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C. S. DARROW

TRIAL

Damon

Volume 10.

July 15/ 16/ 17, 1907.

Gas Co

Seaton's Store

Carroll's

Runny Run

C.C.R.R.

C.C.R.R.

Walden City Council

Banker's

Bookkeeper

C.C. Mine

Pondler Mine

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Boise, Idaho, Monday, July 15th, 1907.

9:30 o'clock A. M.

Parties not pursuant to adjournment.

Minutes of the session of Saturday, July 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.

THE COURT: Gentlemen, I have considered the matter of the objection to the introduction of the records of the Probate court of Washington county by which John B. Elliott, I believe, the name of the witness was -- a witness for the Defense -- was declared an insane person by the Probate judge of that county. Now under the statutes of this state, section 5937, under the first sub-division thereof -- "The following persons cannot be witnesses: Those who are of unsound mind at the time of their production for examination." Now at that time of the examination of this witness it is apparent that counsel for the state knew of the existence of these judgments or proceedings of the Probate court wherein this witness was declared to be an insane person, and particularly of the last one and questioned him in relation thereto. It was the privilege of counsel for the State at that time to object to the examination of this witness on the ground he was incapacitated to testify under the provisions of this statute. And if it had been done, it was the province of the court to examine that

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question with reference to his capacity, to determine whether or not he was a competent witness notwithstanding the judgment of that court; and a further examination discloses the fact that the witness himself admitted the material allegations of those judgments, that he had been declared a person of unsound mind not only at the time of the original judgment but also of the second one that is offered to be introduced; and the only possible theory upon which it could be introduced would be for the purpose of contradicting or impeaching the witness. And I am satisfied from an examination of the record that in that respect the only contradictory feature of it is immaterial, and for that reason the record should not be admitted. For this reason the objection will be sustained.

MR. RICHARDSON: If your Honor please, during the cross examination of Mr. Hoyer the other day Senator Borah called for the four Denver newspapers covering a period mentioned by that cross examination. I telegraphed for them and had them sent here, and I have looked them through to January 8th, Senator, and here they are; and we have some more of them, up to January 18th, if you want them, but we haven't had time to look through them yet. I will ask that these papers be preserved in view of the fact that there are two other cases in which the same question may arise.

(Mr. Richardson hands papers to Mr. Borah.)

MR. HASLBY: I desire to recall Mr. Dewey.

WITNESS WILLIAM DEWEY, being recalled upon behalf of the People in rebuttal, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q. Mr. Dewey, on Saturday afternoon we were speaking of W. F. Davis; You may state whether the W. F. Davis that you know in the Oscar d'Alencas was afterwards a resident of the Gripple Creek country, in Colorado? A. Yes sir.
- Q. State whether or not you know with reference to his having been a member of any W. F. N. union at that time. A. Yes sir, he was.
- Q. Of what union? A. He was president of Altman union No. 19.
- Q. What year? A. That was the year the trouble started down there; I have forgotten.

THE COURT: Speak a little louder, please.

THE WITNESS: It was the year the trouble started down there; now, I don't remember whether it was 1903 or 4.

MR. HAWLEY: That is all.

CROSS EXAMINATION

BY MR. RICHARDSON:

- Q. Mr. Dewey, when did you walk down with from the court house the other day after you testified Saturday, what was the man's name that you walked down from the court house, down town with?
- A. I don't remember who I did walk down with.
- Q. Did you say to that man on your way down town that you know the names of more than two hundred people who went down on that train to Gardner on that day, and you know everybody

that was in Gen who went down on the train, but you would be damned if you was going to tell that fellow who they were?

A. No sir.

Q. Or anything like that in substance or effect? A. No sir, not to that effect.

Q. But something like that in substance? A. No sir, not in substance at all.

Q. What did you tell him? A. I don't remember what I did tell him.

Q. Did you have any conversation on that subject? A. I don't remember of having any.

Q. Do you remember that you didn't have? A. I couldn't say.

Q. Couldn't say? A. No sir.

Q. Don't remember whether you had any conversation like that or not? A. No sir.

Q. Mr. Dewey, you got in debt to the union store, by reason of the luncheon of Mr. Davis, about \$300, did you not?

A. No sir.

Q. At the time you seemed to be a member of the union at Alamosa?

A. No sir.

Q. Did not. How much did you owe it? A. Probably twenty or twenty-five.

Q. Which you have never paid? A. No sir.

Q. Did Mr. Davis shut off your credit down there at that time?

A. No sir.

Q. Who did shut it off? A. I don't think anybody did.

Q. You tried to lay in a stock of goods, gave an order for some, and you was indebted to the store and Mr. Davis declined to let you get in debt any further, is he not? A. No sir.

- Q. And then you quit the store and the union both? A. No sir, not right at that time.
- Q. How soon after that? A. I should judge four or five months.
- Q. You should think so? A. Yes sir.
- Q. Well, you quit the store when credit was refused you and you refused to pay the store and never have paid them, is that right? A. My credit never was refused.
- Q. But you owe them the twenty or twenty-five dollars yet? A. Yes sir.
- Q. You are sure that is not three hundred? A. No sir.
- Q. Nor nothing like that sum? A. Nothing near that.

MR. RICHARDSON: That is all.

MR. HAWLEY: That is all.

LAWRENCE GIBBNEY, being recalled as a witness on behalf of the People in rebuttal, on oath testified as follows:

DEPOT EXAMINATION

BY MR. HAWLEY:

Q. Mr. Gibbney, are you acquainted with J. B. Reilly?

A. Yes sir, very well.

Q. State whether or not you was acquainted with Mr. Reilly in 1904 at the time of the explosion. A. I was.

Q. At the ^BBradley residence? A. Yes sir.

Q. You may state whether or not he was a customer of yours at that time? A. Yes sir, he was.

Q. You remember the morning of the explosion at the Bradley residence, do you? A. Yes sir, I do.

Q. Where was you that morning at the time of the explosion?

A. I was just getting out of bed.

Q. State whether or not you had been up that morning? A. No sir.

MR. DAWSON: I object. He went over this. I object to it because he has already stated it.

THE COURT: Objection overruled.

MR. DAWSON: Is it overruled for the reason he did not so state? If so I want to show the record.

THE COURT: No sir.

MR. DAWSON: I would like to know the reason.

THE COURT: It is overruled because in the opinion of the court this testimony is proper rebuttal.

MR. DAWSON: I desire to take an exception to it.

THE COURT: An exception will be noted.

Q. Did you see J. B. Reilly that morning? A. I saw him after the explosion.

Q. How long after the explosion? A. Probably five minutes or a little more. I just dressed myself after the explosion and went down.

Q. And were did you see him after the explosion? A. In front of the building where the explosion was.

Q. Did you before the explosion on that morning serve Mr. Reilly with a drink? A. No sir, I did not.

Q. State whether or not you served him with a drink after the explosion? A. I believe I did. I am not sure but he has always been in my saloon pretty nearly every morning and every evening.

Q. Are you acquainted, Mr. Clubbin, with the Bradley premises-- I believe you have so testified? A. Yes sir, I did.

Q. Do you know a building called the Shafer Building?

A. I do, yes sir.

Q. How was that Shafer building situated with reference to the Bradley building? A. Which one? You mean the old one or the new one?

Q. The unknown; old one, the one that was there in 1904?

A. It stands about twenty or twenty-five feet from the street, Leavenworth Street.

Q. And how high was it? A. A two story building.

Q. You may state the position of the roof of that building so far as its being practicable to go upon the roof without trouble from the Bradley flat, the flat Mr. Bradley was in.

MR. DARROW: To that we object on the ground that it is a conclusion, not a statement of fact, not relevant. In the

first place it is not rebuttal, and in the second place if it was, it is the statement of a conclusion and not a statement of fact.

THE COURT: The court is of the opinion that it is proper rebuttal, but the witness may only state how the buildings were situated with reference to the one occupied by Mr. Bradley.

MR. HANLEY: That is all we are asking for.

- Q. You may answer. A. The building stands about twenty-five feet back from the street and it comes up against the back stairway that goes up to Mr. Bradley's residence.
- Q. The back stairway of the Linforth building? A. The Linforth building.
- Q. And how far from that back stairway and how high above is this flat, or is this roof of the Shafer building? A. I should say it would reach up to about the second story of the Linforth building.
- Q. And how high above the landing place there of that flat, of the Linforth building, the Bradley part?

MR. DANKOW: I object to that question on the ground that it is leading. He can describe this building, as he has already described it.

MR. HANLEY: I would like to ask you how, when I ask him how far above, it can be called leading.

THE COURT: The objection is overruled.

- A. I couldn't tell you how far up it would reach; it would reach about the second story, and the corner of the building comes right over close to the back stairway.

- Q. How far from the back stairway does the corner of the building come? A. Oh, I should say between twelve and eighteen inches.
- Q. Twelve and eighteen inches? A. Just the corner of the building though.
- Q. What, if anything, is there or was there at that time to prevent a person on the back stairway getting onto that roof of the Shafter building? A. Only the baluster of the stairway going up.
- Q. There was nothing else? A. No sir.

MR. HAWLEY: You may take the witness.

CRUISE EXAMINATION

BY MR. DASHOW:

- Q. Mr. Glubbing, you have been to San Francisco since we saw you last? A. Yes sir.
- Q. And got back again? A. I did.
- Q. Been most of the time on the road then since you were here? A. Pretty much.
- Q. Who got you back this trip? A. Mr. Wilsey.
- Q. Who is Mr. Wilsey? A. It is a fellow from the Pinkertons.
- Q. The same fellow who got after you before? A. Yes sir.
- Q. And he asked you whether you served a drink to Mr. --
- A. To Mr. Reilly.
- Q. -- to Mr. Reilly on the 17th of November, 1908? A. Yes sir.
- Q. And you said you did not? A. I did not, not previous to the explosion.
- Q. Did you serve him one on the 16th? A. Oh, every day; he has always been in my place.
- Q. Every day? A. Oh, yes.

Q. What? A. I believe so. He didn't -- I don't believe he missed once since I was down there.

Q. Every day in the morning? A. Morning and evening. If I didn't sell him a drink my clerk sold him a drink.

Q. You have a clerk, have you? A. Yes, always.

Q. What time do you open your refreshment parlor? A. Before six o'clock.

Q. Well, then, it was open about six on the 17th, wasn't it?

A. Oh, sure, except Sunday morning, we wasn't up before six.

Q. A fellow could get a drink there before the explosion?

A. Oh, sure.

Q. Only you think you hadn't got up? A. No, I was in bed; I was just getting out of bed.

Q. And your clerk was there? A. Yes sir.

Q. Who was your clerk at that time? A. He was a fellow by the name of Graber.

Q. Do you know where he is now? A. No, I don't. It is quite a while ago. I believe he went back to Germany; maybe he is back here again, I don't know.

Q. Haven't looked for him, have you? A. No sir.

Q. This man Reilly was in the habit of going over there before breakfast? A. Yes sir.

Q. The first thing in the morning? A. Yes sir.

Q. What time did he generally show up? A. Oh, about six or seven o'clock, I guess, something like that.

Q. You don't know whether he was over this morning at half past six or seven or not? A. No sir, I am not positive. I don't know.

- Q. You just know you hadn't got up yet? A. I know I hadn't got up yet.
- Q. And you did see him out there in front of Bradley's house after this thing happened? A. After the explosion, yes sir.
- Q. Now which is the highest, the front part or the back part, of that flat building where Mr. Bradley lived? A. On the corner of Washington is the highest part, going down Lawrenceworth it is the lowest part -- four story.
- Q. It is a four story where? A. Going down Lawrenceworth Street.
- Q. Whereabouts are the back stairs? A. The back stairs stand down to where the four story is.
- Q. Where the back stairs are it is four stories high? A. Three stories, and then there is a basement -- it is a story higher than at the corner.
- Q. How high is it -- at the corner? A. Three stories.
- Q. Then that would make it four in the back, wouldn't it, Mr. Gibbing? A. Yes sir.
- Q. Now which way are the back stairs by the points of the compass, the north side of the building? A. Let's see -- I think they are on the north side.
- Q. You spoke of a flat building; is it there now? A. No, it is burned now.
- Q. When was that burned? A. At the time of the earthquake.
- Q. At the time of the earthquake? A. Yes sir.
- Q. And the whole corner is burned, is it? A. Yes sir.
- Q. You say that was a two-story flat building? A. That was a two-story residence, that is, previous; they have a new building put on afterwards.

- Q. It was a two story residence, was it? A. Yes sir.
- Q. Whose was it? A. I believe it must have been Mr. Shafer's. It used to belong to a fellow by the name of Wise.
- Q. A big house and a big yard back there? A. Yes sir, it was.
- Q. And that is the one you refer to? A. Yes sir, that is the one I refer to. I believe that is the one that was standing there at the time of the explosion.
- Q. How big was the yard? A. Oh, it is a big yard, probably 135 feet deep.
- Q. Don't you know who lived there? A. I don't remember who lived there at that time.
- Q. Don't you know whose property it was at all? A. I believe it wasn't occupied at the time of the explosion.
- Q. Whose place was it? A. Mr. Shafer is the one that tore the building down and put up a new one.
- Q. It was one of the old settlers there who was supposed to own the house? A. He sir, he wasn't supposed to own it.
- Q. Who was there? A. There was nobody there, if there was anybody there it was somebody that rented the place.
- Q. How large was this house? A. A good large mansion house.
- Q. What? A. It is a good large house.
- Q. Was it the same height all around it? A. Yes sir, I think so.
- Q. What shape was it? A. Square I believe, pretty near.
- Q. How large is the lot? A. I know it is 135 feet deep but I don't know how large it was in front.
- Q. Do you know about how large the front was? A. About 70, I guess, or 75 feet. I couldn't tell you exactly.
4319. And 130 feet deep? A. Yes sir, 135 feet deep. I know that

myself because I saw the sign on it to sell.

Q. And where did the house stand with reference to the lot?

A. Well, it was built right in the middle of the property there, and then a part of it was sold to Mr. Linforth.

Q. Built in the middle of the property? A. Pretty near I suppose.

Q. And it was 125 feet deep, you think? A. Yes, that was the depth of the lot.

Q. And you don't know how wide? A. No sir, I don't. I don't remember.

Q. Was it pretty near square? A. Not what was left, no sir.

Q. No, I mean as it stood in the first place. A. I didn't see it.

Q. When did Mr. Linforth buy a part of it? A. I couldn't tell you; but he started to build in 1901 I believe.

Q. Before the earthquake? A. Yes.

Q. When did he put up the building? A. In 1901 I think, around there somewhere.

Q. Did he move any part of the house before he put it up?

A. When he put it up you mean?

Q. Yes. A. I don't recollect if he moved right away down in one of his cottages below that building --

Q. Where did he put this new building? A. No, he didn't move into the new building right away; no sir.

Q. No, when he put up the new building did he have to move anything or did he put it up right on the vacant ground?

A. I believe he put it up on the vacant ground. I don't remember, though.

Q. There was nothing there, was there? A. I don't remember now. I don't know. I didn't get there until 1902.

- Q. Where was the new building that Linforth put up, close up to the north end of the flat? A. What new building?
- Q. The new flat building that he put up north of that flat?
- A. Right close to the big building.
- Q. Comes right up to it? A. Yes sir, within a passageway -- I believe it is connected to it.
- Q. How wide is that building? A. I couldn't tell you. It is pretty near square. You mean the big building?
- Q. No, I mean the new building. A. That is a two-story cottage.
- Q. When they built that they didn't take anything away to put it up? A. I believe he took away --
- Q. How do you remember? I don't want you to guess at it?
- A. No, I don't remember. I just came there in 1902. That is when I came to that corner there.
- Q. Did you pay any attention to it? A. No, not to his business. I had all I could do to build up my own trade and attend to my affairs.
- Q. You didn't pay any attention to this building? A. No, I wasn't interested in the building at all.
- Q. And you never knew who lived in the big house? A. I knew everybody who lived in the big house, yes.
- Q. Who lived there? A. There was Mr. Bradley, Mr. De Lavigne --
- Q. No, I don't mean the house on the corner, I mean the house back of it, the north house, with the big yard. A. Oh, there was an old lady kept it as a lodging house. Mrs. -- I couldn't remember the name. She used to keep it as a lodging house like.
- Q. Who did you talk to about this before you came? A. I don't know if I talked to anybody except Mr. Wilney is the one that

told me they wanted me to come if I would like to.

