect this defendant in any way with the killing of Governor

Steunenberg.

THE COURT: Objection overruled.

MR. RICHARDSON: Noteour exception.

Q. State the order that was given as near as you remember it.

A. In May, 1905, there was a man come into my shop and asked me to make him a vessel of a certain diameter, I think about nine inches in diameter and about twelve inches high, and I asked him what he wanted it for. He told me that he was going to put a cactus plant in it to grow up and flowers in it. I paid no more attention to it. I had a piece of sheet lead there in the shop that would just about answer the purpose and I went ahead and made it. He asked me how much it wouldbe and I told him it would be a dollar and a half, and that is about all there was to our conversation that I remember.

Q. Did you make the vessel yourself? A. I did.

Q. You may state whether or not you identify Exhibit J as the vessel which you made at the request? A. That is it.

Q. Would you be able to identify the party who gave this order?

A. I don't believe I could identify him.

Q. When did you first see this vessel which you made to identify it after the time it left your place of business, when was it brought to your attention, and by whom? A. I was then doing business at 1754 Walton Street and I was sent for by the Pinkerton detectives to come up there to their office, and I there met Mr. Sutherland and he had this lead casing in his satchel, and wanted to know if that was some of my work.

1534

Q. Was that the first time you had seen it after it left your place of business at the time you made it? A. Yes sir.

MR. BORAH: You may cross examine.

MR. RICHARDSON: I want the usual motion here.

THE COURT: The motion will be overruled.

MR. RICHARDSON: I take our exception.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. That is the whole history, so far as you know it, of this case or box or whatever you call it? A. Yes sir, that is about all there is to it.

Q. Now this man, whoever he was, who came in there, when you asked him what he wanted it for said he wanted it to put a cactus in: Did he say anything to you about boring holes in the side of it and having the cactus come out through the holes? A. I believe he did, yes sir.

Q. And that didn't attract your attention in any way and you were not asked to bore the holes? A. No sir.

Q. Just went on and made it and gave it to the man and he took it away and went away with it? A. Well, I wasn't there at the time it was delivered. I didn't give it to him.

Q. But you went on and made it? A. Yes sir.

Q. Did the Pinkertons come to see you about coming up here?

A. Yes sir.

Q. Or did you go to see them? A. I was sent for as I have stated here before.

1535

Q. That was the first time, was it, that you knew anything about

this thing, at the time you was sent for? A. Yes sir.

Q. You had seen the statement in the newspapers along about the time that Governor Steunenberg was assassinated here in Idaho to the effect that you had made a bomb case, hadn't you, you had seen something in the newspapers about it? A. Why, I believe I read something about the murder of Governor Steunenberg.

Q. Well, didn't you read something about your having made a bomb case for a man along about that time? A. I don't know as I did.

Q. Did you read what purported to be statements coming from a confession that was made by Harry Orchard along about that time? A. Yes.

Q. And your name was mentioned as being the plumber who had built a bomb case for him? A. Yes sir.

Q. You remember that, don't you? A. Yes sir.

Q. That was the first thing that your attention was called to with respect to this case that you had made, wasn't it?

A. That is right.

Q. That is before you went to the Pinkerton office? A. About that time.

Q. How did you come to come up here, Mr. Roach? A. I was subpoenaed.

Q. By whom? A. By this court.

Q. Yes, I know the subpoena read from this court, but you knew it had no force or effect in Glenwood Springs, didn't you? You knew that the subpoena had no force or effect on you in Glenwood Springs, you didn't have to come if you didn't want to?

A. No sir, I didn't know it.

Q. You didn't consult any lawyer there about it? A. No sir.

Q. Who served the subpoena on you? A. Mr. Carey.

Q. He is the sup erintendent locally of the Pinkerton forces in Colorado, isn't he? A. I believe he is.

Q. You know he was at the time he served the subpoena?

A. Yes sir.

Q. And you knew that a Pinkerton had no authority as much to serve a subpoena, didn't you? A. No sir, I did not.

Q. Did you come on account of that service or because Carey made arrangements for you to come and paid you for coming?

A. I came on account of the service.

Q. Did he give you some money to come on? A. Yes sir.

Q. And you have been paid some money since you got here?

A. No sir.

Q. How much have you gotten in all, Mr. Roach? A. I got $150.

Q. You have got some more coming, have you? A. I don't know, sir. I haven't asked.

Q. You hope so, I suppose? A. Yes sir.

MR. RICHARDSON: That is all.

MR. BORAH: That is all, Mr. Roach.

MISS CORA MAY PEABODY, a witness on behalf of the People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. NORRIS:

Q. What is your name, Miss Peabody? A. Cora May Peabody.

Q. Where do you reside, Miss Peabody? A. In Canon City, Colorado.

Q. Are you the daughter of ex-governor Peabody? A. I am.

Q. Where did you reside with your father at the time that he was governor of Colorado, in what part of Denver? A. 1128 Grant Avenue.

Q. Were you residing there in the winter of 1904 and the spring of 1905? A. I was.

Q. Do you remember, Miss Peabody, of an occasion when you were coming home from a theatre of seeing some parties near your carriage A. Yes.

Q. Where was this with reference to your residence? A. It was right on the sidewalk, the carriage step.

Q. Who was with you, that is, who was in your company, what parties constituted your party or company?

MR. RICHARDSON: I thought that last was a preliminary question and he was going to ask who the parties were. I want to object, if your Honor please, to any testimony with regard to this matter, because it is not relevant or competent or material ex upon any issue that is presented by this indictment, does not tend to connect the defendant William D. Haywood in any way with the killing of Governor Steunenberg.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

Q. Who constituted your party, who was with you? A. My mother, sister and I.

Q. Where had you been that night? A. Been to the theatre.

Q. Do you know about the time of night that you arrived at your home after the theatre? A. About eleven o'clock.

Q. How were you travelling, in what kind of a carriage? An open carriage? A. A closed carriage.

Q. Now you may state, Miss Peebody, just what happened at your home, what you saw and observed from the time of your arrival at your home.

MR. RICHARDSON: To that we object for the reasons heretofore stated in the last objection.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A. When the carriage stopped at our front door I was the first one to get out and as I did there was a man standing almost so close that I could have touched him when the carriage door opened, and another almost directly behind him when we stepped out and went to the front porch; by that time the men had walked rather slowly away, to the driveway, as we turned around we watched them from the front porch. The carriage had also turned around on Grant Avenue and was going back to 12th Avenue and the two men apparently peered into the carriage as it passed them. Then they hurriedly ran into 12th Avenue and were out of sight, and we went in the house and called a detective agency in Denver. They sent up a man almost immediately who stayed there --

MR. RICHARDSON: Now, if your Honor please, we object to that.

MR. BORAH: Yes, that is not proper.

Q. Could you see these parties so as to identify them, to tell who they were? A. No, I couldn't identify them.

Q. Was your father with you that night? A. No.

MR. BORAH: You may cross examine.