Q. Who did you talk to about the old house? A. Nobody that I know.

Q. Nobody? A. Nobody that I remember.

Q. When did you first hear about it? A. The old house?

Q. Yes, when did you first hear about testifying to it?

A. Mr. Wiley down there told me what I know about it and I simply said --

Q. He told you what you know about it? A. He told me if I know anything about that house, how it stands.

Q. Did you talk with anybody else about it? A. No sir, not except my family.

Q. Did you see Mr. Linforth? A. No sir, I didn't see Mr. Linforth.

Q. He is there now? A. No sir, I am not living there now.

Q. You didn't get to him? A. No sir, but anyway --

Q. Who did you talk to? A. Nobody that I know.

Q. And the only fellow you talked to was this detective, was it?

A. The detective, and up here.

Q. What? A. I talked to Mr. Stone up here outside of the detective down below.

Q. Before you got here the only one you talked to was the detective? A. Yes sir, that is the only one I remember talking to.

Q. Do you know who lives in this big ^{flat} ~~house~~ at this time?

A. Nobody I guess.

Q. Are they destroyed? A I suppose so.

Q. Do you know who lived there before they were destroyed?

A. I don't recollect now.

- Q. How much money did you get for coming back? A. I got for me and my wife and the little child, so we got \$225.
- Q. Brought your wife and little child with you? A. Yes sir, they wanted her here.
- Q. You mean you got \$125 all together? A. \$225.
- Q. Oh, \$225? A. Yes sir.
- Q. Well, you have got all you are going to get, or do you expect some more? A. If I could get some more I would get it.
- MR. DARRON: That is all.

RE-EXAMINATION

BY MR. DARRON:

- Q. You had that much money advanced for your family coming up as witnesses? A. Yes sir, and then to pay for the man I had to put in my place below.
- Q. To pay your expenses? A. Yes sir.
- Q. Did you have charge of the Shafer building at any time? A. The new building I did right along.
- Q. I mean of the building that was there in 1904, at the time of the explosion? A. Yes sir, I had the charge of that new building.
- Q. That is what you call the new building, the building that was there at the time of the explosion? A. Yes sir.
- Q. You may state whether or not you ever crossed over onto the top of that Shafer building, on the roof? A. No sir, I never crossed on top of the old building, no sir, I never did.
- Q. I mean the building, the Shafer building that was there at the time of the explosion that I bring? A. At the time of the

explosion I believe it was the old building there. I have never been over to that roof.

MR. HAWLEY: That is all.

MR. BARNOW: Mr. Gibbins, I wish you would come back here at two o'clock. I want to look at this record a little more and make sure of one or two points.

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LINDA GIUBBINI, being called as a witness in rebuttal on behalf of the state and being first duly, on oath testified as follows.

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q Please state your name? A Linda Giubbini.
- Q Are you the wife of the last witness on the stand? A Yes sir.
- Q Were you his wife at the time of the explosion in the Bradley residence in 1964? A What is it?
- Q You were married to him in 1964? A Yes sir.
- Q And were his wife at that time? A Yes sir.
- Q Do you remember the morning that Mr. Bradley's residence was blown up? A Yes sir.
- Q Where was your husband on that morning at the time of the explosion? A He was just getting out of -- he was undressed, but he was just standing outside of the bed. Of course I was woke by the explosion. I saw him standing there but he was not dressed yet.
- Q Was not dressed yet? A No sir.

MR. HAWLEY: Take the witness.

MR. RICHARDSON: We move to strike out all the evidence of this witness as not rebuttal evidence, and if it does rebut anything it is rebutting something entirely immaterial.

THE COURT: The objection is overruled -- or the motion will be denied.

MR. RICHARDSON: Note our exception.

THE COURT: The exception will be noted.

MR. HANLEY: That is all.

THE COURT: Call your next witness.

C. F. WATKINS, being recalled as a witness in rebuttal on behalf of the State, and having been heretofore duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HARLEY:

Q Mr. Wayne, you were sworn upon your direct examination?

A Yes sir.

Q You were the first witness called? A Yes sir.

Q I believe you stated that immediately after the explosion causing the death of Governor Steunenberg you went over to his place? A Yes sir.

Q And to his body? A Yes sir.

Q And you may state, Mr. Wayne, how far the body of Governor -- or where the body of Governor Steunenberg was lying with reference to the fence between the Steunenberg lots and the street.

MR. RICHARDSON: That is objected to as immaterial, incompetent and irrelevant, and as not rebuttal evidence. There is not any controversy upon that branch of the case at all, if your Honor please, and they had their day upon that and that is all there should be of it.

MR. HARLEY: The controversy is not upon that point directly, we admit, but it is upon matters that are far more

important than that point. It is upon the question of an explanation. The evidence has been shown where the bomb was planted that caused the death of Governor Staunenberg,-- the evidence has demonstrated that, and becomes important now to fix the locality of the body and the direction in which it was blown, the place where it laid after the explosion, in connection with the Bradley explosion and the effect that was had upon Mr. Bradley by that explosion.

MR. RICHARDSON: I would like to know what it rebuts in our case?

MR. HANLEY: It will rebut this, if your Honor please, this which is fairly inferred and which has been proved by the other side in regard to Bradley, and that is the position of Bradley's body in the street after the explosion. That has been brought out fully in these depositions. Now, we will prove the location in a similar way of the body of Governor Staunenberg after that explosion which we claim was caused by similar material.

MR. RICHARDSON: I would suppose that rebuttal evidence on that proposition would be that Bradley's body was blown in the other direction. There has been no testimony whatever upon our part with regard to Staunenberg's body or where it was found, whether or not in the direction it was blown, and this cannot be rebuttal testimony.

MR. HANLEY: Rebuttal testimony is not circumscribed by any such testimony as that. We are not compelled to take

any piece of testimony, in rebuttal testimony, and deny the express words or the very act itself, but you can, as part of your rebuttal, deny those inferences which will necessarily be drawn from that testimony, and that can be done.

MR. RICHARDSON: Rebuttal evidence is defined to be that class of evidence which tends to disprove the new matter introduced by the defense. Now, I submit there is no new matter introduced by the defense even upon the disposition of Bradley's body after the time of the explosion. Orchard himself testified that he knew of Bradley's body being blown out in the street and I cross examined him upon that subject. If it was a material part of the controversy and was introduced by them, whatever they had to say upon that subject should have been put in at that time, and they are not entitled to introduce it now.

MR. HAWLEY: We could put it in at any time with the permission of the court.

MR. RICHARDSON: With the permission of the court, yes --

THE COURT: When you gentlemen are through the court is ready to rule upon the matter.

MR. HAWLEY: I had not finished my remarks when counsel interrupted me with his last remarks. What I desire to say is this: In the case of the State against Anthony it is laid down as the rule that evidence need not be rebuttal.

THE COURT: There is no question about the right of the court to allow either side to re-open the case, but the court

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has serious doubts as to this being proper rebuttal testimony. I do not see how this can explain or meet any testimony that has been introduced by the defense, and for that reason the objection will be sustained.

MR. HAWLEY: I will not leave to introduce this testimony at this time.

MR. RICHARDSON: We object to their re-opening their case at this time, or to attempt to add to the testimony in chief, as immaterial, incompetent and irrelevant, and they introduced their evidence upon the question, and the effect of it and the result of it --

MR. HAWLEY: I will withdraw the offer. I think there was some testimony on that, come to think of it. That is all Mr. Wayne.

C. D. LAMSON, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q Your name is C. D. Lamson? A Yes sir.
- Q What is your business? A Manager of the Boise Home Gas Light Company.
- Q How long have you been in that business? A Here at Boise?
- Q Yes sir. A Three years.
- Q How long have you been in the gas business? A Twenty years.
- Q In what capacity have you been -- have you worked during this past twenty years? A Most of the time in an engineering capacity and the rest of it in a managerial capacity.
- Q And as such have you become acquainted with gas and its uses?
- A Yes sir, illuminating gas.
- Q The illuminating properties? A The gas itself has no exact illuminating properties.
- Q You are familiar with it and its lighting properties?
- A Yes sir.
- Q You have made this your business for the last twenty years?
- A Yes sir.
- Q It has been your exclusive business, has it? A Yes sir.
- 4326 Q I will ask you, Mr. Lamson, what it requires to ignite gas?

MR. RICHARDSON: We submit, if your Honor please, that the character of this witness is not shown as an expert, and we object to the testimony as immaterial, incompetent and irrelevant and the proper foundation is not yet laid.

MR. HAWLEY: We will turn him over for examination.

MR. RICHARDSON: I don't propose to qualify him. A man may be an engineer for a gas company or a manager for a gas company for twenty years and still not be qualified to testify to any such question as is now asked.

THE COURT: I think, Mr. Hawley, that you better examine him more as to his knowledge.

Q I understand you to say that you have, during the past twenty years, been working in the gas business? A Yes sir.

Q In these different capacities? A Yes sir.

Q And you have familiarized yourself with illuminating gas and its properties? A Yes sir.

MR. RICHARDSON: I object to the question as leading.

THE COURT: What is that answer?

The answer was Feasible.

Q Have you made a study of this from the books as well as from your experience? A Yes sir.

MR. RICHARDSON: That is objected to as leading.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

Q You may state whether or not you have inquired into the explo-

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give qualities of gas and also its illuminating qualities?

A Yes sir.

Q And also the method of lighting or igniting gas? A Yes sir.

Q And of the kindred steps and subjects pertaining to it?

A Yes sir.

Q You have been, I believe, during this time exclusively in this business? A Yes, in the capacities named.

Q And in what particular capacities have you worked, do you say?

A Well, mostly in a managerial capacity. Of course, in the larger plants, in some cases it had been in an engineering capacity and in the construction work.

Q State where you first worked in the gas business? A New York City.

Q In what company? A George F. Swift Construction Company.

Q In what capacity? A As constructing engineer.

Q Yes, and in what capacity -- A The construction of and blowing in of the plant, as we call it; it is usual for the contractor to get the plant under way.

Q How long did you stay there with that company? A In New York?

Q Yes, with that company? A Something over four years.

Q And did your part of that business bring you into, -- or cause you to inquire into the character of gas and its explosive qualities? A Yes sir.

Q And did you make this a study, and also your business? A Yes.

Q Where did you next work and in what capacity? A Well, I was in a consulting capacity for one year after that, with a number

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of small plants and large ones, different items that come up. I have never kept any record of them.

Q It was in various places? A Yes sir, scattered over the country pretty well.

Q How long have you been here in Boise? A It will be three years in October.

Q Have you been manager of the Boise gas plant since that time?

A I was superintendent -- no, for two years and a half of it I have been.

Q And the other part of the time what was your business?

A This one here is a new plant and it took all my time there, for I came here in the course of its construction.

Q During all these months had you been engaged in the subject of this study of gas, and its qualities? A Oh yes; necessarily must be.

Q State whether or not you kept yourself up in literature pertaining to the subject.

MR. RICHARDSON: That would be his conclusion and we object to it for that reason.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A Well, of course I subscribed to the technical papers and read whatever comes out now on the subject, but we are mostly guided by our experience. The manufacture of gas is something probably in which no text book applies the same in all locali-

ties. It is large a matter of experience.

Q A matter of practical experience rather than theoretical knowledge then? A Yes sir.

Q And you have had those twenty years of practical experience?

A Yes sir, approximately twenty years.

Q Yes, approximately, I understood you? A Yes sir.

Q Have you during that time ascertained or inquired into the lighting properties of illuminating gas and what would cause its ignition? A How is that?

Q What would cause it to ignite? A The temperature of the flame, I suppose that is what you mean.

Q Yes sir. What do you mean by that, that it requires a flame?

A Oh, yes, -- that is, it requires a point of contact, -- heat sufficient at the point of contact at least to light it. It may be an incandescent point or something of that sort, but you know a flame is a very vague term, and it is the flame temperature, I might say.

Q State what the effect of an ordinary lighted cigar would be upon gas, introduced into a room or hallway that is filled with gas?

MR. RICHARDSON: That is objected to for the reason that is not shown to have had any experience upon that subject whatever.

MR. HAZLEY: I don't know how we can show any further experience as an expert than we have shown.

THE COURT: I think he may testify.

MR. RICHARDSON: I desire to object to the ruling.

THE COURT: The objection will be overruled.

MR. RICHARDSON: I desire an exception.

THE COURT: The exception may be noted.

Q You may answer? A Will you kindly read that question.

The question was then read to the witness.

MR. RICHARDSON: Furthermore I want to object on the ground that there is no testimony in the case that this was an ordinary cigar.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

THE WITNESS: Probably the best way I can answer that question is to say that gas, after being mixed with air, itself is not explosive, and at no time, even if it is under pressure, isn't explosive. If it is mixed with air it is not explosive, and at no time can you light an ordinary illuminating gas from a glow.

Q From a glow or coal? A Yes.

Q Then the effect of an ordinary ignited cigar would not light it?

MR. RICHARDSON: We object to that.

Q Would it, then? A It would not unless the wrapper or some part of it was fanned into a blaze, but the ordinary glow of a cigar would not do it.

Q You may state whether it is possible to ignite this kind of gas unless there is a blaze or flame? A Oh, yes, but that

depends upon what you call a blaze or flame. As we understand a blaze or flame, it is something I would say -- put that in this way, it would take a body having sufficient heat units to generate a flame temperature. These terms are vague, however the word spark is used, as a spark of light, which does not signify anything, and electric sparks are really a flame which gas can be ignited by.

- Q I am speaking about it with reference to a cigar -- a lighted cigar?? A Ordinarily a lighted cigar would not do it, no.
- Q How would the -- if the gas -- if gas in a given place is leaking, in a basement or cellar, what is the direction that it takes in escaping -- where does it naturally, or in what direction does it naturally travel? A Illuminating gas would travel upward.
- Q On account of its -- A Less gravity.
- Q Less specific gravity? A Yes.
- Q What would be the effect of -- or, how much gas does it require, or what proportion of the gas in comparison with the air, can you tell us, in a given place to cause an explosion or enable an explosion to occur? A That would depend largely on the quality of the gas.
- Q I am speaking about the ordinary illuminating gas?
- A I think less than six parts of air, and never more than eight or nine.
- Q To one of gas? A To one of gas, yes.
- Q And what would be the effect on a person in an atmosphere of

What kind before an explosion occurred, what would be the effect upon a person? A Well, it would depend on the quantity. Some people are easily asphyxiated with a small quantity and others can stand a whole lot of it.

Q I am speaking of the quantity where a flame would cause an explosion? A A flame would cause an explosion in a very minute quantity just as well as any large quantity.

Q In a -- where it comes from the -- I am speaking now, where it is coming from a distance below, rising up above, from a basement or a cellar or subterranean chamber of some kind, rising up in an open hallway? A Its presence would be detected on account of its odor, that is, a quantity to cause an explosion. It would take a very minute quantity present, before it would show itself.

Q That is, the presence of it would be detected immediately by the -- A By the disagreeable odor, yes sir.

Q And how would it be in an open hallway? A If the gas was in sufficient quantity --

Q Yes, if the gas was in sufficient quantity to cause an explosion how would it be so far as detecting the gas in any part of that open hallway, would it spread out? A Oh yes, of course gas will attempt to go up, of course. We figure that air taken at a gravity of one, and gases vary from about 45/100ths to 75/100ths, and as they try to scatter through the strata of air its progress is slow, and there is ample time to make its presence known before the explosion would occur. They

must be intimately associated or the two would lie in strata.

Q As I understand it, the gas and air must be of a mixture before there can be an explosion? A Oh yes.

Q But what I am asking now, put it in an ordinary open hall, and have the gas coming into the open hallway or room from some point in it, would that gas spread itself throughout that room or hallway? A Oh yes, they will all diffuse.

Q They will diffuse everywhere? A Yes sir.

Q And presuming that was so diffused, what would be the effect on the organs of smell -- would it be detected? A The offensive odor would make its presence known, and if a person was there a sufficient length of time asphyxiation would be caused.

Q And what would be the effect by introducing a flame or light in that hallway anywhere as to causing an explosion? A Well, the flame would communicate -- of course it would travel along; those things are done so rapidly and so quietly that there is really no absolute theory on it and there is no practical theory on it. Those things happen.

Q It all occurs very quickly? A Yes sir.

Q And what is the effect of the explosion of gas so far as its burning qualities are concerned? Would it -- would or would not a gas explosion in a room or where a person was involved, so burn that it would be shown? A It would depend on the quantity of the gas present. A small quantity of gas although

in an explosive mixture, requires a certain time in contact with a body before it will scorch it. If there was only a small quantity it would not show.

Q What is the effect of a gas explosion so far as noise is concerned? A That depends upon atmospheric conditions and everything else.

Q It depends upon the amount of gas in the atmosphere? A Yes sir.

Q If there is a small amount of gas, what would be the effect as compared with a much larger amount? A If it were confined in a small space you would have relatively as loud an explosion as if it were confined in a large space.

Q I don't understand. A In gas analysis the last thing done is to explode the remaining quantity by means of an electric spark, and there is just a click. If that was fifty times or a hundred times its volume it would be correspondingly louder.

Q And would it be loud in proportion to the amount of gas in the atmosphere with the particular room where it is exploded?

A It would be in proportion to the mixture.

Q And what in an ordinary room or hallway would be the effect where it was -- where the gas or there was sufficient gas mixed with the air to cause a very loud explosion, what would be the effect so far as burning was concerned? A Well, where it would first break out that is, where it would first burst out, there would probably be a scorching or something to

show that flame temperature was there of course.

- Q And what would be the effect if the gas that was causing the explosion was coming from an open tube, so far as lighting that gas itself? A That would ignite at the point from which it emitted; of course it would light there.
- Q Then if a gas explosion occurred in a room or hallway, the gas itself coming from a gas tube, what would be the effect of the explosion so far as lighting the gas that was still coming from the tube? A If that gas tube were in the same room the chances are it would ignite at the point of emission.
- Q But in igniting, or causing the explosion, would not the explosion run back to the source from which the gas came?
- A That would depend upon the point of least resistance, of course the point of least resistance, it naturally seeks and gets away.
- Q In speaking of that, what is the effect of a gas explosion upon, so far as the force is concerned, what is the --
- A They diffuse equally in all directions; that is the theory.
- Q Then if a gas explosion would occur in this room the atmosphere was so charged with gas as to cause an explosion, in what direction would the force be manifested? A All directions.
- Q All directions equally? A Yes sir.
- Q Did you ever know, -- and there would be no particular downward force -- or no more downward force or effect that upward?
- A No, all explosions are caused by the expansion of gases, and

gases extend equally in all directions.

Q. Premising that a gas explosion was in a hallway, that the gas in a hallway was so mixed with the atmosphere as to cause an explosion if brought in contact with a flame, what effect, if any, would it have upon the flooring of the vestibule immediately outside of the hallway and opening into the street?

A. That is a question that is hard to answer. There might be little ducts or channels through which the explosion could get to the outside surface and rip it up, but that would be purely theory. There is nothing practical on that.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. You have control of the gas works here? A. Yes sir.

Q. And all your employees are allowed to smoke in and around the works? A. Yes sir.

Q. You have no rules against smoking at all? A. No sir.

Q. And no signs in your gas works prohibiting smoking? A. No sir.

Q. That is because the gas is confined, isn't it? A. Yes sir.

Q. If the gas was out in the room you would not allow them to do it? A. I would not allow them to light a cigar in there.

Q. Would you allow them to go in there if they were smoking a cigar or a pipe? A. No.

- Q There is such a thing as an automatic gas lighter, isn't there?
- A But that is a kind of a chemical.
- Q I understand, you turn on the gas and get the result from the chemical which does not result in a flame at all? A Oh no; you don't; that coming in contact with the gas causes the flame. That is not true of an open flame burner, however.
- Q You say gas cannot be ignited without a flame? A I do not say that. I said without a temperature.
- Q If you get a temperature you get just the same result as with a flame? A Certainly.
- Q Suppose you are going into a room that had a good deal of gas in it and took a live piece of anthracite coal out of a furnace and carried it through, you would get a flame? A No sir, not unless you put a bellows behind it.
- Q You think a live piece of anthracite coal could be carried through a room filled with gas? A If it only glowed.
- Q It has what you call a flame, does it? A Yes sir.
- Q Tobacco can glow and have a flame, can't it? A Give it sufficient oxygen to blow it into a flame.
- Q What makes gas flame is the combining of the gas with the oxygen, isn't it? A Yes, of course, with atmospheric air.
- Q And that is what makes the explosion of gas? A Yes sir.
- Q Suppose you had a building that had a partition in it above a gas meter and the lower part of the partition was open,-- do you know what I am driving at? A You mean a studding partition.

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Q Yes, a stuffing partition, and under this was a gas meter?

A Yes.

Q And this gas leaked out at a hole in it, wouldn't the gas come up into this partition and fill and permeate it along the line of least resistance? A Yes.

Q And finally it would begin to come out? A Yes.

Q This space would perhaps very slowly fill and fill and fill until it practically contained no more gas? A Yes.

Q And then it would begin to come out around the walls of the partition? A Yes, provided it was kept confined.

Q If it was kept confined there absolutely it is just as safe there as in a pipe, isn't it? A Yes.

Q Because there would be no oxygen? A Even though it were, if it has no pressure.

Q So that there it is just the same as in a gas pipe?

A Yes.

Q Now, suppose there were some little leaks, while this reservoir I have described was gradually filling, and suppose that some one came along with a lighted cigar, or the glow on the end of a cigar, would or would not that lighted cigar as I have described be liable to ignite this gas that was coming out of this place and cause an explosion? A Not as you describe it, no.

Q Let's hear you describe it. A You said a glow; the authorities agree that a glow cannot ignite an explosive mixture.

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Q No matter what the degree of heat may be of that glow?

A When you give it sufficient oxygen to fan it into a flame, yes.

Q So that that occurs, doesn't it, from the combination of the oxygen and the gas, and the heat or flame that you have spoken of? A Yes, of the flame temperature.

Q Your flame may be so imperceptible that it cannot be seen as a flame at all, by the naked eye, I mean? A Oh, no, you would see the flame.

Q The explosion would be so much quicker than the eye that it would not be seen? A Yes, but you know it is there just the same.

Q Suppose a man should come downstairs with a recently lighted cigar in his mouth, either an ordinary or an extraordinary cigar, and should approach a room that was filled with illuminating gas, wouldn't it be entirely possible for that cigar to explode that gas? A Not if it were filled with illuminating gas.

Q I mean with the ordinary atmospheric conditions? A If the mixture were right, that is, to place it in an explosive condition, and that cigar should be fanned into a flame -- the wrapper or any part of it fanned into a flame, the explosion would result.

Q Suppose you light a cigar in this room and start downstairs, and in the lower hall of this court house there was a large amount of gas contained in the atmosphere of that hall, and

you kept puffing on your cigar, wouldn't you be liable to get an explosion? A Not unless the cigar broke into a flame. You would have to puff pretty violently.

Q Wouldn't you be liable to have the result of an explosion?

A That depends.

Q What books have you read on this subject of the explosive qualities of gas? A There are a number of them. King's Treatise is probably the standard work, but where the explosive quality of gas comes into our study more than anything else, it is in its application to combustion engines, such as gas engines.

Q You have had a little experience right here in Boise, haven't you, with the explosion of gas? A We have three or four a day, mild ones.

Q Didn't you have one here some three or four years ago?

A I don't know, I possibly was not here.

Q You know a saloon down here called the Senate saloon? A Yes sir.

Q Wasn't there an explosion in that saloon? A Yes.

Q Wasn't that a gas explosion? A That was not illuminating gas, that was natural vapors that caused that.

Q It did not come from the Boise gas works? A No sir.

Q The whole front of that building was blown out from an internal explosion in the basement? A I did not see the wreck. I don't know, it could not have been very much blown out.

Q Did you make an investigation of that explosion? A I sent

the foreman up to look at it.

Q Why? A Because I knew the service was out and the supply cock turned off.

Q Then there was a claim that there was a gas explosion?

A Through the papers, but they jump at anything.

Q They do? A Yes.

Q That is news to us, who have been engaged in this defense.

When was it that explosion occurred? A I don't recollect.

Q Any suit been brought in respect to it? A No sir.

Q But you were notified and immediately sent up there to make an investigation? A No, I sent up after I saw it in the morning paper.

Q You are satisfied that gas expands equally in every direction, that is, assuming the resistance is equal in every direction?

A The force is equal in every direction.

Q That is what I mean, provided the resistance is equal?

A Yes, and that the mixture is uniform.

Q If you had a uniform mixture of gas in this room and you should find that side of the room had been blown outward would you conclude that this side was stronger than that? A Yes.

Q And if that was thrown outward you would come to the conclusion that the explosion came from the inside of the room?

A Yes sir.

Q And if anything in the room was thrown still further outward would you come to the conclusion that the explosion was on the inside, that is, opposite the point towards which the

object was driven -- the point where you got the results?

A Yes.

Q Have you read anything with reference to this explosion that is under consideration here? A When it happened I read in the technical journals the account of it, and that is about all.

Q Did you read that both the professors from the Leland Stanford University and the Berkeley University had decided that this was a gas explosion? A No sir.

Q Did you read their testimony? A No sir.

Q Did you read the resume in the Linforth case? A No sir, I did not.

Q Where there was a ten thousand dollar verdict recovered because of a gas explosion? A No sir.

Q Is it customary in gas houses where gas is being manufactured for commercial uses, such as you manufacture here and distribute throughout the city to put up cards saying "No smoking allowed?" A Well, in some of the old time plants there are restrictions placed on it. We don't though.

Q Where they are up to date they smoke all they want to, do they -- in plants that are modern and up to date? A If the place is properly ventilated and they have proper apparatus there is no reason why they should not.

Q Now, in order to insure safety in respect to that you keep the place well ventilated? A Yes sir, when the gas is under

pressure it is not explosive.

Q You can smoke in an automobile, but you would not take a cigar to examine the carburettor with? A No sir.

Q Do you know anything about an automatic gas lighter that will light the gas on an open jet? A An electric, yes.

Q You turn that a spark? A Yes.

Q You even now in the old days a gaslight lighted by a little small wire that ran around to the burner? A Yes.

Q And you touched that and it gave out a spark? A That is in itself an arc and that has a temperature of approximately 8,000 degrees, and if you have an arc you have a flame.

Q So imperceptible that it cannot be seen? A Oh no, it is luminous.

Q You have seen chandeliers in theaters that were lighted that way? A Yes.

Q Did you ever see that spark? A If you are close enough you can.

Q It is not ordinarily seen? A It is not ordinarily looked for.

Q There is a good deal of difference between the gas used in different cities is there not? A Yes sir.

Q It depends upon the coal very much from which it is made?

A Not all gases are made from coal.

Q Well, from whatever it is made from? A Yes.

Q Different gases have different densities? A Yes.

Q And they have a different flashing point the same as coal oil or kerosene? A Yes.

- Q What is the flashing point here in Boise? A Well, we would run -- the temperature being 59, the ultimate temperature of the flame would be about 2350 or 70, somewhere.
- Q At sea level would it be different? A It would depend upon the temperature.
- Q The altitude has some effect on the flashing point? A Oh yes.
- Q It does with kerosene and gas? A Yes, when we speak of gas that is all reduced to sea level.
- Q I know it is in the books -- A It is in practice.
- Q The actual flashing point of coal oil say from which gas could be made, or which is one of the products of the same general substance, is different, a little higher than at sea level? A Oh yes.
- Q And the higher your altitude the lower your flashing point? A Yes.
- Q And on the other hand the lower your altitude the higher the flashing point? A Yes.
- Q You don't know what the temperature would be at San Francisco for flashing of gas? A They make water gas in San Francisco, and I should take it from an average that it would be from 72 to 73 one-hundredths air gravity; air is 43/100ths and it would require more air with any water gas to bring about the same result than it would with Boise gas. Ordinarily we have to combine two parts of oxygen with one of hydrogen to bring

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it about.

Q And that is true of the water gas, isn't it, that it is richer in hydro-carbons themselves so that it would explode more easily? A Why, more easily, yes.

MR. RICHARDSON: That is all.

MR. HAWLEY: That is all.

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HARRY ORCHARD, being recalled as a witness in rebuttal on behalf of the State, and having been heretofore duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q Was you ever, Mr. Orchard, known as or called as, "Shorty"?
- A No sir, not that I know of.
- Q Did you ever, while you was in Cheyenne after the -- or at any time after the explosion at the Independence depot, while you were around Moran's place, did any one call you that name? A No sir, I never remember of any one calling me by that name.
- Q Did you know Gratias of the Globeville union? A No sir.
- Q Did you ever have any acquaintance with him or was you ever introduced to him? A No sir, I did not.
- Q Did you know Joe Barnes? A Yes sir, I think I know a man by the name of Joe Barnes.
- Q Who was it that introduced you to Joe Barnes? A I could not remember who did, if anybody did.
- Q Did you know George Ridell? A Yes sir.
- Q Where did you know him? A At Cury, Colorado.
- Q Where -- I mean on what particular trip? A I met him on the trip that I had down there with Mr. Moyer.
- Q The trip you have described in your direct evidence? A Yes

air.

Q State whether or not George Riddell introduced you to Joe Barnes? A I could not say whether he did or not, I don't remember of it.

MR. HAWLEY: That is all.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q Mr. Orchard, if Pat Moran has said that you were called "Shorty" do you know whether or not that is untrue? A That is untrue as far as I know. I never remember of it.

Q That is, so far as your presence is concerned other people may have called you Shorty? A I never knew anybody to call me Shorty.

Q And you were not introduced to Max Malich by Mr. Grattias?

A No sir.

Q Nor was he introduced to you by Mr. Grattias? A No sir.

Q Nor you did not introduce him to Joe Malich? A No sir, I did not.

Q Mr. Orchard, did you ever hear of a man named Patrick McKinney?

A No sir, not that I know of.

Q Was your maternal grandfather named Patrick McKinney? A I could not say.

Q Do you know who your maternal grandfather was? A I know my

grandfather on my mother's side was McKinney.

Q But you don't know whether it was Patrick or not? A No sir, I do not.

Q Where did he live? A I could not tell you.

Q Didn't he live in Northumberland County, Ontario? A I don't know.

Q Did you ever see him? A No sir.

Q Never saw him? A No sir.

Q Do you know whether he was insane or not? A No sir.

Q He may have been insane for all you know about it? A He may have; I never remember of him.

Q He lived in Ontario, didn't he? A I could not say whether he did or not; I never remember my grandfather.

Q Just a moment, do you know how your grandfather Patrick McKinney, if he was your grandfather, came to his death?

A No sir, I don't know.

Q Don't know anything about that? A No sir.

Q Don't know whether he hung himself or not after being insane?

A I don't know.

Q You don't know? A No sir.

Q Did you ever have an uncle who ever became insane to your knowledge? A I never had an uncle that I know of as insane.

Q Didn't know anything about that? A No sir.

Q Did you know that you had an uncle who imagined he had committed a crime and finally hung himself? A I never had an

uncle who imagined he committed a crime.

Q Did you have an uncle who hung himself? A Yes sir.

Q What was his name? A Peter McKinney.

Q What relation did he sustain to this grandfather of yours, if his name was Patrick? A I don't remember my grandfather on my mother's side.

Q What relation did Peter McKinney sustain to your grandfather?

A He was his father.

Q Where was Mr. Peter McKinney when he hung himself, do you know?

A He was in Northumberland county, Ontario, Canada.

Q How old were you at that time?

MR. BORAH: I object to this as not proper cross examination until we find out the object of it.

THE COURT: The court would sustain the objection on that ground, but if I do so I will permit the defense to treat the witness as recalled for further cross examination, and knowing that, I will not pass upon the question of whether it is proper cross examination. I don't suppose there is any contention that this is proper cross examination?