MR. RICHARDSON: I move to strike out all of the testimony of this witness as incompetent, immaterial and irrelevant, neither sustaining nor tending to sustain any connection of this defendant with the death of Governor Steunenberg.

THE COURT: When was this?

MR. BORAH: The spring of 1905, the time Mr. Orchard says Steve Adams --

THE COURT: What does this witness say about it?

MR. BORAH: Can you give about the time this was?

A. It was early in 1904.

MR. BORAH: 1904, yes, I was mistaken in the year.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Where had you been on that night, Miss Peabody? A. To the theatre.

Q. What play was it you had seen that night? A. I don't remember.

Q. Don't remember that? A. No sir.

Q. Where had you been, which theatre? A. I don't remember which theatre it was.

Q. One of the theatres in Denver? A. Yes.

Q. There are five or six theatres there, any one of which you might have gone to? A. I don't remember which one it was.

Q. It was in the heighth of the theatre season, was it?

A. Yes.

Q. So that all the theatres were running? A. Yes.

Q. Would you think it was January of 1904? A. I am not sure.

Q. But you are satisfied that it was in the early parto f the year 1904? A. Yes.

Q. You couldn't say whether it was January or February of that year? A. No.

Q. It was shortly after -- well, it was during the first part then of the second year of your father's term as governor?

A. Yes.

Q. You had lived in Denver just about a year at that time? A. Yes

Q. Haven't you any way, Miss Peabody, of fixing the time that this event occurred? A. No, I don't know just when it was.

Q. You had been made a colonel of the Colorado National Guard at that time? A. No.

Q. Was that before or after? A. I never was.

Q. Was that your sister? A. Yes.

Q. You are not "Colonel Peabody". Your mother, you say, and some other lady were with you? A. My mother and sister.

Q. Is that the Colonel, the one who was made a colonel of the Colorado National Guard? A. Yes.

1541 Q. Haven't you talked with them about this matter? A. Yes.

Q. Don't that refresh your recollection as to what play you saw? I want to fix the date if I can. A. No, I don't remember.

Q. And from your conversation with them you have not been able to fix the time in 1904? A. No, not definitely.

Q. Well, you have fixed it then as definitely as possible when you say that it was in the very early part of 1904?

A. Not in the very early part; it might have been in the spring.

Q. What would you say would be the latest time that you would fix a date as the one upon which this event occurred? Give us the two extremes as nearly as you can. A. Between the first of the year and when the theatres closed for the summer.

Q. That would be a period of four or five months or six months, wouldn't it, Miss Peabody? A. Yes.

Q. So that would get it back past the first of the year some time, wouldn't it? A. I said between the first of the year.

Q. Was there snow on the ground? A. I don't remember.

Q. Was the evening a cold evening? A. I don't remember that.

Q. Did you have on wraps? A. I don't remember.

Q. Don't remember how you were dressed? A. No.

Q. Don't know whether the evening was a cold one or a warm one?

A. No.

Q. You don't remember any event that occurred about that time which would help you to fix the date? A. No.

Q. No reason why you wouldn't fix that date for us if you ~~cannot~~, could, is there? A. No.

Q. You would be glad to do it if you could? A. Yes.

Q. You have thought about it a good deal, haven't you, since this testimony came out here? A. Yes, since I was asked to come.

Q. In fact, you and your family have known all the while about Mr. Orchard's confession, haven't you, to the extent that you were involved in it, for more than a year now? A. Through the papers.

Q. And you have known it from other sources, haven't you?

A. I don't know what other sources you mean.

Q. Talked with your pops about it, haven't you, frequently?

A. Yes.

Q. And have known for a year and a half that there was a man who said that at one time your father was in great danger of being killed by a dynamite bomb or being shot or something of that kind? A. Yes.

Q. And yet from all of that talk you have not been ble to fix this date any more closely than you now state? A. No.

Q. And no oth r member of your family has been ble to fix the day so far as you are aware? A. No.

Q. Was this a private carriage that you were riding in? A. No.

Q. Or was it one you had employed from down town, from a livery?

A. The livery.

Q. You don't know then who the driver was? A. No.

Q. Do you remember what livery you employed it from? A. Kuykendall's.

Q. Were you employing Kuykendall's livery very frequently along about that time or was this the only event that you used a carriage for? A. No, we always used that.

Q. Always used a carriage, so that wouldn't help in establishing the date? A. No.

 Q. You are certain as to the year, are you? A. Yes.

Q. How do you fix the year, Miss Peabody? A. From different trips that we have taken.

Q. What were those trips? A. Well, I remember when we came back from St. Louis, just before that.

Q. And when was it that you went to St. Louis? A. We made two trips there I don't remember just when they were.

Q. You refer to the time you went down there to the opening of the World's Fair? A. Yes.

Q. It was before that, was it? A. I don't remember whether it was before that. I don't remember.

Q. Was that the first trip you made to St. Louis when you went down there to open the World's Fair? A. Yes.

Q. When there was a banquet given at the Planters Hotel do you mean? A. Yes.

Q. Was it before that? A. I don't remember whether it was before or after.

Q. Then that trip down there don't help you in fixing the time?

A. Only as I wrote it in my diary.

Q. When did you make the second trip to St. Louis? A. I don't remember.

Q. You were keeping a diary, were you, at that time? A. A part of the time I was, part of the time I did when we came back.

Q. Now this event about your getting out of the carriage was quite an important event, wasn't it? A. Yes.

Q. So important that you went into the house very scared and called up the detectives' office: Don't you think you have got a note in your dairy about it? A. No, I have looked for it.

1544

Q. While it was an important event it was not one of the important

things you put down in the diary? A. No.

Q. Then your diary does not help you any to fix the date? A. No.

Q. But you do know it was in 1904? A. Yes.

Q. And somewhere between the first of January and the time when you went down to help open the World's Fair? A. Between that time and in May sometime, I don't remember just when it was.

Q. Well, was the World's Fair opened before May? A. I don't remember.

Q. ~~I don't remember~~ What is that? A. I don't remember.

Q. Well, your diary ought to help you out on that, hadn't it?

A. Yes.

Q. Because you remember that event from your diary? A. Yes.

Q. You looked in your diary: Now you went down there to be in the Governors' Parade, didn't you, which was on the day that the Fair was opened? A. No.

Q. Wasn't that the day that the Fair was opened? You heard Governor Francis make an address, didn't you? A. Yes.

Q. That was the day the fair was opened, wasn't it? A. Yes.

Q. You hadn't been to the Fair before that? A. No.

Q. That wasn't your business to the Fair to see the Fair, that occurred afterwards, didn't it? A. Yes.

Q. Along in the summer or fall of that year? A. Yes.

Q. Well, then it was before you went the first time to see the Fair -- to open the Fair? A. Yes.

Q. You don't know now when it was that the Fair was opened?

A. No.

MR. RICHARDSON: That is all.