, MR. RICHARDSON: Oh no, I don't pretend that it was.

THE COURT: You may proceed.

Q Read the last question, please.

The last question was then read.

A You mean at the time of my uncle hanging himself?

Q Yes. A I think I was about 37 or 38 years old.

Q Had he been ill before he hung himself? A No sir.

Q Had he been confined? A No sir.

Q Had he been confined by his relatives or anybody else?

A No sir.

Q What was the matter with him, if you know? A He was supposed to be a little demented. It was from a family trouble.

Q How long had he been demented? A Well, I think it was a year or so, as near as I can remember. I cannot remember exactly.

Q You never heard that there was anything wrong with your maternal grandfather? A No.

Q Did your grandfather live in the same place, Northumberland county, Ontario? A I don't know whether he did or not.

Q Did he die before you were born? A I think he did.

Q You don't know whether you ever saw him or not? A I know I never saw him to know him.

Q Have you never heard from any of your relatives that your maternal grandfather was chained or tied up for years at his house in Northumberland county before he died? A No sir, I never heard of such a thing.

Q Do you know a man named Ezra Thresher of Butte, Montana?

A Thresher?

Q Yes. A No sir, I do not.

Q Did you ever go under the name of Holenski? A No sir, not that I remember of.

Q In Butte, or anywhere else? A No sir, I never did in Butte.

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Q Anywhere else? A No place that I remember of, no sir.

Q Were you ever in trouble up there, charged with arson and burglary? A At Butte?

Q At Butte, Montana? A No sir.

Q Never was? A No sir.

Q Do you know G. L. Brokes? A No sir, I do not.

Q Never heard of such a man? A No sir.

Q Did not meet him in Spokane, in 1904? A No sir, I did not.

Q Nor tell him you had been a detective for the Pinkertons for five years and that you was going to San Francisco for some people in Idaho if they would put up the money for you to go on, in Wallace, Idaho? A No sir, I did not.

Q Nothing like that? A No sir.

Q Did you enter into any arrangement with Mr. Brokes, or attempt to enter into any arrangement with Mr. Brokes in Portland in 1905 to hold up a Great Northern train near Seattle? A No sir.

Q You never did? A No sir, I never did.

Q Nor with any man, no matter what his name was?

MR. HASKIN: I object to that as not proper cross examination at this time.

THE COURT: I will overrule the objection.

Q Did you ever meet at 301 Watson Avenue in the City of Butte, in the month of August, 1902, with a Mrs. Williams?

A No sir, I did not.

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Q Mrs. Williams, 201 Watson Avenue? A No sir, I never did.

Q At any time at all? A Well, I was in Butte a little time once, but I don't remember who I boarded with.

Q Was that in 1908? A No sir, it was not.

Q You were not in Butte that year at all? A No sir.

Q And consequently did not board with Mrs. Williams? A Not in 1908, no sir.

Q Did you board with her when you were there? A I don't remember who I did board with.

Q Did you live on Watson avenue there? A I don't remember,-- I don't know where Watson avenue is.

Q When was the last time you was in Butte? A The last and only time I was in Butte was in 1908.

Q When you were on the stand before you denied any knowledge of any inner circle of the Western Federation of Miners, didn't you?

MR. HAWLEY: I object to this cross examination at this time for a number of reasons.

THE COURT: The court will permit cross examination of this witness upon any new matters that have come to your attention since he was on the stand.

MR. HAWLEY: I think we have some rights in this matter that should be respected by counsel on the other side. This is not cross examination, and if they had a right to recall this witness for further examination, they have no right to do it when they are breaking in on the rebuttal testimony.

The question of recalling him for further cross examination can be gone into, but they cannot take it at any time they choose when it would perhaps interfere with the general outline of the rebuttal of the prosecution.

THE COURT: Upon that theory the court will sustain your objection at this time, but with the understanding that the defense, before the rebuttal is closed, may recall this witness for further proper cross examination upon any matters that have been called to their attention.

MR. RICHARDSON: It would take but a minute to ask this.

MR. HAWLEY: Go ahead then.

Q Since you were on the stand before the first installment of the story you referred to has come out in McClure's Magazine?

A Yes sir.

Q And you devote a paragraph to the inner circle of the Western Federation of Miners in that very first article? A I don't remember whether I did or not now.

Q You don't know whether you did or not?

MR. HAWLEY: We object to that as incompetent, immaterial and irrelevant.

THE COURT: The court will sustain the objection. We are not going into those matters.

MR. RICHARDSON: Note our exception.

THE COURT: The exception will be noted.

MR. RICHARDSON: Does that answer stand that he said?

If not I want to make an offer.

MR. BORAH: There has not been any motion to strike it out.

MR. RICHARDSON: I want to offer to show that he has described an inner circle of the Western Federation of Miners in an article in McClure's Magazine, that he has previously referred to, and I want to show by him that he got those words from Mr. McFarland, and that he obtained his knowledge, if any he had, of an inner circle of the Western Federation of Miners from Mr. McFarland.

THE COURT: I will sustain the objection.

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

THE COURT: Do I understand you propose to recall this witness again on another branch of the case?

MR. HAVENY: It is possible on another branch, yes sir.

C. W. HENRI, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows.

DIRECT EXAMINATION,

By Mr. Hawley.

- Q What is your name? A. C. W. Eymus.
- Q Where do you reside? A. Denver, Colorado.
- Q How long have you resided there? A. Why, about 17 years off and on.
- Q What is your business or occupation? A. Plumber.
- Q Were you residing in Denver in June, 1904? A. Yes sir.
- Q State whether or not you are acquainted with Pat Moran? A. Yes sir.
- Q Do you know where he lives? A. Do I know where he lives?
- Q Yes. A. Why, he told me that he was living in Cheyenne. I don't know what the fact that he does.
- Q The name Pat Moran that was here as a witness?
- A Yes sir.
- Q Were you acquainted with him in June, 1904? A. Yes sir.
- Q State whether or not you saw Pat Moran in the city of Denver, at State of Colorado on or about the 10th or 11th of June, 1904?
- A About that time.
- Q Yes sir. A. Yes sir.
- Q Where was it you saw him? A. I saw him on South 11th street, on the South 11th street car.

Q On the south 11th street car? A Yes sir.

Q Where does the south 11th street car run to and from?

A It runs from City Park across town on 15th street, then out South 11th to South 11th South.

Q It goes on 15th street, does it? A No, it crosses it.

Q About what time of day was it? A Well, it was in the evening, I don't know just -- I could not tell the exact time.

Q It was along -- A It was along the evening; I was going home, I know -- along pretty late, possibly six or seven o'clock, somewhere along there.

Q You know it was along late in the afternoon? A Yes sir.

MR. KIMMELSON: No, if your Honor please, he does not say that at all.

Q Do you know the time at all? A No sir, I don't know the exact time.

Q How do you fix this time? A Well, I know I was going home and I had taken a transfer from South 11th Street to the Wash. Park car, going home, and I know it was late.

Q What time were you in the habit of getting work at that time? A Well, I quit work most any time myself.

Q You had no particular time? A No sir, I had no particular time.

Q Had you been acquainted with Moran before this? A Yes sir.

Q How long before this had you known him? A I cannot tell just how long that I have known him, but that I don't remember.

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Q You may state whether or not you ever associated together or worked together? A Yes sir.

Q Where? A At the American Wringer Company,-- Pettibone's.

Q George Pettibone's? A Yes sir.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q So you could not be mistaken about the man himself? A No sir.

Q You remember this incident of June, 1904, and have remembered it constantly up until now? A Well, I did not remember it for some time; I could not recall the incidents at all, but I referred to my books and found the jobs that I was at work on.

Q As a matter of fact there was not anything about the fact of your having seen him that was remarkable at all at the time it occurred, isn't that right? A Well, nothing at the time I met him that was remarkable; I had not seen him for a long time you know.

Q What made it remarkable was the fact that there was some testimony up here as to whether he was in Denver or not about the middle of June, 1904? A At the time I met him it was his good clothes that made it remarkable to me.

Q But that don't help you any with regard to the time of meeting

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him? A No.

Q It only impressed itself upon you that there was Fat Moran and he was doing well? A Yes sir.

Q How was he dressed? A He had on a light natty suit and was tugged up pretty well.

Q And when you had seen him before he did not have on a natty suit and was not so prosperous looking? A No sir, no indeed.

Q How long had you seen him before that? A I had seen him, -- oh, I had not seen him, I guess, for six or eight months before that. I had met him on the street, but had not seen him to talk with him.

Q Were you running a place by yourself? A Yes sir.

Q And what were you doing yourself -- what were you doing, what kind of work? A Plumbing.

Q Were you a journeyman plumber? A No sir, I have my own place.

Q You did keep your place open until six o'clock? A No, not as a rule, -- five o'clock.

Q What time did you close up your place? A Five o'clock.

Q How you remember the fact of his being there because you had some job at that time, do you? A Well, I was coming from -- I was going down on the South 11th Street car.

Q You had not closed your store then? A No, my shop is not there at all, you know; this was down town and I was going in on the car from some place.

Q Let me ask you, -- the south 11th Street car, was that the 23rd Avenue car at that time? It goes from City Park on

22nd, and down Curtis and then down South 11th street --

is that right? A Yes sir.

Q And you were going into town from South 11th street, were you?

A I was going home.

Q On South 11th street? A I was going down town on the South 11th street; we have to transfer from that.

Q Where did you get onto the car? A I got on at 8th Avenue.

Q Was Pat Moran on the car at that time? A No sir.

Q Where did he get on? A Below there at one or two streets below that; I had not noticed him though until we got to 13th Avenue west.

Q That is before you cross Cherry creek? A Yes.

Q And then you rode into town with him at the time, did you?

A Yes sir.

Q Where did you live then? A I lived on South Gaylord street.

Q You lived on south Gaylord? A Yes sir.

Q You had to go clear out on that car pretty near to City Park?

A I went out on the Wash. Park line south, you know.

- Q. And was he on the car when you changed cars? A. I don't remember whether he was on the car or not. I think he got off though, at 15th Street. I lost track of him when I got off.
- Q. On your direct examination you said you was going home in the evening between six and seven o'clock?

MR. HAWLEY: No, I beg pardon. He thought it was.

THE WITNESS: I don't know the exact time. I don't remember.

- Q. Well, the best of your recollection is it was between six and seven o'clock? A. I should think so.
- Q. Was it nearer seven than six? A. Well, I couldn't tell you as to that. I might have been.
- Q. It wasn't dark yet? A. No, it wasn't dark then.
- Q. But your day's work was entirely done and you were going home for the night? A. Well, I don't know as to that. I don't remember as to that. I sometimes had to do work after I got home you know.
- Q. Do you know whether or not at that time the Union Pacific train for Cheyenne left Denver at six o'clock? A. I don't know.
- Q. You don't know where Moran was going? A. No sir.
- Q. Nor when he was going? A. No, I don't.
- Q. Didn't say anything to you about it? A. No.
- Q. You spoke of having seen Moran about six months before that time; where did you see him at that time? A. I saw him on 15th Street. His back was turned to me then. I was on the car and I saw him then.
- Q. You didn't see him to speak to him on that trip? A. No.
- 436: Q. How was he dressed then? A. Why, he had on a brown suit I

think.

Q. But not so neat and pretty as this other one you have described?

A. No.

Q. What time was it when you saw him? A. It was about ten o'clock in the morning.

Q. In January you think? A. Sometime along there.

Q. When had you seen him before that? A. I don't remember. I think it was when he was working at the store.

Q. So from the time that he left the store and went out of Denver you have only seen him twice since? A. No, I have seen him since; I met him --

Q. Well, up to June, 1904, you had only seen him twice? A. No.

Q. Once standing on the sidewalk with his back towards you as you was riding by on a car. A. Yes.

Q. He was dressed in a brown suit at that time. What kind of a hat did he have on? A. I don't remember the hat. I just saw him.

Q. You can remember the suit all right but you can't remember the hat? A. I can't remember the hat.

Q. What was there about the suit which gave you any more reason to remember it than the hat he had on? A. Well, I can't say now as to that, what caused me to remember it, but I remember it.

Q. You really don't remember the reason why? A. It was a kind of a brown looking suit.

Q. But as you went by on a rapidly moving car you saw Pat Moran's back having a brown suit on? A. Not a real dark brown but a

kind of a mixture.

Q. What was it mixed with? A. I couldn't say as to that.

Q. But in a passing glance enabled you to take in that suit?

A. Yes.

Q. Is your eye more attracted to a brown suit than it is to a soft or a hard hat? A. I think so.

Q. You think it is? A. Yes sir.

Q. A man might have on my kind of a hat and you wouldn't notice it? A. Yes sir.

Q. But if there is a brown color in his suit you notice it instantly, that is right, is it? A. I notice a loud color, you know.

Q. What was the color of his suit in June, 1904?

THE COURT: Witness, you must speak up louder. The jury cannot hear you. You are not answering these questions for Mr. Richardson's benefit, but for the jury.

THE WITNESS: I said I was attracted by a suit, a loud suit you know. A highly colored suit I could notice it quicker than I would anything else.

Q. Do you call a brown suit a highly colored suit? A. Especially if it is a kind of dark brown and has a little mixture.

Q. Was this the kind of a suit that particularly attracts you?

A. Well, it might, yes.

Q. Now what kind of a suit did he have on in June of 1904?

A. Well, it was a light natty suit. It looked like a tailor made suit, you know.

Q. No, I don't know. I didn't see him in June. I never got acquainted with him until he came up here.

MR. HAWLEY: You know what he is talking about. Don't be funny.

Q. Go ahead. Mr. Hawley won't let me say I don't know, but as a matter of fact I don't.

A. Possibly the color of this gentleman's suit here (indicating) something like that.

Q. And you noticed that because it was that color? A. Yes sir.

Q. How far did you ride with Pat Moran that time? A. I rode with him from -- when I noticed him on that car, about 15th Street, I rode with him down to 18th.

Q. Have any conversation with him? A. Yes.

Q. What did you talk about? A. I said, "Hello, there". I says, "I think I know you." He says, "No, you don't." "Well," I says, "I guess I do." "Well", he says, "I don't think you do." "Well," I says, "I know I do," and I gave him my card then and told him that I was still on earth yet.

Q. He didn't remember you but you remembered him? A. Not for a time, and then he remembered me.

Q. You didn't keep any book that covered the event of having met him at that time? A. No, not of having met him.

Q. How long were you on that job? You said you looked at some job you were doing -- looked at a memorandum book as to some job. A. It was a job that I was doing at that time that called me to remember it.

Q. I am just asking you what the job was? A. There was four or five jobs that I was looking after.

Q. What were the four or five jobs that you were doing?

A. (Looks at book).

MR. DAWSON: Can't you remember that?

MR. HAWLEY: He has got a right to refresh his recollection.

MR. DAWSON: I object. He can go through and pick out a date from a book and tell what he was doing at that time. The question is his remembrance of it.

THE COURT: Witness, can you answer the question without referring to memoranda?

THE WITNESS: Well, I can try it to the best of my knowledge.

MR. RICHARDSON: I assumed that he had combed his book all over before he came here.

MR. HAWLEY: I submit he has got a right to look at his book.

THE COURT: He can answer the question.

A. I was down at the Hay terrace and I had fixed a gasoline stove down there for a party.

Q. Now what connection -- just to interrupt you on that one and then we will go to the other's -- what connection is there between fixing a gasoline stove at the Hay terrace and meeting Pat Moran on the street car, what is the relation between the two? A. I couldn't recall the incident at all at the time being -- at the time they asked me about it I couldn't recall the date.

Q. So you hunted up this book?

MR. HAWLEY: Let him go on.

THE COURT: You may answer the question.

THE WITNESS: Until I referred to my books, and I

remembered of meeting a fellow the day after I had met Pat while I was out collecting, and this fellow that I had met he acted peculiar, you know, and he wanted to know what I was looking at him for.

Q. Was that because you were acting peculiar?

MR. HAWLEY: We object to that, your Honor. Let him go on.

MR. RICHARDSON: I don't care if he does object to that. When he goes from one subject to another I will ask the question if I want to.

THE COURT: The witness may answer the question.