MR. BORAH: That is all, Miss Peabody.

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

DIRECT EXAMINATION

BY MR. BORAH:

Q. What is your name? A. James H. Peabody.

Q. You are ex-governor of Colorado? A. Yes.

Q. Where do you reside, Governor? A. Canon City, Colorado.

Q. Where did you go to reside immediately after your term as governor expired? A. Canon City, Colorado.

Q. At what time in the year did you go down? A. About the first of April, 1905.

Q. Did you know Harry Orchard, or did you know him at that time, or Thomas Hogan? A. I knew a person who had been pointed out to me as that individual.

Q. You may state whether or not you saw Thomas Hogan or Harry Orchard in Canon City in the spring of 1905 after you removed back to Canon City? A. I did.

Q. Where did you see him, that is, what part of the country?

A. I saw him on the street of Canon.

Q. Canon City? A. Canon City.

Q. You may state whether or not you were engaged in the spring of 1905 in remodelling your house there? ~~[illegible]~~ A. I was.

Q. About what time? A. I commenced the repairs immediately after getting home.

Q. Did you have any personal acquaintance with Hogan or Orchard?

A. None whatever.

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MR. BORAH: You may cross examine.

MR. RICHARDSON: I move to strike out all of the testimony of this witness as immaterial, irrelevant, incompetent, neither sustaining nor tending to sustain any issue in this case nor to connect this defendant in any way with the death of Governor Steunenberg.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

We want a little consultation, if your Honor please, with respect to this witness. If your Honor will let it go until after the lunch hour.

We would like to say another thing, if your Honor please: From the manner in which this case is now proceeding, if the State would be pleased to give us any idea of about the time we will need our witnesses here -- we want to have them here and we want to have them here on time, but we do not want to get them here and keep them here in advance; and we have Sunday before us, which will give us an opportunity to order them here, if we know when they are wanted.

MR. HAWLEY: We will inform you this afternoon in regard to that.

MR. RICHARDSON: We would like to know before the four o'clock mail goes out.

MR. HAWLEY: We will let you know by the time court adjourns.

Thereupon the jury were cautioned by the court and retired in the custody of the sworn bailiffs.

The defendant was remanded to the custody of the sheriff and a recess was taken until 1:30 P. M.

Boise, Idaho, Saturday, June 15th, 1907.

1:30 o'clock P. M.

Parties met pursuant to adjournment.

The clerk called the names of the jurors and announced all present.

THE COURT: The witness will take the stand.

WITNESS JAMES H. PEABODY ON THE STAND.

MR. RICHARDSON: That is all, Governor.

MR. BORAH: That is all.

THE COURT: I will announce to counsel at this time that when the court takes its adjournment it will be until Tuesday morning at half past nine instead of Monday.

E. S. RAYMOND, a witness on behalf of the People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. MORAN:

Q. Where do you reside, Mr. Raymond? A. Denver, Colorado.

Q. What is your business? A. Special police officer of the city of Denver.

Q. How long have you been such? A. Well, I have held the position about nineteen years.

Q. Do you know Mr. Haywood? A. I do.

Q. Do you know Mr. George A. Pettibone? A. I do.

Q. Do you know or did you know Harry Orchard, Thomas Hogan sometimes called? A. Thomas Hogan was what I knew him by.

Q. How did you know him, as Hogan or Orchard? A. Hogan.

Q. Where were you performing duty as a police officer in the year 1905? A. On beats No. 7 and part of 22.

Q. Is that in the vicinity of the residence of Mr. Pettibone?

A. 22 is.

Q. Did you during the year 1905 at any time see Mr. Pettibone and Mr. Haywood and Mr. Hogan in company? A. Different times, yes sir.

Q. Whereabouts? A. Well, anywhere from down on 15th Streetup to between 13th and 12th on Evans.

Q. Did you see them more than once? A. Several times.

Q. What times in the day? A. Mostly in the evening when I saw them.

Q. During what time of this year was this principally that you saw them in 1905? A. Well, in the spring and fall.

MR. BORAH: You may cross examine, Mr. Richardson.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Mr. Raymond, you were a policeman on a beat at that time?

A. Yes sir, special officer.

Q. Well, your beats change around in Denver, do they?

A. No sir, mine don't. I am what is called part pay special officer and have a stationary territory.

Q. And you had the same territory all during the year 1905?

A. Yes sir, I have been there four years and a little over.

Q. When was the time that you saw these three men together?

A. Well, at different times I saw them.

Q. Well, when was that? A. I should judge it was anywhere between the spring and fall of 1905.

Q. Some time between the spring and fall of 1905? A. Yes sir.

Q. Can you give us the earliest time in the spring you saw them together? A. No, for this reason, I just simply saw them as I did any of the rest of the neighbors around there; I didn't pay any particular attention to them.

Q. There was nothing about it to attract your attention or to fix your memory upon it then as to the times which you saw them or the number of times that you saw them? A. No, not in regard to that. What amused me to pay any attention to them at all was the general talk of who they were and what they belonged to.

Q. Otherwise than that you paid no attention to them? A. No.

1550 Q. Now how many times in all do you think it was that you saw

them? A. Oh, it might have been a half a dozen and might have been two dozen.

Q. You would think that you saw them in all from 15th Street down to the place where Pettibone lives on Evans Street not less than a half a dozen times and not more than two dozen times? A. Well, I couldn't state the number of times, just as I happened to run onto them.

Q. Were they walking along the street together? A. Yes sir, some of the time.

Q. All three of them every time? A. Oh, no.

Q. How many times did you see all three of them together?

A. Well, I don't remember of more than two or three.

Q. Not more than two or three? A. No.

Q. Are you sure that you remember two or three times? A. Yes, I do.

Q. Where were those times? A. There was one time that I am pretty positive that Mr. Haywood went in with them into Mr. Pettibone's house?.

Q. What time was that? A. In the evening.

Q. What evening, what time of year? A. Well, it was during the time between the spring and fall.

Q. Haywood and Pettibone lived on the same street, didn't they?

A. Yes sir, opposite sides.

Q. On opposite sides of the street? A. Yes sir.

Q. And not more than half a block apart? A. No.

Q. They were both within the boundaries of the same two cross streets? A. 12th and 13th.

1551 Q. 12th and 13th Avenues? A. Yes sir.

Q. South Evans? A. No, Evans.

Q. Then you think you saw Mr. Haywood going over to Mr. Pettibone's house once? A. It might have been two or three times.

Q. Well, I know, it might have been ~~three~~ four hundred times if he went there four hundred times. But I want to know how many times it was according to your best recollection? A. Well, two or three times.

Q. Do you know whether Pettibone and Orchard were in the house at that time or not, or this man Hogan as you call him?

A. No.

Q. Well, you saw, then, Pettibone go into the house two or three times -- I mean Haywood? A. I saw Haywood go in and I think Mr. Pettibone met him at the door once as I happened to be opposite the doorway.