MR. RICHARDSON: Of course he may. I am not going to interfere with his answering it.

THE WITNESS: This fellow was rather a tough looking man and he looked peculiar and I was looking at him, naturally would, you know, and he wanted to know what I was looking at him for. And he says, "I have a notion to smash you one anyway", and he jumped at me, you know, but I happened to be quick enough to defend myself, and I says, "Don't you move another inch," I says, "or you and I will come together", and he didn't.

MR. RICHARDSON: Do we have to have that in order to find out the answer to my question.

MR. HAWLEY: He is fixing the date.

THE COURT: My understanding is that the witness is giving this to identify the date.

THE WITNESS: I got to stating it from remembering seeing Pat jump onto a man just like that, you know, and that

in why I happened to think of it and it impressed me as being like the party Pat had -- Pat jumped onto a fellow one time and whipped him like that and he found he had whipped the wrong man after he had whipped him.

Q. He did. And so you remember your date from that?

A. Yes sir.

Q. Now what is there in your book that shows that you give the date that that man jumped onto you? A. Well, it was when I was going to collect a bill at Mr. Hemptons at the Colonel Hennig mansion up at 9th and Logan.

Q. Then it had nothing to do with the gas stove incident?

A. Well, I had been over there fixing this the day before you know.

Q. Then the gas stove incident didn't help you any? A. No.

Q. There wasn't really any substantial relation between the gas stove and Pat Moran, it was something else that made you remember when Pat Moran was there? A. It was this other first, you know.

Q. Was the desire to have a trip to Idaho and see a celebrated case, did that have anything to do with fixing your date on the 15th of June? A. No, it didn't.

Q. You have been reading the papers about this case, haven't you?

A. Yes, I have.

Q. Rather glad to come up here and see the case progress a little while, weren't you? A. No, I wasn't.

Q. As long as you could get good pay for it and a nice trip up to Idaho in the middle of the summer? A. I didn't care for it.

Q. Who did you volunteer the information to that Mr. Moran was in

Denver about the middle of June? A. I don't know unless it was a bunch of lawyers down in the Kittredge Block. I think they are the ones that gave them the information.

Q. Who came to see you about it? A. I don't remember that. The fellow that came give one name and then another fellow came in and introduced himself as somebody else, so I don't know his name.

Q. Were they connected with the Pinbertons in any way?

A. I think they must have been.

Q. Think they were. Well, don't you know that they were?

A. Not at that time I didn't.

Q. You were down in the Kittredge Bldg. doing something, were you?

A. I was talking with Mr. Teggart and Irwin.

Q. A bunch of lawyers there? A. Yes.

Q. Teggart and Irwin are both lawyers? A. Yes.

Q. Did you tell them about the incident? A. Yes.

Q. That you had seen Pat Moran? A. Yes.

Q. At that time you hadn't looked for a date or a book? A. No.

Q. And yet you told them that you had seen Pat Moran there in June of 1904? A. About that time. I didn't know the date, you know.

Q. And so Teggart and Irwin you suppose went to the Pinbertons and told them about it? A. I think they must have.

Q. And then the Pinbertons came to you, and then you wasn't quite sure whether it was June, 1904, and so you looked up a date, that you fixed a gas stove, because that fixed some date that you had met a man in the street one who had acted peculiarly toward you, and that is the way you found out when it was that Pat Moran was there? A. Yes sir.

Q. And the man that you met in the car that acted peculiarly was not on the same day at all that you met Pat Moran?

A. I didn't meet this man on the car.

Q. Well, the man that you met who told you that he was going to search you or had an idea he was going to search you anyhow?

A. It was the day after I met Pat Moran that I met this fellow.

Q. How are you sure it was the day after you met Pat Moran?

A. Yes, I am sure.

Q. You say you remembered this man because you remembered that Pat Moran had had an experience of that kind once in which he came out second best? A. No, he came out first best.

Q. He came out first best, and so you think it was the day after you had met Pat Moran, and that is what called your attention to the incident? A. Yes sir.

Q. And that is the only way you have of remembering it?

A. That is the only way.

Q. When was the next time that you saw Pat Moran? A. Well, I saw him in Denver at a distance. I didn't speak to him then.

Q. Well, when was it? A. That hasn't been over I should judge five or six months ago possibly.

Q. I asked you the next time that you saw him after June of 1967?

A. I don't remember that, the exact time.

Q. Well, how many times have you seen him since June of 1967?

A. Once.

Q. When was that? A. Well, that was, as near as I can remember, five or six months ago.

Q. How was he dressed that time? A. Well, he had on a -- a kind of a -- brown -- an overcoat, with brown through it, I think.

I think he had on an overcoat.

Q. You think he had on an overcoat and think there was brown to it? A. Yes, brown.

Q. That is the reason you noticed it? A. Brown stripes through it, a kind of a light color, a mixture.

Q. So all the time since you worked in Pettibone's store you have only seen Pat Moran three times? A. That is all.

Q. And you can't give the date of any one of those three times except the one in June of 1904? A. Well, I can't give that exact, that date exact; but it is about that time.

Q. And you had given it out to some lawyers and some Pinkertons who had found it out from them, the fact that it was in June, 1904, before you looked up any memorandum book at all?

A. No, I didn't tell them the date.

Q. When did you first look up that memorandum book which you now say helped you to tell the day you got a fellow on the street car because you fixed a gas stove that time? A. Why, it was-- I don't remember when I did begin to look it up and tried to locate the date. It was shortly after the testimony was given up here.

Q. But you had told the lawyers about it before you had looked up any date at all? A. Yes.

Q. How much money do you get for coming up here? A. I don't know exactly. I am going to get all I can.

Q. Sure, and a nice trip besides? A. Yes sir.

Q. And a sort of a vacation?

MR. HAWLEY: We object to that method of cross examination as being improper.

Q. Who did you talk with about the amount of money you were to

have?

THE COURT: Question withdrawn.

A. There are so many of them I can't think of who I did talk with.

Q. Were they all Pinkertons? A. I don't know.

Q. Can't remember them as well as you can remember Pat Moran in the summer of 1904? A. One of them I think was Mr. Prettyman.

Q. Did any of them have on any brown suits? A. They were all dressed in summer suits.

Q. They were? A. Yes.

Q. None of them dressed in brown? A. No.

Q. Well, did Prettyman give you anything for coming up here?

A. Why, he advanced some money to come on.

Q. Of course. I couldn't use that language, but that is what I wanted to know. How much did he advance you? A. Well, he advanced me \$75 to come up here.

Q. And you think you have got some more coming, or at least you hope so? A. I don't think I will have by the time I get out of town.

Q. What is that? A. I don't think I will have much coming.

Q. Don't think you will have much left, do you, after you get through? A. No.

Q. But you think you may get some more from Mr. Prettyman when you get back, is that the idea? A. I don't know as to that but --

Q. But that is all you have had, is it? A. No, I have drawn my mileage.

Q. How much is that? A. \$90.

Q. So you have had \$165 so far, have you? A. Yes sir.

Q. And hope you have got some more coming? A. Yes sir.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. HAWLEY:

Q. How long have you been here? A. Two weeks today.

Q. And your mileage within the state of Idaho amounted to \$80?

A. \$80, yes sir.

Q. And your arrangement was what in regard to expenses?

A. Well, I was to get so much -- my wages while I was gone and my expenses, and my mileage was to help pay the expenses.

Q. That is the mileage and per diem was to be devoted to the expenses? A. Yes sir.

Q. And this money that was advanced by Prattynum was a part of that? A. That was on that account.

Q. Where was the depot of the train that runs between Denver and Cheyenne, what street in Denver? A. They are on 17th.

Q. 17th Street? A. Yes sir.

MR. HAWLEY: That is all.

MR. RICHARDSON: That is all.

R. M. BABIN, a witness on behalf of the People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HASKIN:

- Q. What is your name, sir? A. -- R. M. Babin.
- Q. Where do you reside, Mr. Babin? A. Idaho Springs, Colorado.
- Q. What is your business or occupation? A. Lawyer.
- Q. Where are you practicing? A. Idaho Springs, Colorado.
- Q. How long have you been a resident there? A. I have been a resident of Idaho Springs since January, 1896.
- Q. Do you know the Sun & Moon mine? A. Yes sir.
- Q. Where does that lie with reference to Idaho Springs?
- A. About three miles south.
- Q. Did you in his lifetime know Igle Gregory? A. I did.
- Q. What was Igle Gregory's business or occupation?
- A. He was in the employ of the citizens of Idaho Springs.
- Q. What year? A. 1903.
- Q. In what capacity? A. He was a guard, riding the trails to the various mines, and also in looking up testimony for the prosecution in those cases.
- Q. What cases? Give generally the idea of the kind of cases.
- A. There was one case tried in Clear Creek county, in which Idaho Springs is located, known as the conspiracy case.
- Q. What did it refer to? A. It referred to the charge of conspiracy to blow up the Sun and Moon mine.

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MR. RICHARDSON: No, the Transformer.

THE WITNESS: Well, the Transformer was blown up, but

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The charge was to blow up the Sun and Moon mine, and following that there was an arson case tried later in Gilpin county, the buildings destroyed having been in our county and the charge of conspiracy in another.

Q. And this last case tried in the other county was what?

A. That was for the destruction of the transformers at the Sun and Moon mine situated in Gilpin county.

Q. Was you an attorney in those cases? A. Yes sir, I was listed in the prosecution of those cases.

Q. Was Mr. Richardson an attorney in the case? A. Yes sir, he defended the cases, he and Mr. Pat Carney.

Q. Who was it that was charged with those crimes in those two counties? A. In the conspiracy case there were fourteen defendants, I think, thirteen or fourteen. There was Pat O'Brien, Sam O'Brien, Joe Carbonetti, Frank Napoli, Howard Tressidi, R. C. Copley, A. D. Scott, C. C. Compton, A. J. Dean, Jack Chandler; there might be some more.

Q. Do you know a man named Milburn? A. Foster Milburn. Foster Milburn was a defendant in both cases.

Q. Who was this R. C. Copley that you mention?

MR. RICHARDSON: I don't suppose there is any idea that this is impeaching evidence. If so it would have to be shown by the record that they were convicted. Of course I don't see how it is rebuttal evidence.

MR. HASKIN: It is to show --

THE COURT: The court understands the purpose of it.

MR. RICHARDSON: No object to it as not rebuttal or impeaching evidence.

MR. HASKELL: So insist it is absolutely impeaching evidence.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A. What is the question?

Q. (Question read). A. Why, he was a member of the executive committee of the Western Federation of Miners.

Q. State what relation these other defendants in this case bore to the Western Federation of Miners? A. They were officers and members of the local union at Idaho Springs.

Q. And who was it that got the testimony together in these cases?

A. Well, there were quite a number. Lytle Gregory assisted in it.

Q. State whether or not he was a witness or was intended to be a witness in these cases? A. He was not called as a witness in the conspiracy case, but was considered by the prosecution a material witness --

MR. RICHARDSON: No, if your Honor please, we don't care for what he was considered.

THE COURT: If he was called as a witness you may show it.

Q. Had the arson case been tried at the time of his death?

A. It had not been tried.

Q. What was the intention of the prosecution in regard to using him in the arson case?

MR. RICHARDSON: We object to that, if your Honor please.

THE COURT: The objection is sustained.

Q. State whether or not he had been subpoenaed as a witness in the

arson case. A. He was dead at the time the case came up.

Q. I am asking if he had been subpoenaed. State whether or not there had been any preliminary examination or any matters to show to the community that he was to be a witness in the arson case.

MR. RICHARDSON: We object to that. It calls for a conclusion, not rebuttal evidence.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note an exception.

A. He assisted in getting the evidence together in that arson case and would have been called if he had been alive.

MR. HANLEY: You may take the witness.

MR. RICHARDSON: We move to strike out the last answer, the last part of it, to the effect that he would have been called if he had been alive.

THE COURT: The motion is denied.

MR. RICHARDSON: Note our exception.

CRIME EXAMINATION

BY MR. RICHARDSON:

Q. Mr. Sabin, you have been a resident of Idaho Springs for a long time? A. Well, since January, 1894.

Q. And during the spring of 1903 there was a Citizens' Alliance formed there, was there not? A. Yes sir.

Q. And you were a member of that Citizens' Alliance? A. Yes sir.

Q. And that Citizens' Alliance went down to Reno detective agency for some detectives, did it not? A. I don't know that they did; they had some men there assisting in keeping order and

protecting the man who wanted to work.

- Q. You got as a result of an application to Reno's detective agency Lyte Gregory and a man named Baird, didn't you, up there from Denver? A. I don't know whether they came from Reno's detective agency or not, Mr. Richardson. I know they were there and paid by the citizens for the work they did.
- Q. Now about the time that the controversy happened over the Sun and Moon where this transformer house was blown up there was some discussion as to whether or not they were worth their wages, wasn't there?

MR. HAWLEY: We object to this as immaterial, incompetent and irrelevant, not proper cross examination.

THE WITNESS: I think only in your mind, Mr. Richardson, not in that of the citizens.

- Q. You don't know that there was proof upon the proposition that the salaries of these men were unpaid at the time of the destruction of the Sun and Moon transformer house?

MR. HAWLEY: We object to that as not being proper cross examination. I am objecting to this on general principles, your Honor, because what earthly reference would that have to this case?

THE COURT: The court will permit the witness to answer the question.

MR. RICHARDSON: You needn't be afraid of the witness. He can take care of himself.

MR. HAWLEY: I am sure of that. I think you have found that out before.

MR. RICHARDSON: I have always beaten him but I will

acknowledge he is a hard man to beat. I will recommend him as a good lawyer and he is able to take care of himself on the stand or anywhere else.

Q. Go ahead, Mr. Sabin. A. I would like to know what you mean; at the conspiracy trial that this discussion came up whether their wages were paid up or not?

Q. Read him the question.

(Question read).

A. I don't recall any proof at the trial, Mr. Richardson, that they had not earned their salary.

Q. No, not that they had not earned their salary, but the salary was not paid at the time, their salary was in arrears and that there was a discussion on the part of some members of the Citizens' Alliance as to whether they would continue them in their work or not. A. Well, the citizens had a good many expenses and possibly they were in arrears, but I don't know that there was any discussion about it. There never was with me.

Q. There was some discussion as to whether they would keep them or not, wasn't there? A. Well, after the hood of the gentleman I presume they had discussed the question of letting them go. They didn't want to keep them forever.

Q. The moment that the Sun and Moon transformer house was blown up then there was never any trouble about their getting their pay and having an increase in pay, was there? A. I don't know of any increase at that time.

Q. They were kept there in any event for a long time after that, weren't they? A. They were there for several months.

- Q. Now we were six or eight weeks, somewhere in that neighborhood, trying that case up there at Georgetown, weren't we?
- A. Yes sir.
- Q. And during all of the time you had both Gregory and Baird in attendance as witnesses in the case? A. We had them there for various purposes.
- Q. Well, one of them was for the purpose of being witnesses?
- A. If we decided to call them.
- Q. And as a matter of fact you decided not to call either one of them? A. We didn't put either of them on the stand.
- Q. And furthermore as a matter of fact you had charged the men with the dynamiting of the Sun and Moon transformer house and you and other good members of the Citizens' Alliance had deported them from Lake Springs, and had you not, and they had come back? A. A good many of them came back after Judge Owen came up there.
- Q. How about this deportation --
- THE COURT: What was that last answer.
- THE WITNESS: A good many of them came back after Judge Owen came to Georgetown.
- Q. Now the Citizens' Alliance had deported these identical men who were thus charged? A. The citizens did. If you want to call it the Citizens' Alliance, you say, but the Citizens' Alliance held no meeting on it.
- Q. No formal meeting of record? A. There were a great many present who helped deport those men who were never members of the Citizens' Alliance.
- Q. These were the men in the mine who had been deported?
- A. Yes sir.

Q. And they were deported immediately? A. I think not all of them, Mr. Richardson.

Q. And they were deported immediately after this occurrence took place where the Sun and Moon transformer house was destroyed?

A. The Sun and Moon transformer house was destroyed on the hill, their deportation took place in Idaho Springs immediately following.