Q. You don't know whether Hogan was there upon these occasions or not? A. I knew he was in the neighborhood during the day time.

Q. Then you didn't see them together? A. I didn't see all three of them together that night.

Q. Where did you see all three of them together, that is what I want to know? A. Sitting out on the front ~~ex~~ steps of the house I think they were.

Q. Of what house? A. Mr. Pettibone's.

Q. When? A. One evening.

Q. What were they doing there on the front steps? A. They seemed to be visiting, talking.

Q. Did you hear what they were talking about? A. No sir. It is twenty feet into the ~~xxxxx~~ steps or more.

Q. You passed along and saw them sitting there talking with one another? A. The same as I did with the other neighbors.

Q. That was a customary thing along the street, was it, for neighbors to meet there together? A. Sitting out on the porches.

Q. You noticed particularly, did you, that all three of them were there at that time? A. Yes, I think I did.

Q. And yet you didn't have any reason whatsoever to remember Hogan at all, did you? A. Nothing only as I saw them together and from what I had heard.

Q. Nobody was mentioning Hogan's name in connection with their names at that time, was there? A. Oh, there was general talk in the neighborhood.

Q. There was general talk in the neighborhood, was there?

A. Yes sir.

Q. You were a policeman on the beat there? A. Yes sir.

Q. And walked up and down the beat nights? A. Yes sir.

Q. And stayed at home in the day time? A. Well, mostly; sometimes in the afternoon I would go down town.

Q. You are still connected with the police force of the city of Denver? A. Yes sir.

Q. Have you got any books that show any of these dates?

A. I didn't pay any attention to it, no sir.

Q. And really you didn't have your attention called to it until after Orchard had been arrested, did you, for the killing of Governor Steunenberg? A. It wasn't called to my attention then.

 Q. Didn't consider nor regard it as a matter of any importance at

all, did you? A. No.

Q. When did you first know you were going to be a witness?

A. About the 6th of the month.

Q. How did you happen to come here? A. Some gentleman, I don't know the name, called at my house.

Q. Mr. Carey or Mr. Prettyman, was it? A. No, neither one.

Q. Neither one of them? A. No.

Q. You know Carey, don't you? A. No, I don't know that I do.

Q. You know Prettyman, don't you? A. I do when I see him.

Q. How do you know it wasn't Carey that called at your house?

A. Because I have seen the gentleman since.

Q. Who was he? A. I don't know his name.

Q. What was his business? A. He stated he was an operator of the Pinkertons.

Q. Came to your house and served you with a subpoena, did he?

A. Well, no, he commenced to ask questions about certain things. I asked for information as to who wanted to know all of this before I would answer any of them. It isn't customary for me to talk about things of that kind unless I know who I am talking to.

Q. As quick as you found out then you were willing to talk to him? A. No sir, I was not. I told him I didn't know anything about the case that would amount to anything and I didn't want to have anything to do with it.

Q. You still think so, don't you? A. I don't think I know much about it.

MR. RICHARDSON: That is all.

MR. BORAH: That is all, Mr. Raymond.

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

DIRECT EXAMINATION

BY MR. BORAH:

Q. What is your name? A. -- W. J. Vaughn.

Q. Where do you reside, Mr. Vaughn? A. Minneapolis, Minnesota.

Q. What is your business? A. Railroad man.

Q. What capacity as a railroad man? A. Different capacities in the train service; conductor usually.

Q. What other positions? A. Well, the last year I have held a position as general yard master at Glendwood, Minnsota.

Q. What road are you with? A. It is known as the "Soo Line" for short.

Q. What is it known by, what is the name of it in a more extended way? A. The Minneapolis, St. Paul and Sault Ste. Marie railway.

Q. Where does it run from and to where? A. It runs from near Sault Ste. Marie, Michigan, to Portland, North Dakota; has many ~~[illegible]~~ tributary branches.

Q. How long have you been a railroad man in any capacity?

A. I have followed railroading all my life from the time I was able to hold a position as brakeman, I believe when I was sixteen years of age.

Q. Continuously? A. Yes sir, with just a few interruptions.

Q. Where were you in the year 1903? Were you in Colorado any place? A. Yes sir, I was in Colorado.

Q. Did you ever meet a man by the name of Dempsey? A. Yes sir.

1556 Q. Do you know what his first name was? A. No sir, I never heard.

Q. Where did you meet him? A. I met him at the Belmont Hotel, that is, I grew into his acquaintance there. I didn't ever meet him direct, that is, have a formal introduction to him.

Q. You became acquainted with him at the hotel? A. Yes sir.

Q. Were you stopping at the hotel? A. I was stopping at the Belmont on the European plan, yes sir.

Q. Where is the Belmont? A. It is on Stout Street in Denver about opposite the Albany I believe.

Q. When did you first meet Mr. Dempsey, about when? A. I went to this hotel in the fall of 1903 and I remember of meeting him there some time during the winter, seeing him there rather.

Q. When did you next come incontact with Dempsey after meeting him this time at the hotel? Where did you next see him after you left the hotel? A. Well, I always stopped at the hotel as a rule when I was in Denver, from that time on, whenever I was in Denver.

Q. Do you know who Dempsey was, what his real name was?

A. No sir.

Q. Have you seen him since you have been here? A. Yes sir.

Q. Under what name is he passing here? A. He is known here as Harry Orchard, I believe, in the trial.

Q. The same party then who is testifying here as Harry Orchard?

A. Yes sir, the same party.

Q. Did you see Orchard or Dempsey again in the year 1904?

A. Yes sir, the spring of 1904, in April, I met Mr. Dempsey as I knew him then.

Q. Where did you meet him at this time? A. I met him at the Belmont hotel.

Q. Did he continue to remain at the Belmont hotel for any length of time? A. Well, I couldn't say as to that because I went to the Belmont hotel in the first part of April and I saw him around there at different times and up until the time that he went out on the line to writeinsurance.

Q. About when did he go out on the line to write insurance, if you remember? A. I can't say what time it was other than it wasin the fore part of April.

Q. What year? A. 1905.

Q. Did you do any writing of insurance that spring? A. Yes sir.

Q. 1905? A. Yes sir.

Q. Did you ever see Mr. Orchard or Dempsey at Canon City?

A. Yes sir.

Q. What was his business there if you know? A. Well, he was writing life insurance for the Mutual life of New York.

Q. What was your business there? A. The same business.

Q. You may state whether or not you stopped at the same room that Mr. Orchard did while you were there in Canon City?

A. Yes sir, I roomed with him while I was in Canon City.

Q. Where did you room? A. I don't know the location as to the street and number, but it was about two blocks I think from the streetthat run east and west south of that.

Q. Do you know the name of the landlord or landlady? A. Not at that timeI didn't.

Q. Well, describe the landlord or landlady with reference to age, and so forth. A. Well, there was an old lady there with whom we roomed, a lady I should judge to be ~~about~~ about sixty years of age.