Q. That is what I want, I say immediately. A. Yes sir.

Q. The Sun and Moon transformer house was destroyed on the 28th day of July, 1903? A. 28th I think.

Q. 28th, and you deported these citizens on the 28th day of July of 1903? A. It was the next evening after the explosion.

Q. And they got an injunction against you after the deportation and returned to Idaho Springs? A. Yes sir, you and Mr. Owers went to Georgetown and we were enjoined and put under bonds also to keep the peace.

Q. All of you? A. Yes, about eighty of us.

Q. And then you turned around, because we had enjoined you from preventing us going back to our homes, and you had us indicted or had us informed against? A. No, we never had you indicted or informed against because we were put under bond, but because we believed those men were guilty and that a crime had been committed and we wanted them prosecuted. That is the reason we had them indicted or informed against.

Q. And it was all handled by special prosecutors, too, wasn't it?

A. No sir.

Q. And the district attorney of the district took no hand in the trial? A. He was a non-entity, as you called him at the trial.

- Q. And you agreed with that? A. Everybody did.
- Q. And you and Ralph Talbot were the people who tried the case?
- A. We took the most active part in the prosecution.
- Q. We were trying that case for six or eight weeks, during all of which time you were paid by the Citizens' Alliance and the Mine Owners' Association, weren't you? A. We were paid by the citizens of Idaho Springs.
- Q. And after six or eight weeks trial, without a single witness being put on the stand by the defense, the jury returned a verdict of not guilty as to every man who was on trial, didn't they? A. That is true. Nobody has ever denied you the glory of that singular victory.
- Q. I am not asking you for any glory about it, I am asking as to what the fact was. A. That was the fact.
- Q. You didn't have enough evidence to make a case against them that would stand alone, did you? A. I think we did. We had an excellent case against them, and I think everyone of them were guilty that were tried, now if you ask me for my opinion about it.
- Q. What makes you think that? A. You asked me about it and I am telling you what I think about it.

MR. RICHARDSON: I ask it be stricken out as not responsive to the question.

MR. HANLEY: If they choose to inquire into this kind of matters they must simply take the consequences. We have objected to this class of questions as immaterial, incompetent, irrelevant, not proper. Now having gone into that they can strike out the answer.

MR. RICHARDSON: We are not scared about the consequences of it, because we have got a record which is against his opinion.

THE WITNESS: I wouldn't have given my opinion if you hadn't asked me about it.

THE COURT: The motion is denied.

MR. RICHARDSON: I would like to have the question read for my benefit, if your Honor will permit it.

THE COURT: It may be read.

(The last two questions asked the witness, and his answers thereto, were read by the stenographer).

MR. RICHARDSON: Note our exception to the ruling on our motion.

- Q. After these men were discharged you had certain of them re-arrested for the same, that is the same substantive offense although the form of the charge was different in Gilpin county, didn't you? A. Foster Milburn and some others were arrested there on the charge of arson in Gilpin county.
- Q. And then we went over in June or July of that summer and we tried two of these cases over there, didn't we? A. It was in June and July of 1904.
- Q. There were separate trials over there, were there not?
- A. I think we only tried Foster Milburn and the others were nolleed after the verdict in that case.
- Q. Didn't we try Jack Chandler over there first and then Foster Milburn? A. Over in Gilpin county?
- Q. Yes. A. That is not my recollection.
- Q. My recollection is we tried two cases and then you dismissed

- the rest of them. A. That is possible.
- Q. I may be mistaken about it, Mr. Sabin. A. I may be, too.
- Q. You are younger than I am and your memory is probably better.
- A. Not much -- pretty ancient.
- Q. Then if there were two cases tried, or only one, it resulted in an absolute discharge, did it not? A. Yes sir, an acquittal.
- Q. You had indicted or informed against in Georgetown a man by the name of Thomas Walsh, didn't you? A. Yes sir.
- Q. Did you have him arrested? A. Tom Walsh never came back there and we never got him.
- Q. Was he a Pinkerton detective? A. No sir.
- Q. Are you sure about that? A. He never talked like one to me.
- Q. Did you have any Pinkerton reports on the trial ^{while} ~~where~~ there at Georgetown that were made by Mr. Walsh? A. No sir, not to my knowledge, Mr. Richardson. This is the first time I ever heard it intimated that Walsh was a detective.
- Q. You did have Pinkerton reports there, didn't you?
- A. I expect we did.
- Q. And lots of them, and if they were made by Walsh you don't know it? A. We were pretty well informed of the situation I think.
- Q. And if they were made by Walsh you don't know it? A. No, I don't. I never heard him called a detective until today.
- Q. But in any event Walsh was never arrested and he was not brought there to that trial? A. Walsh was departed with the rest, and you will remember when he got to Forks of the Creek, he said he didn't expect to come back.
- Q. He did? A. Yes, he did.

Q. You remember he was not up there? A. Yes.

Q. Was Walsh deported? A. Yes sir.

Q. Sure about that? A. Yes sir.

Q. There were a number of damage suits instituted also up there, weren't there, for those deportations? A. I think there were twelve.

Q. And one of them has been tried? A. Yes sir.

Q. And resulted in a recovery, did it not? A. About one hundred and eighty dollars I think, or one hundred and eighty-nine dollars.

Q. And the costs? A. And the costs followed, yes.

Q. And the balance of them are pending waiting for me to get back there and try them, aren't they? A. They are pending? I don't know how soon they will be taken up.

Q. Neither you nor Talbot were attorneys for any of the mining companies of Idaho Springs? A. Any what?

Q. Neither you nor Talbot were attorneys for any of the mining companies at Idaho Springs and represented them in that fight? A. One of the mining companies paid me some money for my services.

Q. What company was that? A. The Sun and Moon Mining Company.

Q. But you and Talbot were both hired, generally speaking, by the Citizens' Alliance? A. Why, yes, our clients were the mining companies, but we were hired generally by the miners.

Q. Did you have any special employment by the mining companies with respect to this matter? A. No sir.

Q. Other than the Sun and Moon? A. No sir.

Q. Although your business is that of a mining lawyer principally?

A. Well, that is the general business that we have there.

Q. Of the community; and you represent quite a number of the big mining companies in that district? A. Well, I represent some of them.

MR. RICHARDSON: That is all.

MR. HAWLEY: It is twelve o'clock, your Honor. I may want to ask him something after the adjournment.

Thereupon the court gave to the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was removed, and court took a recess until 1:30 o'clock P. M.

Baino, Idaho, Monday, July 15th, 1907.

1:30 o'clock P. M.

Session not pursuant to adjournment.

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

Witness E. M. Sabin on the stand.

RE-DIRECT EXAMINATION

BY MR. HARLEY:

- Q. Mr. Sabin, you have spoken in your cross examination about the Citizens' Alliance of Colorado Springs? A. Idaho Springs.
- Q. Or Idaho Springs. I beg your pardon. What was this Citizens' Alliance? A. Why, it was made up of miners, business men, professional men, clerks, all vocations.
- Q. Where is Idaho Springs situated with reference to the Cripple Creek country and the Telluride country in Colorado?
- A. Well, Idaho Springs is forty miles west of Denver, and Cripple Creek is in a southerly direction from Denver, I don't know just how far, some forty or fifty miles, maybe more — seventy-five.
- Q. And Telluride is in what direction? A. Telluride is in the southern part of the state in San Miguel county.
- Q. When was this Citizens' Alliance formed, about the time?
- A. Why, I should say about March or April, 1903.
- Q. What particular circumstances, if you know, caused its formation? A. Why, the mines had been picketed by union men, the train leading to the mines, and it was immediately brought

- about by non-union miners who asked that this organization be -- the men get together and organize for their protection.
- Q. You may state whether or not there was a strike on at that time? A. Well, it wasn't exactly a strike but it was a demand that no one be employed but union men.
- Q. A demand on the part of whom? A. The officers of the local of the Western Federation of Miners.
- Q. What proportion of the business men of that community were members of the Citizens' Alliance? A. The Alliance was made up of about sixty per cent. miners, laborers, and the balance was business men, professional men, clerks.
- Q. I was asking what proportion of the business men? A. Nearly all the business men, nearly all.
- Q. Of that section, and how about professional men? Were they members, or part of them? A. Yes, I think they were all, with one or two exceptions -- all of the lawyers there with one or two exceptions, possibly they were members. The doctors, many of them belonged. I think the dentists belonged.
- Q. And about sixty per cent. were miners? A. Were miners, laboring in the mines.
- Q. That is working men? A. Yes sir.
- Q. How long did this Citizens' Alliance continue?

MR. RICHARDSON: If your Honor please, we object to that, not re-direct examination.

MR. HANSEN: Going into matters that they went into. We didn't go into this in direct examination at all. These matters were brought out by them.

MR. RICHARDSON: To think it is immaterial.

THE COURT: Yes, the court thinks it is immaterial, too.

MR. HAWLEY: I think so too. I think the whole thing is immaterial.

MR. RICHARDSON: This is the first time we have all been unanimous on anything.

MR. HAWLEY: Yes, I guess it is.

Q. You spoke something about some parties being deported from that section: Was there martial law at any time there?

A. No sir.

Q. These deportations that you have spoken of upon your own examination consisted of what and who? A. Consisted of the officers and active members of the local union who were taking the most strenuous part in this picketing business and carrying on their proceedings, and those whom we believed to be interested in the blowing up of the mine, of the Sun and Moon transformer.

Q. How long had that mine or that transformer been blown up before the Citizens' Alliance was formed? A. The Citizens' Alliance I think was formed in March or April, 1903, and this property was blown up July 28th, 1903.

Q. How long was it after this that these deportations which you have mentioned took place? A. Well, the blowing up of the transformers happened about eleven o'clock at night and the deportations took place probably between eight and nine the next night.

Q. You may state whether or not these deportations were a result of a meeting of the Citizens' Alliance? A. There was no meeting of the Citizens' Alliance between the time of the blow-

ing up of the transformers on the Sun and Moon and the deportations.

Q. State whether or not it was the action of the people generally or of the Citizens' Alliance as an organization? A. It seemed to be that it was not the action of the organization as an organization. It was the people generally in the city.

Q. Immediately after this happened? A. Yes sir.

MR. HAWLEY: That is all.

RE-CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Can you name any crime that was committed that grew out of the labor strike trouble or the troubles between the Miners' Union and the mine owners in the Idaho Springs district prior to the time that detectives Baird and Gregory came in there, any offense against the law? A. Not to an absolute certainty, but I believe that there were two or three men driven out by the Miners' Union men prior to that time.

Q. You are not quite certain about that? A. I couldn't give the date exactly, Mr. Richardson.

Q. And that was simply your belief upon that subject? A. Yes, I have stated so.

Q. You people were getting along well enough there until that time? A. There was never any dispute as to wages nor hours there. They were working union hours and getting union wages.

Q. And the trouble which arose that caused the action which was taken by the Citizens' Alliance or the people who composed what you are pleased to term the citizens of Idaho Springs, was

because of the destruction of the Sun and Moon transformer house on the Sun and Moon mine? A. The deportation was the immediate result of that explosion.

- Q. What was the value of that transformer house? It was about three or four hundred dollars, wasn't it? A. Well, the house wasn't worth as much as the transformers. It wasn't based upon any monetary value of the property. That wasn't what occasioned it.
- Q. There was no very considerable amount of property destroyed by reason of that what you called dynamiting at that time? A. Well, probably a thousand dollars would cover the cost of the transformers as I remember it.
- Q. And the balance, the transformer house was simply a little shed that covered it? A. I think it was covered with corrugated iron.
- Q. And that was made the excuse for the deportation of all the prominent members of the Miners' Union? A. No sir, it was not made the excuse. It was the immediate result of the destruction. But their actions prior to that time was what led us to believe it was those men.
- Q. So in all of the controversy that you had there growing out of this dispute there never was any infringement of the law until that time, isn't that correct? A. No, I don't think it is correct.
- Q. Well, was there anybody prosecuted, any complaints made? A. Yes?
- 4390 Q. Was there any infringement of the law that was prosecuted or any complaints made? A. There were no criminal prosecutions

prior to that time.

- Q. So that the destruction of the Sun and Moon transformer house resulted in getting rid of the Miners' Union, was that the direct result of it? A. I presume that hastened it.
- Q. And that was what the mine owners wanted in Idaho Springs long before that, wasn't it? A. Well, there was a considerable element there I think would have joined in it because there were forty or fifty men in the shaft and workings of that Sun and Moon mine that was immediately adjoining the transformer, and if the dynamite had struck the shaft house it would have been a good deal worse than it was.
- Q. The transformer house was on one side of the divide, though, and the shaft house was on the other side? A. Yes, but that is simply a geographical line between the two counties.
- Q. I said it was on a geographical divide. Didn't the mountain come up in this way, with the shaft house over here and the transformer house over here? A. Yes, it was in that shape and the county line ran between the shaft house and the transformer house. It was on a dividing line between Gilpin and Clear Creek counties.
- Q. The house that was blown up was the one that was over on this side of the dividing line of the mountain, without regard to the dividing line of the county -- which happened to be the same thing, however? A. There was very little divide there where the business started. You might have gone either way.

MR. RICHARDSON: That is all.

QUESTIONS BY MR. HANLEY:

Q. How far was it between the shaft house and the transformer?

A. Probably twenty to forty feet.

Q. Do you know how this dynamite was put in there or what was used to blow it up, what material?

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent.

THE COURT: The objection is sustained.

Q. What was the date of this picketing that you have mentioned, when did it commence?

MR. RICHARDSON: We object to that, if your Honor please, as immaterial, irrelevant and incompetent, not re-direct examination.

THE COURT: He may answer.

MR. RICHARDSON: An exception.

MR. WITNESS: The picketing by the union had been going on actively for the month immediately preceding, and to a more or less extent for two or three months prior to that time.

MR. HANLEY: That is all.

MR. RICHARDSON: That is all.

D. C. SCOTT, a witness being recalled on behalf of the People, in rebuttal, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

Q. What is your name, sir? A. -- D. C. Scott.

THE COURT: Mr. Scott was sworn, I believe?

MR. HAWLEY: Yes sir, he has been sworn -- I believe he was.

MR. RICHARDSON: Yes, we called him and identified him.

Q. Where do you reside, Mr. Scott? A. Cripple Creek, Colorado.

Q. What is your business at the present time? A. I am a railroad special agent.

Q. For what particular road? A. The Colorado Springs and Cripple Creek district railway company, the Midland Terminal Railway Company, the Florence & Cripple Creek Railroad Company.

Q. What was your business in the winter and spring of 1904?

A. I was a railroad special agent.

Q. Of what particular road or roads? A. The Midland Terminal Railroad and the Florence & Cripple Creek railroad.

Q. Where did you reside in the early part of that year?

A. In Cripple Creek.

Q. Town of Cripple Creek? A. Yes sir.

Q. Did you have an office there? A. I did.

Q. Where was your office situated? A. It was upstairs in the depot of the Florence & Cripple Creek railroad in Cripple Creek.

Q. How long did you occupy that position as agent for that road, special agent? A. I started with the company on the 18th day of March, 1900.

Q. I will ask you when, if at any time, you quit the employment of the Florence and Cripple Creek railroad in 1904?

A. I quit their employ on the last day of March, 1904.

Q. When again did you resume your employment with that company?

A. About August, 1904.

Q. In the meantime, from the time you quit your employment on the last day of March until you resumed your employment in August, 1904, where did you reside? A. I was in Cripple Creek at the same place until about the 15th or 16th of April, 1904, and I went from there to Denver, stopped some days at the Adams hotel, and then I went from there and stopped at the Miles hotel in Denver at the corner of 19th and Walton Streets.

Q. What was that time that you left Cripple Creek, do you say?

A. Either the 15th or the 16th of April?

Q. After you quit the employment of the company and until you left Cripple Creek where did you stop. A. I stopped in the depot, the same place.

Q. You retained your office there? A. I retained a room there.

Q. After you quit about the middle of April, 1904, and until you returned in August state whether or not you retained your room in the depot? A. No sir, I did not. It was occupied by another person.

Q. By what other person? A. A man by the name of James Crockett, superintendent of bridges and buildings of that company.

Q. When did you take possession of that room again, after you resumed your employment or before? A. Later on, probably not until -- perhaps not until October.

Q. 1904? A. Yes sir.

- Q. You say that you went to Denver about the middle of April I understand? A. Yes sir.
- Q. And you first stopped where? A. At the Adams hotel.
- Q. That is in the city of Denver? A. Yes sir.
- Q. How long did you stop there? A. I stopped there from about the 15th, off and on until on or at the --
- Q. 15th of April? A. Yes sir, off and on till about the -- I don't know -- 23rd or 24th or 25th, along there somewhere.
- Q. Then where did you go? A. I went then over to the Miles hotel.
- Q. Who was the proprietor of the Miles hotel at that time?
- A. A woman by the name of Miss McKee.
- Q. Do you know the name of that lady at the present time?
- A. Her name now is Mrs. Baker.
- Q. State whether or not you was in Cripple Creek at any time after the middle of April, 1904, until you resumed your employment with the Florence and Cripple Creek railroad company? If so, at what time? A. I was.
- Q. When? A. I arrived in Cripple Creek either the 13th or 14th of June, 1904.
- Q. And how long did you stay? A. I was in Cripple Creek up till the latter part of June, when I made a trip to Telluride.
- Q. And where did you have your office or where did you make your headquarters in Cripple Creek after this date in June that you have mentioned? A. I had a room close to the corner of First Street on Bennett in Cripple Creek.
- Q. After you had removed from Cripple Creek in the middle of April until you returned there on this date in June -- what date was it? A. About the 13th or 14th of June.

- Q. 13th or 14th. You may state whether or not you visited the Cripple Creek country. A. I had not been in the Cripple Creek district from the time I left in the middle of April until I returned the middle of June of that year.
- Q. How long was this after the explosion at the Independence depot that you returned? A. About seven or eight days.
- Q. Are you acquainted with Harry Orchard? A. Yes sir.
- Q. When did you become acquainted with Harry Orchard?
- A. On the 17th day of November, 1903.
- Q. How do you fix that date? A. It was the morning -- I met him in the afternoon of the evening of the attempted -- second attempt of the train wreck on the Florence & Cripple Creek Road.
- MR. BARRON: Was that the 17th of November?
- A. 1903.
- MR. BARRON: Thank you.
- Q. Had you ever met him prior to that time that you know of, or made his acquaintance? A. I don't know that I ever saw the man before.
- Q. You are sure of this date, are you, Mr. East? A. I am sure in this way, if the Sunday preceding that day was on the 15th, which I am satisfied it was, I met him next on Tuesday, the 17th.
- Q. Had there been any attempted wreck on the Florence and Cripple Creek road before this occurrence, this second wreck as you call it, on the 17th? A. Yes sir.
- Q. What date had been this other attempt? A. As near as I can find out, it was the Friday evening previous, the Friday night previous or early Saturday morning.

Q. Do you know a lady by the name of Joyce, Mrs. Nellie H. Joyce?

A. No sir, I don't know that I do.

Q. Do you know a lady that kept a boarding house for the section heads of ^{the Midland or} the Florence and Cripple Creek railroad along in the latter part of 1903, in November, 1903? A. The only person that I know that kept a boarding house for section men, if you refer to that, was a man by the name of Moore, a section foreman. I never knew of her.

Q. Where was his boarding house for the section men? A. It was situated very close -- it was on Fourth Street near the Midland Terminal tracks in Victor.

Q. You may state if in November, 1903, or at any other time in that boarding house -- or you was in that boarding house in company with one E. C. Sterling and one Steve Blacker, the road master, and the section foreman of that road, Pat Moore?

A. I never was in that house to my knowledge. I had been to the back door on one occasion, a long time previous to that, alone.

Q. Was Harry Orchard with you on that occasion you was there, or any of these other parties that I have mentioned? A. No sir.

Q. You may state whether you was in November, 1903, at any boarding house or hotel in that section and vicinity on or about the Midland or Florence & Cripple Creek railroad where Mrs. Joyce was, or any person was, in company with Harry Orchard, E. C. Sterling and others? A. I never was.

Q. Was you ever in company at any point on that railroad with Harry Orchard with or without any other person? A. I never was with the exception of the Florence & Cripple Creek depot in Cripple Creek.

- Q. Florence & Cripple Creek depot in Cripple Creek, and that was about? A. The first time I met him was on the 17th day of November, 1904.
- Q. That was after the second explosion, you say? A. The second wreck, attempted wreck.
- Q. The second attempt to wreck. Where was you on the second or third Sunday before June 6th, that is June 6th, 1904, the day that the Interoceanic blew up? A. In Denver.
- Q. And you had ^{not} seen in Cripple Creek for how long at that time? A. From the middle of April of that year.
- Q. State whether or not upon that occasion or on that time -- or in the first place say whether you know Al Oller? A. I do, you sir.
- Q. What was Al Oller's business at the time you was working for the Cripple Creek railway in 1903 and 04? A. He was telegraph operator and ticket agent in the depot of the Florence and Cripple Creek railroad in Cripple Creek.
- Q. State whether or not at any time between the middle of April and middle of June, 1904, you had an appointment or engagement with him to take dinner with him at his place on a Sunday or any other day? A. That I did not. I never saw the man during that time.
- Q. And you may state whether or not you saw Harry Orchard between those dates, either in the depot, your old room in the depot, or any other place? A. I did not.

MR. HANLEY: You may take the witness.

CRIME EXAMINATION

BY MR. DANHOW:

Q. Mr. Scott, you say you are special agent of the railroad company? A. Yes sir.

Q. Is there any other name for that office which you hold?

A. No sir.

Q. You never heard any other name, did you? A. I have seen other names in the newspapers, you a r.

Q. Detective? A. Yes, I have seen that quoted.

Q. But you are not a detective? A. No sir.

Q: That is, you never detect, is that it? A. Well, I am not a detective, sir.

Q. Well, your business is to look up what you consider crimes and guilty people connected with your affairs, isn't it?

A. Yes, I do some work that is similar to that of a detective.

Q. How long have you had that, have you been in that business?

A. About thirteen years, twelve or thirteen years.

Q. And you began it I think you said in 1900 for the railroad company? A. For that company, yes sir.

Q. Who were you working for before that? A. The Union Pacific Railroad Company.

Q. Whereabouts were you located? A. Denver.

Q. You were not the chief officer in the department I suppose?

A. No sir. They are located in Omaha.

Q. How long did you hold that position with the Union Pacific?

A. I think somewhere about five years.

Q. What were you doing before that? A. I didn't do anything in Colorado.

- Q. Whereabouts were you employed? A. I hadn't done anything in Colorado for over a year.
- Q. You came from the West, did you? A. Yes sir.
- Q. What business were you in there? A. I was inspector for the Goble-Farwell Telegraph Company of New York City, located at Haverhill Newton Upper Falls, Massachusetts.
- Q. Where was your work mainly? A. They manufactured fire and police telegraph boxes and electrical apparatus.
- Q. Your business would be to examine the instruments? A. Yes sir, I served my time as apprentice and I rose to be the inspector to test the apparatus before they were shipped to the purchaser.
- Q. You gave up that business to be a detective in the employ of a railroad company, did you? A. No sir, I gave that up on account of my health and came West.
- Q. How your position there with the railroad did it call you into communication and acquaintance with Mr. Sterling?
- A. Yes sir.
- Q. How long have you known him? A. I think I met him there in August or September of 1903.
- Q. What was his business then? A. He was with the Mine Owners' Association in the Cripple Creek district.
- Q. What was he doing with the Mine Owners' Association?
- A. He was their secret service man.
- Q. Is secret service man another name for detective? A. Why, in one sense, yes sir.
- Q. How would you distinguish between a secret service man and detective so far as definition goes? A. Well, a detective I

have always considered as a man who worked for some detective association.

- Q. You distinguish it by who they work for instead of the kind of business they are doing? A. Not particularly that, no sir.
- Q. Well, how would you distinguish as to the kind of business they are doing? A. Well, a secret service man who is employed by individuals or by the government, they have never been considered from my point of view as a detective.
- Q. A little better position, isn't it, as you would put it? You like the work better anyway, don't you, rather?
- A. Why, I think I like it a little better myself, yes sir.
- Q. And their business, however, is looking up things connected with crimes, misdemeanors and charges of various sorts, isn't it? A. Why, their duties I think vary a great deal. They have some of that to do.
- Q. Had you met any of the Pinkerton officials in the line of your business? A. Yes sir.
- Q. Pretty well acquainted up at headquarters at Denver, are you not? A. Fairly well.
- Q. Have been for a good many years? A. Quite a number of years, yes sir.
- Q. You know Harland pretty well? A. Yes sir.
- Q. How long have you known him? A. About fourteen years I think.
- Q. Talked with him about this case? A. Very little.
- Q. Have you any? A. Not very much. I might have spoken to him several times about some things, witnesses or one thing another, but I refrained from talking that case over.
- Q. Did he furnish you any money to come here with? A. No sir.

- Q. Or the railroad? A. No sir.
- Q. Well, do you know any of the Hilde detective agency men?
- A. Yes sir.
- Q. There in Denver? A. Yes sir.
- Q. Do you know Captain Swain? A. I have met him since I have been here.
- Q. Do you know Farley? A. Very well.
- Q. How long have you known him? A. About twelve or fourteen years.
- Q. Do you know any of the Reno agency men? A. Yes sir.
- Q. How long have you known them? A. I have known Mr. Reno very well for ten or twelve years.
- Q. Did you know Gregory, Lyte Gregory? A. I did, yes sir.
- Q. Ever connected with him in any business affairs? A. Why, no. He was on the police department when I was with the Union Pacific, and I think I met him down in the yards in the evenings a great many times, but I never was connected with him in anything.
- Q. Police department of what? A. City of Denver.
- Q. Was that the only business he was ever in when you knew him?
- A. Why, the only business that I really knew, yes sir.
- Q. You didn't know he was with the Reno detective agency?
- A. Not definitely, no sir.
- Q. You kind of had your suspicions about it? A. I thought he was.
- Q. You met him frequently? A. Yes.
- Q. You never asked him whether he was connected with a detective agency any more than inquiring into any other event in his life? A. No, because he wouldn't have told me.
- Q. So you never did talk with him about it? A. No sir.

- Q. Well, you went down and arrested Mr. Mayer in Telluride, didn't you, Mr. Scott? A. No sir. I read a warrant to him in the jail.
- Q. Well, did you escort him up from Telluride to Cripple Creek?
- A. Yes sir.
- Q. That was in July about, was it, June or July, 1904? A. Yes, I think it was the latter part of June, 1904, my best recollection.
- Q. Now when were you acting then? A. Deputy sheriff, for the sheriff of Teller county, Colorado.
- Q. Had you been down there any? A. In Cripple Creek?
- Q. Telluride, Colorado? A. No, I went down.
- Q. Oh, Teller county, yes, that is right. That would be Cripple Creek? A. Yes sir.
- Q. When were you made deputy sheriff there? A. I have been deputy sheriff since 1900.
- Q. You held a regular commission there right straight along, did you? A. The different sheriffs appoint me a deputy sheriff.
- Q. Were you drawing a salary as deputy sheriff? A. No sir.
- Q. Special pay for what you did? A. No sir.
- Q. Well, you didn't go down and pay your own expenses, did you?
- A. I did, you sir.
- Q. Out of your own pocket? A. Yes sir.
- Q. What was your salary in those days? A. I wasn't drawing any salary at that time.
- Q. Well, what had it been before? A. \$100 a month at one time and \$125 a month at another time, and my expenses.
- Q. What was it just before you stopped working? A. I am not

quite sure whether I was getting \$125 at that time or whether I was getting \$100.

Q. And you stopped working, were living without any salary, and making these arrests at your own expense, was that it?

A. No sir, I expected to be paid for my trip going down there, that is, my expenses, but I never got any money for it.

Q. Who did you expect it to be paid by? A. By Teller county.

Q. Who asked you to go? A. Tom Underwood, deputy sheriff, spoke to me about going, and Mr. Sterling spoke to me about going, both of them.

Q. What was Mr. Sterling's business at that time? A. He was employed I am pretty sure at that time by the mine owners.

Q. But they didn't pay you for the job? A. No sir.

Q. Was Mr. Sterling a deputy sheriff too? A. I don't think so.

Q. Then it wasn't in his capacity as deputy sheriff he asked you but in his capacity as special agent for the mine owners?

A. You mean when he asked me to go down?

Q. When he asked you. A. I met him there, I believe he was -- I think he was deputy sheriff under Sheriff Ball, but I am not sure.

Q. You think he had a star also? A. I never saw it.

Q. What makes you think so then? A. Well, I think that Sheriff Ball gave all peaceable citizens a deputy sheriff's commission that were in the district.

Q. That is, you think that you and Sterling about the sort of men that the sheriff would have handed a star to, is that what you mean? A. He didn't give me a star. He gave me a deputy sheriff's commission.

- Q. He gave you a commission? A. Yes sir.
- Q. It is the character of the man that leads you to infer that Mr. Sterling was a deputy sheriff then and no thing else?
- A. No.
- Q. That is the only reason you have given me so far.
- A. I am not saying that he was. I think he was.
- Q. What leads you to think so -- just because of his character and standing in the community, is that all? A. No, he needed it in the line of business he was in.
- Q. You mean as a secret service man? A. Yes sir.
- Q. That is, you think Sheriff Bell gave out these commissions to everybody who needed them as a secret service man?
- A. Men who were located there doing work.
- Q. For the Mine Owners' Association? A. I never worked for the Mine Owners' Association.
- Q. Well, he did? A. Yes, he did.
- Q. For the Mine Owners' Association and for the railroad companies? A. He never worked for the railroad companies.
- Q. You did? A. I did, yes sir.
- Q. And you had one? A. Yes sir.
- Q. So taking you and Sterling together that would include the Mine Owners' Association and the railroad company, wouldn't it?
- A. It would include me as a railroad man and him as a Mine Owners' Association man.
- Q. That is what I am getting at. A. Yes sir.
- Q. How when did you give up your position as an operator for the railroads? A. On the last day of March, 1904.
- Q. Have any special reason for giving it up? A. The only reason

I had to give it up, I received a letter from the general manager saying in order to reduce expenses that the office of special agent would be abolished. When my pay stopped I stopped.

Q. And about three or four months later you got a letter that they had ~~reinstated~~ reinstated you or made a new office, didn't you? A. No sir.

Q. You did go to work for them again? A. Yes sir.

Q. Well, you immediately went to Denver, did you? A. No, I stayed there until about the middle of April.

Q. Can't you be any more explicit as to the date you left?

A. Yes sir, I think I left on the -- probably on the 15th.

Q. What makes you think so? A. Well, I went to the Adams hotel -- I waited until after pay day, I didn't draw my money, and pay day there was along the 14th or 15th, and I stayed one day I think later and then went to Denver.

Q. Have you been examining the hotel register to find out what the date was? A. I have not.

Q. Well, how is it you think it was the 15th or 16th? Because the pay day was the 15th, is that it? A. I have received word from Denver that I was registered there --

Q. That is hearsay, isn't it? A. I presume that is what you might call hearsay.

Q. Well, we will put that out. You have been around the courts a good deal. Have you got any remembrance of the date?

A. Yes, I remember, as I say, that I think pay day was about the 14th and I stayed there a day or so longer. I either left there the 15th or the 16th.

- Q. What day of the week was that? A. I couldn't say.
- Q. Did you come up on a pass? A. I carry annual transportation.
- Q. Did you keep that while you were out of their employ? A. Yes.
- Q. How long did you stay in Denver without going away?
- A. I stayed until the 28th of April of that year.
- Q. 28th; where did you go the 28th? A. I left Denver for a town over on the western slope called Paonia.
- Q. On business? A. Yes sir.
- Q. What business? A. I went over to see Mr. F. R. Rockwell, who is now superintendent of the first division of the Rio Grande road.
- Q. Have any memoranda or any way to fix that date? A. Yes sir.
- Q. What was it? A. On the morning of the 29th in going from Denver to Paonia -- you get into Salida in the evening -- you have to wait until the morning train on the narrow gauge, there is one train each way a day. I stayed over night at Salida, took the morning train for Paonia, that would be on the 29th. I stayed over night in Paonia and came back, that would be the 30th, when I arrived at Sargeant Station, the night of the 30th for supper. The lady who was earlier, when I paid for my supper, told of Hardison being beat up at that station the night previous.
- Q. You are sure you were not there until the day after?
- A. Until the day after.
- Q. Do you remember who this lady was, do you remember her name?
- A. No sir, I didn't know her, I was never there before.
- Q. And that is the way you fix the date of the time you was there?
- A. Yes sir.