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Q. Have you since learned her name? A. Yes sir, I heard her

spoken of as Mrs. Adams, I believe.

Q. You didn't know that at the time? A. No sir.

Q. Whose room was this when you first went to occupy it?

A. Dempsey's room.

Q. Under what name was he passing at Canon City? A. Thomas Hogan.

Q. I will ask you to state if you had your attention drawn to anything which was in the possession of Mr. Orchard in his room.

MR. RICHARDSON: That calls for a yes or no.

MR. BORAH: Yes, answer it by yes or no.

A. I didn't quite catch the question -- I don't remember it, rather.

Q. Was your attention drawn to any peculiar transactions in the room with reference to the possessions of Mr. Orchard? A. Yes.

Q. I wish you would state what experience you had in his room, what you observed and what your conversation was with Orchard in regard to it.

MR. RICHARDSON: We object to that as immaterial, incompetent and irrelevant, as not connecting or tending to connect this defendant with the charge upon which he stands here indicted and as having nothing to do whatsoever with this case or this defendant.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A. Why, I heard a clock ticking in the room there and I referred to the clock ticking without being able to see it any place, and he jokingly referred to it as a matter of no consequence at the time. I forgot just what his language was at that time

referring to this clock other than it was his and in his grip.

Q. Did you make any investigations in regard to the grip?

A. Not at that time, no sir.

Q. Did you later? A. I did, yes sir.

Q. What did you do and what did you ascertain?

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

THE COURT: Objection overruled.

MR. RICHARDSON: Exception.

A. In moving stuff around the room I happened to move this ~~[illegible]~~ suit case and I noticed it was very heavy at the time.

Q. Did you make any further investigation of it other than observing its heft? A. No sir, no further investigation.

Q. Did you have any further conversation with Orchard in regard to it? A. Not at that particular time, no sir.

Q. Did you later? A. Yes sir.

Q. What was that conversation?

MR. RICHARDSON: Objected to for the same reasons.

THE COURT: Does it relate to this ---

MR. BORAH: Yes sir.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

MR. DARROW: Where was this, Mr. Borah?

MR. BORAH: Where was this conversation that you had the second time? A. In Denver, Colorado.

Q. After you had returned from Canon City? A. Yes sir.

Q. Well, now, have you stated the only conversation which you had with Mr. Orchard that you can now recall while you were at

1559

Canon City in regard to this grip or its contents?

A. Well, now, you are referring to the contents of the grip?

Q. Yes sir. A. Well, to make myself plain on that, I left the room the evening that we referred to the clock and when I came back he had this little clock outside there, and he demonstrated to me how it was possible to explode a charge of dynamite in a mine by using this clock. And it didn't interest me at the time and I told him so, and a day or so after that he referred --

MR. RICHARDSON: Now, if your Honor please, we object to that.

THE COURT: Where was this, Mr. Borah?

MR. BORAH: This was at Canon City at the time Orchard has testified he was on an expedition there to kill Governor Peabody.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

Q. Go ahead. A. He referred to this grip in a joking way and said he had a bubble in there that he would put under somebody across the way, and I took it as a joke, that is, I let him think I did at the time, or tried to, paid no further attention to it. The next time that I referred to this suit case was in Denver when I asked him if he had brought back the suit case --

MR. RICHARDSON: We object to that. That was after the expedition was over with, in addition to the other reasons which we have stated.

MR. BORAH: That was after this particular expedition,

but the general expedition was still on.

MR. RICHARDSON: They have not proven any general expedition yet, if your Honor please.

THE COURT: Was this before the suit case was removed from Canon City, or when was it?

Q. About when was it you had this conversation in Denver?

A. That was towards the latter part of June.

Q. What year? A. 1905.

Q. Was it in regard to this particular suit case that you were talking? A. I just simply asked him that question, if he brought that suit case back from Canon City, if he had received it from there yet. That is the reason I referred to the suit case, was because you asked me when was the next time we talked about the suit case.

Q. Did you have any other conversation with him in regard to the contents of the suit case other than those you have mentioned? A. No sir, I did not.

Q. Did you have any talks with Mr. Orahrd or Mr. Hogan while you were in Canon City as to the residence of Governor Peabody?

A. Yes sir.

MR. RICHARDSON: We object to that as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

Q. You may state what that conversation was. A. He was pointing out the leading residences in Canon City to me, amongst which he pointed out Mr. Peabody's residence.

1561 Q. Did you have any further conversation with him in regard to

Mr. Peabody's residence other than the fact he pointed it out to you? A. He referred to Mr. Peabody sitting there at the window one night when we were passing the residence, yes sir.

Q. What did he say in regard to that? A. He simply said "He reads there every night, that is Mr. Peabody."

Q. Where was this residence of Governor Peabody with reference to the place where you were rooming? A. I should judge about two blocks.

Q. In what direction? A. It was -- I can't name the directions in Canon City, but it seems we went two blocks to our left when we went in that direction alongside of Mr. Peabody's house.

Q. From whom did you have a contract to write life insurance and with what company? A. From Mr. Stearns.

Q. In what company? A. Mutual Life of New York.

MR. BORAH: You may cross examine.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Mr. Vaughn, you were rooming at the Belmont rooming house in 1903 and the winter of 1904? A. Yes sir.

Q. And some time during that winter, you don't know just when, you met Mr. Hogan or Mr. Dempsey, as he was then called, at that rooming house? A. Yes sir.

Q. Then you went away and was gone a long time, wasn't you?

A. Yes sir, I left there in December of 1904.

Q. You stayed there during the summer of 1904, did you?

1562 A. Well, you understand how I stayed there: I was working on

the road, you know, and I put in about three days out of a week.

Q. Then you were in there and out? A. Yes sir.

Q. Now this man Dempsey wasn't rooming there during that summer of 1904, was he? A. I couldn't say.

Q. He had been there some time during the winter of 1903-4 and you had gotten acquainted with him by the name of Dempsey?

A. Yes sir.

Q. And later on you changed your occupation and went into the insurance business? A. I went into the insurance business the spring of 1904.

Q. But you left the city in 1904 and went away somewhere?

A. Yes sir, I went east, to Minnesota.

Q. And you don't know where this man Hogan was at that time?

A. At the time that I went away?

Q. Yes. A. No sir.

Q. He had left the Belmont rooming house before you left it?

A. I presume he did because I don't remember of seeing him there just when I left.

Q. And when you got back to the city it was what time in 1905?

A. It was very close to the first of April.

Q. And was this man Dempsey there when you got back? A. I couldn't say whether he was there right when I got back or not. I remember seeing him there shortly after.

Q. And then you say you became acquainted with him by the name of Hogan, did you? A. Well, I met him as Dempsey when I returned and it was noised around the Belmont hotel there that Hogan was writing insurance and then afterwards the association came

to me that he was Hogan.

Q. Did you commence writing insurance with him or he with you?

A. No sir, I went to him.

Q. You went to him? A. Yes sir, at Canon City.

Q. Hogan told you about writing insurance and asked you to see if you couldn't get an agency to work with him?

A. We talked it over in a general way but he didn't put it so direct.

Q. Well, something like that, you didn't know John L. Stearns?

A. No sir.

Q. And you got acquainted with John L. Stearns through the fact that you had talked it over with this man Hogan? A. Yes sir.

Q. And while it wasn't directly at Hogan's request, you and Hogan understood that if you could get an agency too that you would work together, is that right? A. That was understood in a measure, yes sir, but not -- that is, it wasn't settled.

Q. It wasn't a settled agreement between you? A. No sir.

Q. You were to go down to John L. Stearns and see if you could get a contract to write insurance; if you could, you were going to join Hogan? A. That is what was understood.

Q. Hogan said he was going to Canon City and asked you to follow ~~gx~~ him if you got the contract? A. He asked me to come over there, there would be room for both of us; those are the words he used.

Q. So you did go over there and met him as you expected to do?

A. Just exactly.

1564 Q. And he had provided a room in the meantime where you and he could both stay while you were attempting to write this

insurance? A. Yes, I met him there and went to his room.

Q. Now you canvassed Canon City for some little period of time, didn't you? A. I think we were at Canon City for about six days.

Q. And during that tim e you worked and worked hard canvassing for insurance, didn't you? A. We certainly did.

Q. And Hogan worked just as hard as you did? A. Yes sir, he worked harder than I did.

Q. And you both worked energetically trying to write insurance?

A. Yes sir.

Q. Were you successful in writing any? A. Well, we were not, but we was not disgraced about it inthe words of an agent because we had these policies in line and we could close them up later on.

Q. You were getting them in line just as other insurance agents do? A. Yes sir.

Q. And you worked faithfully and hard for six days on that insurance? A. We worked every day, yes sir.

Q. Then you concluded that you would go over and get some people in line over at Rocky Ford, didn't you? A. Well, we decided to go to Rocky Ford, I don't know why, really.

Q. You didn't abandon these people whom you had in Canon City at that time, did you? A. I did not, no sir.

Q. And so far as you know, Hogan did not? A. He didn't express himself.

Q. And so far as you know there was no other business on foot in Canon City except the writing of insurance? A. Not as far as I know.

Q. And Hogan having been down there a few days before you had gotten acquainted with where the prominent men in Canon City lived and he pointed out their houses to you? A. Yes sir, he did.

Q. No more pointed out Peabody's house than anybody else's house there who had a good house, did he? A. No.

Q. There was no more particularity? A. No, he didn't directly.

Q. There wasn't anything about what he said about Peabody's house that directed your attention to the fact that he, Hogan, had any job in connection with Peabody's house other than the writing of insurance, even if he had that? A. Well, I will say right here I became suspicious of him right there.

Q. Because he talked about Peabody's house? A. Well, his general actions.

Q. Well, was it in connection with Peabody's house? A. Yes sir.

Q. Or was it in connection with his grip/and this clock?

A. The connection came from several things. I became in a general way suspicious of the man.

Q. But still you continued with him, did you? A. I continued with him, yes sir.

Q. He acted in a very erratic way, did you think? A. I thought he was very indiscreet and insincere.

Q. And you thought he was a little bit nutty, did you, in the head?

A. I did, I thought he was bughouse.

Q. You thought he was bughouse in the head, and the longer you stayed with him the more convinced you became that he was bughouse,didn't you? A. Well, I don't know. I didn't form any decisive opinion as to that until later on.

Q. Well, in any event you finally concluded to go over to Rocky Ford? A. Yes sir, I induced him to leave there and go to Rocky Ford.

Q. Was it he came to the conclusion to go to Rocky Ford or you?

A. I secured that conclusion from him.

Q. You had discussed the situation over at Rocky Ford?

A. Well, I didn't discuss the situation at Rocky Ford so much as I did to condemn the situation at Canon City.

Q. Didn't like it at Canon City? A. No sir, I didn't like it at all.

Q. And you knew that Rocky Ford was making lots of money ~~from~~ over there with their cantaloupes and their sugar beets, and so forth? A. I knew it was a good country, I had rode through there on the Santa Fe several times.

Q. And you both concluded to go over there? A. Yes sir.

Q. And he went over there freely and voluntarily with you, didn't he? A. Well, he hung off about going to Rocky Ford pretty stong, but I induced him to go.

Q. And when he got over to Rocky Ford he worked just as hard over there as he did in Canon City? A. Yes sir, he struck right out the first thing.

Q. And worked just as hard as you did if not harder? A. He worked harder than I did all of the time.

Q. Along came a man that handled hail insurance and induced you people to abandon life insurance and go to writing hail insurance? A. Yes sir.

Q. You hadn't succeeded in closing up or finishing up any

policies with the Mutual Life of New York? A. ~~[illegible]~~ No sir.

Q. Those policies did and always do take a good deal of money?

A. They were policies that you could not place in a day; you had to handle them carefully, it took some time to close them.

Q. You had to study your subject, his capabilities and also his financial ability? A. Yes sir.

Q. But that hail insurance, those people there were ready to take hold of that in a minute, weren't they? A. Hail insurance wasn't such a deep proposition.

Q. And didn't take so much money to get into it? A. Not at the time, no sir.

Q. And these men were all farmers there with growing crops?

A. Yes sir.

Q. And anxious to be insured against ~~[illegible]~~ hail which is liable to happen any time that time of year? A. They were not anxious to insure unless they were sure of being insured in a good company.

Q. You didn't have so much trouble in writing that insurance?

A. I had just as much trouble, yes sir, as ~~[illegible]~~ any hail insurance man would have in writing these policies.

Q. Not as much as you did have with life insurance and different classes of insurance like that? A. No sir.

Q. You and he commenced writing hail insurance? A. Yes sir.

Q. And you were very prosperous at it? A. Not to any extent.

Q. Well, you made some money writing hail insurance, didn't you?

A. We made a fair living, yes sir.

Q. Did pretty well at Rocky Ford? A. We done no writing at Rocky Ford. We went to Las Animas to write it.

Q. Did you canvas the country around Rocky Ford for hail insurance?

A. No sir.

Q. When you changed from life insurance to hail insurance you were assigned new territory? A. Yes sir, we went to Las Animas and began our hail insurance.

Q. How long were you down there writing that kind of insurance?

A. We were there writing hail insurance at Las Animas about eight days.

Q. Then where did you go? A. If I remember right, we both went to Denver.

Q. Both of you went to Denver? A. Yes sir.

Q. How long did you stay in Denver? A. I stayed in Denver from Saturday until Sunday night.

Q. And then where did you go, Mr. Vaughn? A. I went to the first station west of Rocky Ford, I can't think of the name of the place.

Q. The first station west of Rocky Ford? A. This side of Rocky Ford.

Q. That is on the Santa Fe, isn't it? A. Yes sir.

Q. Was it La Mar? A. I think it was.

Q. And did Hogan join you at Lamar? A. No sir, he never joined me there.

Q. How long did you remain at Lamar? A. I think I was there about a week.

Q. And then where did you go? A. Well, I think we spent Sunday in Rocky Ford and went from there to -- Alamosa, is it?

Q. Yes. You say "we spent Sunday in Lamar"? A. Yes sir.

Q. Who do you mean by "we"? A. I mean the other agents who

came with this man Peterson from Iowa.

Q. There were other agents besides you and Hogan? A. Yes sir, there were agents everywhere.

Q. You entered into a territory and parcelled it off and canvassed the whole thing, did you? A. Yes, that is the way it was handled.

Q. Well, having stayed in Rocky Ford over Sunday you went over into the San Luis valley at Alamosa, did you? A. As I said before, if I remember right, we went to Pueblo and took in the fair there a day or two and then went over to Alamosa and Monte Vista.

Q. Did Hogan join you there? A. He did later on, about tendays.

Q. How long had you been gone from him? A. Well, it seems about two weeks, a little bit more, probably, fifteen days, something like that.

Q. How long did you canvas in the San Luis valley? A. Well, I would say ten days.

Q. That was a right ~~xxxxxx~~ prosperous country for hail insurance, wasn't it? A. It was a good one, yes sir.

Q. Those people down there are liable to have hail any time?

A. They had plenty of hail I guess.

Q. They all had good crops, had plenty of money ~~xxxxxxx~~ to pay for hail insurance? A. They didn't have to pay a cent in advance.

Q. But they signed some notes or something which made them have to pay afterwards? A. They didn't have to pay unless they got value received.

1570 Q. Well, you wrote good straight insurance then? A. Yes sir, I

was writing good straight insurance.

Q. From your standpoint nobody was being bunceed? A. There was nobody bunceed by that insurance.

Q. Nor by you? A. No sir.

Q. If anybody was bunceed by Hogan you don't know anything about that? A. I don't know anything about it.

Q. Did you and he work together as partners in going out to solicit insurance? A. Yes sir, we did. We went as Hogan and Vaughn and we wrote together.

Q. And the partnership of Hogan and Vaughn made good money that summer, didn't they? A. We didn't make a great deal of money, no sir.

Q. You made about $800, didn't you? A. No sir, we did not.

Q. How much did you make? A. I possibly cleared a hundred dollars.

Q. How much did Hogan clear? A. I haven't the slightest idea.

Q. Did Hogan clear any more than you did? A. He was out by himself after I went back to Denver.

Q. He went off by himself after you got through with him?

A. Yes sir, he went out by himself.

Q. You went down to Denver and quit? A. I was done when I struck Denver, yes sir.

Q. And ceased having any connection with Hogan at all?

A. I never saw him again until I saw him in this ~~morning~~ room.

Q. Here in this court room? A. Yes sir.

Q. Where did you come from, Mr. Vaughn, to testify?

A. I came from Minneapolis.

Q. Who got you to come, Mr. Vaughn? A. Nobody really got me to

come.

Q. Well, I know you didn't have to come if you didn't want to, I understand that, but who talked with you about coming?

A. I was approached by a Pinkerton detective at first.

Q. From Minneapolis? A. Yes sir -- no, from St. Paul.

Q. A man connected with the Pinkerton office? A. Yes sir.

Q. And he gave you some money, I suppose, to come here on or you wouldn't havecome? A. He certainly did.

Q. How much did you get for coming? A. He bought me a ticket here and gave me $25.

Q. And you will get some more here I suppose? A. I expect to.

Q. You reported to the Pinkerton people here? A. I called on Mr. --

Q. I say, did you report to the Pinkerton people? A. Yes sir, I called on Mr. McFarland as soon as I arrived.

Q. And he has been connected with the Pinkerton agency that went to see you and got you to come up here and give your testimony?

A. Well, I was first approached by a Pinkerton detective.

Q. What is your mileage from St. Paul here? A. I don't really know what the mileage is from St. Paul here, it is quite a long ways.

Q. Have you got any contract for the amount of money you are to get? A. No sir, I haven't any contract.

Q. Expect to get twenty-five cents a mile? A. No, I don't. I didn't come out on a money standpoint at all.

Q. Come out on a little trip because it didn't cost you anything?

A. No, I thought I should come here by right on account of being with this man Orchard at Canon City and so on.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q. Are you a member of any labor organization? A. Yes sir, I am.

Q. Of what labor organization? A. I am a member of the Order of Railway Conductors.

Q. When you left Canon City, as I understand, to go to Rocky Ford you had not succeeded in writing any life insurance?

A. No sir.

Q. Do you know whether or not Orchard went back and closedup any that you had commenced or started to write? A. I don't know whether he did or not, in fact I never askedhim.

Q. You said there was some peculiar actions upon the part of Orchard which created some suspicion in your mind, in answer to counsel: Will you tell what they were?

MR. DARROW: I object unless it is something different.

MR. BORAH: If it isn't anything different I don't want it.

THE COURT: You may answer the question.

A. I believe I have answered in substance his general action was rather suspicious I thought, and he made me believe that he was not sincere and not a gentleman.

MR. RICHARDSON: We move to strike that out, if your Honor please.

MR. BORAH: That is a conclusion that perhaps should not go in.

THE COURT: The last statement may be stricken out.

Q. Can you recall anything other than that which you have recalled

and stated, anything in the nature of his actions, not stating your conclusion, but anything that he did or said other than that which you have stated. A. Well, I am trying to illustrate that his general action led to that conclusion.

Q. Well, when you left Rocky Ford, as I understand, or that point near Rocky Ford, you went to Denver? A. Why, I made one trip to Denver and then left From Rocky Ford to Monte Vista.

Q. When you went to Denver the first time Orchard went with you? A. Yes sir.

Q. And did he return back with you? A. No sir.

Q. Where did he stay? A. He remained in Denver, as far as I know.

Q. How long was the interim in which you were separated from Orchard while he was supposed to be in Denver? A. I say I think a little over two weeks.

Q. What were you doing during that time? A. I was between Rocky Ford, Pueblo, Alamosa and Monte Vista.

Q. Do you know whether or not the time that was covered by your separation from Orchard was the time that Walley was killed in Denver? A. I don't exactly know how to answer that. I just read in the newspapers --

Q. Did you hear of the killing of Walley in Denver? A. It seems to me I did, but I can't swear to it.

MR. RICHARDSON: Then we move to strike it out if your Honor please. We move to strike that out as not founded upon anything he knows about.

Q. Have you any means of ascertaining the time when Walley was killed? A. No sir.

Q. You do know, however, when you made your first trip to Denver, that Orchard was with you? A. Yes sir.

Q. Now you know what you were doing during the time that you were separated from one another?

A. Yes sir.

Q. What were you doing?

A. Writing hail insurance and life, or trying to write life.

Q. When did you next meet Orchard and where?

A. Monte Vista.

Q. About how long after you had separated from him in Denver?

A. I should judge over two weeks.

Q. Was Orchard with you at this town called Lamar?

A. If that is the first station west of Rocky Ford he was not.

Q Where was it that Orchard was engaged writing insurance that you know of? A There is another answer that would be stricken out too because I don't know that he wrote that insurance.

Q Where was he at the time, if you know? A I learned that he was west of Denver in the Brighton valley; I learned it from the main office.

MR. RICHARDSON: I move to strike that out as incompetent, immaterial and irrelevant.

THE COURT: It may be stricken out.

Q When did you last see Orchard after you returned to Denver from Lamar, or where did you last see Orchard before you saw him here in the court room? A In Denver.

Q When was that? A The latter part of June.

Q What year? A 1905.

Q Never saw or heard from him until you saw him in the court room here? A No sir, never in any way shape or form.

MR. BORAH: That is all.

MR. RICHARDSON: I move to strike out all thetestimony of this witness as incompetent, immaterial and irrelevant, and as neither connecting or tending to connect Mr. Haywood with any issue in this case.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

MR. BORAH: That is all, Mr. Vaughn.

GEORGE W. RICH, being called as a witness on behalf of the State, and being first duly sworn, on oath testified as follows.

DIRECT EXAMINATION

BY MR. DORAN.

Q What is your name? A George W. Rich.

Q Where do you reside, Mr. Rich? A I have been residing about seven weeks in Salt Lake City.

Q Did you ever reside in Pocatello, Idaho? A Yes sir.

Q During what period? A About nine years, from 1897 until this spring-- the spring of this year.

Q What was your business there? A Keeping a hotel.

Q What was the name of your hotel there at Pocatello? A The Tupper house.

Q Where was it located there in the town? A On the east side of the city, about a block from the depot.

Q Were you keeping a hotel at that place in September, 1903? A Yes sir.

Q Do you remember a party stopping there by the name of Ward at that time? A Yes sir.

Q About what time did he come there?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant, and having nothing whatever to

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do with the charge in this indictment.

THE COURT: What do you expect to show by it, Mr. Borah?

MR. BORAH: That at the time Mr. Orchard testified that he sent Mr. Adams to Pocatello that Steve Adams was there.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q About what time was Adams there? A About September, 1903.

Q He was there? A Yes sir.

Q Under what name? A Ward.

Q Have you seen him since you came to this city? A Yes sir.

Q What was his name here? A The gentleman that was here in court was called Steve Adams.

Q Was that the same party that you saw at your hotel and knew as Ward? A Yes sir.

Q You may state whether the book now handed you is your hotel register that you used there? A Yes sir.

Q Will you turn to the place where Mr. Ward was registered, if you can?

MR. BORAH: We ask to have this register marked as an exhibit for identification.

The register was then marked State's Exhibit "V" for identification.

Q I will ask you if the name of Ward as appears upon that register is the name under which the party registered, whom

1578 you saw here in the court room yesterday as Steve Adams?

A Yes sir.

Q How long was he there? if you know? A He was there three nights.

Q Is the name Ward upon page 25, the same party? A September 25th, yes sir.

Q September 25th, the same party? A Yes sir.

MR. BORAH: That exhibit may be considered as running under the dates of September 24th and 25th. We offer this register in evidence.

MR. RICHARDSON: We object to exhibit W as incompetent, immaterial and irrelevant, not tending to connect the defendant in any wise with the charge upon which he stands here indicted and is now on trial.

THE COURT: It may be admitted. The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. BORAH: You may cross examine.

MR. RICHARDSON: We move to strike out all this evidence as incompetent, immaterial and irrelevant, and as not tending in any way to connect this defendant with the crime here charged in this indictment.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

CROSS EXAMINATION

BY MR. RICHARDSON.

Q Your guest registered twice, did he? A Yes sir.

Q Registered first on September 23rd? A September 24th.

Q And next on September 25th? A Yes sir.

Q Just had lodging at your house? A Yes sir.

Q I observe that you were keeping quite a numberof people at that time? A Yes sir.

Q Do you have any independent recollection of this man? A Yes sir.

Q What do you get your recollection from-- from what occurred here lately? A No sir, I remember his appearance very clearly.

Q You can pick out any guest you had there in 1903? A Yes sir.

Q It don't make any difference to you how many names there are on this book? A I cannot pick out all of them, but there are some I can pick out.

Q And this happens to be one which you can pick out? A Yes sir.

Q How many years have you been in the hotel business? A About five years.

Q You are still in the hotel business at Pocatello? A No sir, I am now living at Salt Lake.

Q When did you cease to be in the business-- in the hotel business? A The 1[illegible]th of December.

Q Or last year? A Yes sir.

Q And what had been your business prior to being in the hotel business? A I was a dealer in implements-- agricultural implements.

Q There is nothing about the business itself, or the business you had theretofore been in which caused you to remember names andfaces of one man out of a vast number of men? A I don't know why there should be.

Q It just happens that way with you? A Except in selling goods and taking notes, I remember a man I took a note from.

Q Yes sir, until the note is paid? A Yes sir.

Q After it is paid it don't make much difference? A Oh, I know him afterwards if he is good pay.

Q That is, if he wants to make another note? A Yes sir.

MR. RICHARDSON: That is all.

MR. BORAH: We will ask the clerk to mark that now. It is now introduced in evidence.

We desire to introduce in evidence a couple of decisions from the SupremeCourt of Colorado and of course we will have to get the original reports, that is, the Colorado reports as published by the State authorities, and I would like to know if counsel will request us to do that?

MR. RICHARDSON: Not so far as your getting the original from the Supreme Court is concerned, but I shall object to your introducing any decisions of the Supreme Court of Colorado in

this case unless you will allow us to introduce a lot of newspaper [illegible] that [illegible].

MR. BORAH: I understand that, but whether you will object to our introducing it from the reporter or compel us to get the State reports.

MR. RICHARDSON: No, I will not do that.

MR. BORAH: Your Honor please, that is all the witnesses we have this evening.

MR. RICHARDSON: We would like to have them tell us about what time they will be ready for our evidence.

MR. BORAH: You had better get ready about Wednesday morning.

THE COURT: There will be no court Monday.

MR. BORAH: I know that.

MR. RICHARDSON: We will have our witnesses here Wednesday morning. Of course if we should get caught with two or three being out of town, you will be as lenient with us as we have been with you, I trust.

MR. BORAH: Yes sir, that is characteristic of my associates.

Thereupon the court gave the jury the statutory admonitions, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded to custody and an adjournment was taken until Tuesday morning, June 18th at 9:30 o'clock.

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