- Q. Now how do you fix the date of Wardjan's beating up, by the time you was there? A. In the 23th, the records show that on the 23th of April of that year that he was assaulted at Sargeant Station.
- Q. What records? A. The original records, I presume.
- Q. You are not just presuming, Mr. Scott? A. No.
- Q. You must have looked at some record, haven't you? A. No, I simply got word the other day.
- Q. How do you come into this court and tell us what the records show -- A. I haven't got any record myself at all.
- Q. You are not fixing it by any record? A. I am fixing it by the date he was beat up.
- Q. How do you fix the date he was beat up? A. I had word sent to find out the date he was beat up so I could fix it when I was there at that time.
- Q. Who sent word to find out? A. They sent word from here to find out. They wired from here.
- Q. Who was it that wired? A. I don't know who wired. I asked them to wire.
- Q. Whom did you ask? A. I asked Mr. McFarland to wire.
- Q. Oh, I see. A. Yes sir.
- Q. Now, let us see how we have got it: You are telling us that Mr. McFarland told you that he sent a telegram somewhere, you don't know where, and got a report that that date was the 23th, is that the way you fix it? A. Yes sir.
- Q. You are not a lawyer, you are just a special agent?
- A. Just a special agent.
- Q. Can you tell us any way you know, Mr. Scott, of your own

knowledge, the date of Varignon's having been beat up -- of your own knowledge? A. Well, I can't tell right in class, within a day or so, Mr. Darrow, but I know that I was out of Denver just once and I was gone about three days the latter part of April, and I know we came through Sargeant the night after this man was assaulted, and that is the way I fixed the date to know where I was.

Q. You know it by the date you came through Sargeant? A. Yes sir.

Q. And you know the date you came through Sargeant by the date Varignon was beaten up, is that it? A. Yes sir.

Q. You call that reasoning in a circle, do you?

MR. HANLON: We object to that as being immaterial, not proper cross examination.

MR. DARROW: All right.

THE COURT: Question withdrawn?

MR. DARROW: I withdraw that question.

Q. When did you get back to Denver? A. I came straight through, I got into Salida that night; there is a train leaves there at midnight and you get into Denver in the morning I think.

Q. What date? A. That would be -- arrived in Denver about the first day of May.

Q. Were you still staying at the Adams hotel? A. No sir, I had gone to the Miles hotel.

Q. When did you move to the Miles hotel? A. About the 23rd, 24th or 25th.

Q. Can't you give it any closer than that? A. I am not sure as to that, no sir. I think probably along there somewhere.

Q. 23rd, 24th or 25th of April? A. April.

- Q. Was that a hotel or rooming house? A. It is called a hotel.
- Q. Have a register? A. Yes sir.
- Q. Have you looked over the register? A. No sir.
- Q. Well, you know you were coming up here to testify, didn't you?
- A. I didn't know that I was accused of being out of there when I wasn't or I would have looked it up.
- Q. But you haven't looked it up? A. I have not.
- Q. So all you know is your memory? A. Yes, my memory, and by the woman who kept that hotel at that time.
- Q. That is, she has told you? A. I have asked her.
- Q. Where did you see her? A. I saw her here.
- Q. Where does she live? A. She lives in Chicago.
- Q. That is, you came here to testify and she came here to testify and you asked her when it was, is that it? A. No. I said to this woman that I was satisfied that I went there along somewhere between the 20th, perhaps 19th or 20th or 21st, and when this woman came here she brought some books with her.
- Q. Did you see the books? A. I haven't, no sir.
- Q. You are taking her statement for it? A. I am taking her statement as to the time I was there but I am taking my own memory that I think I was there within three or four days.
- Q. You mean as to the books? A. I haven't seen the books.
- Q. Now to the best of your recollection you would say it was the 20th, 21st or 22nd? A. Yes sir.
- Q. Were you doing anything in Denver during this time? A. No sir.
- Q. When did you next go out of the city? A. When I made that trip to Peoria.
- Q. Well, the trip to Peoria was over, wasn't it? A. No, I went to

Pacifica after the 28th.

- Q. You got back from Pacifica along the first of May? A. About the first day of May I should judge.
- Q. When did you next go out of the city and where? A. About the middle of June, 13th or 14th of June.
- Q. What were you doing from the what first of May to the middle of June? A. Nothing.
- Q. Where were you stopping? A. Stopping at the Miles hotel.
- Q. Staying there all day? A. No.
- Q. Where were you putting in your time? A. Around town. I spent a good deal of time with my brother. I had a sick brother there at that time.
- Q. Who else did you see at the Miles hotel during these six weeks? A. Oh, there was quite a number of roomers there.
- Q. Who? A. One man by the name of John Woodruff, a travelling man.
- Q. Was he there all the while? A. He was there in and out a great deal at that time, you sir.
- Q. Do you know where he is now? A. I don't know the name of the place. He is in the state of Minnesota.
- Q. Who else did you see there? A. I remember a woman who was a Mrs. Clark there, who was the housekeeper.
- Q. She was the housekeeper? A. Yes.
- Q. Do you know where Mrs. Clark is now? A. Only be hazy.
- Q. Well, who else that was rooming there? A. I know, I got acquainted with three or four people not far from my room, one man was a consumptive who was there, I don't remember his name, but I didn't know very many of the people in the house.

I know John Woodruff because I had lived at the same house with him some years previous.

- Q. So in those six weeks he is the only man you can mention who was connected with the hotel? A. With the exception of the landlady.
- Q. How many people roomed there about? A. I can't know.
- Q. You say you were not out of the town at all during that six weeks? A. I wasn't out of the town during that time.
- Q. Were you looking for a position anywhere? A. I had written to different places for positions.
- Q. Is there any way that you remember the next time that you went out of town, have you looked at any records to find out? A. No sir, I haven't.
- Q. Have you thought about it much? A. Yes.
- Q. For how long? A. Well, I thought about it after I read some of the testimony of this man Allen on the stand.
- Q. Well, did you consult with anybody about it to make sure where you were? A. As to being in Denver?
- Q. Yes. A. Why, I immediately got busy and sent for people to show where I was.
- Q. Did you consult with anyone in Denver as to where you were? A. Yes.
- Q. Who? A. Mr. Cooper, our assistant general manager of the railroad.
- Q. Was he there at that time? A. No sir.
- Q. At this rooming house or boarding house? A. No sir.
- Q. ^{You mean} Was he in Denver? A. Yes sir.
- Q. Who else did you send for? A. Mrs. Miss Nelson or Mrs. Baker.

- Q. Who else -- she was keeping the rooming house at the time?
 A. When I left there.
- Q. Anybody else? A. Well, we have a man here that was train
 master or superintendent of these roads at the time that is
 now located in Chicago. He is here.
- Q. Was he stopping at the rooming house? A. No sir, he was in
 Cripple Creek.
- Q. Were you boarding there or just rooming? A. I had a room there.
- Q. Getting your board regularly anywhere or taking your meals
 as it happened? A. I took most of my meals at the Home Dairy
 on Walton Street.
- Q. You were not registered anywhere at those different days, were
 you? A. No sir.
- Q. That you know of? A. No sir.
- Q. And you don't know any record that you have got of any sort,
 do you? A. I think Mrs. Baker has a record of it.
- Q. I mean you. A. No.
- Q. Well, now, you went away from there in June you say? A. Yes.
- Q. What date? A. It was about seven or eight days after the
 5th day of June, after the explosion.
- Q. Where did you go? A. To Cripple Creek.
- Q. How long did you stay there? A. I stayed there until some-
 where about the last of June when I made that trip to Telluride.
- Q. Where did you stop in Cripple Creek? A. I stopped at a house,
 a rooming house near the corner of First on Bennett avenue
 in Cripple Creek.
- Q. Where did you take your meals? A. At the Merchants' Cafe.

- Q. How long were you there, about a week? A. No sir, I had the room it appears to me until along in September or October.
- Q. Were you doing anything while you were there? A. I went to work for the railroad company along in August I think.
- Q. And you stayed there until August except that trip down to Telluride, I suppose? A. How is that?
- Q. You stayed there until August except this trip you took, is that right? A. Yes sir.
- Q. So after you went there, -- A. I did some work, Mr. Darrow, in July for the railroad company attorneys in Cripple Creek.
- Q. But you did not go away from Cripple Creek except temporarily after that time? A. I did not, no sir.
- Q. How many times did you ever see Harry Orchard before you saw him here, if you know? A. Well, I couldn't state positive, probably five or six times.
- Q. Five or six times? A. Yes sir.
- Q. Whereabouts? A. You mean when I see him or when I saw him to talk to him?
- Q. Well, any the first. A. Well, I couldn't say as to that. I saw the man on the street a number of times.
- Q. How many times then did you ever see him to talk to him before you came here? A. Five or six times.
- Q. Whereabouts? A. I might say as high as seven. In Cripple Creek, in the depot of the Florence & Cripple Creek railroad and in the Adams hotel in Denver.
- Q. When was the first time? A. The first time was late in the afternoon of the 17th day of November, 1903.
- Q. When was the last time? A. The last time I saw Orchard to

speaking to him was during the trial of the railroad wrecking case. I saw him and Steve Adams go into a saloon. I wanted to get acquainted with Steve Adams and I walked in and bought them some beer and was introduced to Steve Adams and came out. I couldn't give the date.

- Q. Did you have any conversation with them? A. Yes.
- Q. And Orshard introduced you to Steve Adams? A. He did.
- Q. And you told Orshard you wanted to meet Steve Adams? A. No sir.
- Q. And had you ever talked with Orshard about Steve Adams?
- A. On one occasion -- two occasions.
- Q. You had? A. Yes sir.
- Q. And when you went in there in the saloon and found them together Orshard introduced you? A. I can explain that so that you will understand it.
- Q. I don't care for an explanation, just that he introduced you, that is all? A. He did introduce me, yes sir.
- Q. How how long before that was it you had seen Orshard?
- A. I saw him, as I say, a few times up in my office in the Cripple Creek depot and also in the Adams hotel in Denver.
- Q. Had you seen him any time while the train wrecking case was on? A. I saw him in the court room every day during the trial pretty near.
- Q. Did you see him anywhere else during the trial? Did you see him at your office during the trial? A. No sir.
- Q. Did you see him anywhere else? A. I may have seen him on the street a number of times.
- 4415 Q. Did you talk with him anywhere? A. I don't think I did.
- Q. You saw him mixing with the men who were under arrest, didn't

- your? A. No,, I don't know that I did.
- Q. Well, did you know whether he was or not? A. I couldn't say.
- Q. Did you have any idea about it at that time? A. No, only I remember of seeing Orchard -- they have a gallery in the court room, I saw him up in there; but these men that were being tried, I don't recollect of seeing him with those men.
- Q. Orchard had already told you about the train wrecking, had he?
- A. Yes sir.
- Q. And you know that of course when you saw him at the trial and when he introduced you to Steve Adams? A. Yes sir.
- Q. Where did he tell you about it, where was he? A. When he told me?
- Q. Yes. A. In my office in the depot.
- Q. How long a time did he talk with you in your office?
- A. At that time?
- Q. Yes. A. Why, he may have been there anywhere from half an hour to an hour that time.
- Q. Talking about this case? A. Talking about that railroad attempt.
- Q. And about the people connected with it? A. Somewhat, you sir.
- Q. And the people who were afterwards prosecuted? A. I am not quite sure whether he mentioned any of those names or not.
- Q. Did he mention Davis and Parker? A. At that time?
- Q. Yes. A. I mentioned them first I believe.
- Q. He talked about that, didn't he? A. Yes, I believe we did. I am not very -- I don't remember that conversation very distinctly as to their names. He rather refused to give up the names of the people back of this attempted wreck.

- Q. But he did tell you, didn't he? A. No, he didn't tell me that they were back of the thing at the time.
- Q. Did he tell you they were connected with it or in it?
- A. Well, I told him and he wanted to know how I knew.
- Q. Did you send for him or did he come on purpose? A. He came voluntarily to see me. I never saw the --
- Q. He came to see you about this, did he? A. Yes sir.
- Q. And he told you about it? A. Yes sir.
- Q. Well, didn't he tell you about it? A. Yes sir, practically -- didn't mention any names.
- Q. When did he see you again about it? A. I am not quite sure whether I saw him the next day or not, but I think I did.
- Q. About this same matter? A. Yes sir, I asked him to come back and see me./
- Q. How long a conversation did you have then? A. I think I talked to him at that time perhaps twenty or thirty minutes, but he was in the room longer than that.
- Q. Did you see him again about it? A. I think the next time I sent for him.
- Q. Well, did he come? A. Yes sir.
- Q. How long did you talk with him at that time? A. I talked with him about the Vindicator explosion at that time. I sent for him to come down the hill and I talked with him probably an hour or more.
- Q. What time of day? A. I think it was along towards evening. I am not quite sure.
- Q. What day of the week? A. I couldn't say.
- 4417 Q. Haven't you any idea of the day of the week? A. No, I don't

- remember what day of the week.
- Q. Can you give the date nearly, the month and the day of the month or close to it? A. Not no, I won't attempt to do that.
- Q. All together, you say you think you talked to him six or seven times? A. Yes sir.
- Q. Ever give him any money? A. Yes sir.
- Q. How much? A. When I wanted him to go to Denver to see a man I gave him some money; but previous to that I think I gave him \$20.
- Q. One time or different times? A. One time.
- Q. Are you sure you didn't give him any more before going to Denver? A. Yes sir.
- Q. How much did you give him when he went to Denver for you? A. I don't know. I am not sure of that. I probably gave him -- I might have given him fifteen or twenty dollars then.
- Q. It was the company's money I suppose? A. It was my money at that time.
- Q. You got it back? A. I think I put that in my expenses.
- Q. You never looked it up to see how much it was? A. No sir, I haven't.
- Q. Why didn't you do that? A. I didn't think it was necessary.
- Q. This matter has been discussed a long while, hasn't it? A. The matter of giving him money? A.
- Q. Yes, on that occasion that he -- A. Well, my memory is clear enough on that, so that I know I didn't give him very much money.
- Q. Well, you say you think you gave him \$20 at that time and \$18 at another, but you wouldn't swear positively about that?

- A. I will swear positively that I didn't give him all together -- positive I never gave him over \$45 all together.
- Q. Ever give him anything else? A. No sir.
- Q. How are you sure about that? A. Anything else how?
- Q. Besides money? A. Oh, I gave him transportation.
- Q. That is what I was getting at. A. If you had asked me -- I didn't know what you meant.
- Q. You, I know you would have told. You did give him transportation? A. Yes sir, I did give him transportation.
- Q. For what purpose? A. To go to Denver.
- Q. You say to see a man? A. Yes sir.
- Q. Who? A. Bill Baxterly.
- Q. When was that? A. That was just after the Vindicator explosion. I am very well satisfied. I am not quite sure as to the date.
- Q. And he told you he would go to Denver to see Bill Baxterly, did he? A. Yes sir.
- Q. For you? A. Yes sir.
- Q. Can't you fix the month and pretty near the date of that trip? A. Well, it appears to me it was along the first part of December.
- Q. Did he say where he would see Bill Baxterly or did you tell him where to see Bill Baxterly? A. No. He said to me that Bill Baxterly was in Denver and I wanted him to see him.
- Q. Now, Mr. Scott, you knew who Bill Baxterly was, didn't you?
- A. Yes. I didn't know where he was, though.
- Q. You know his connection with the Western Federation of Miners?
- A. Yes sir.
- Q. Had you any idea as to where to send him to Denver to see him?

A. No sir.

Q. You hadn't? A. No sir.

Q. You didn't send him to the Pinkerton headquarters? A. No sir.

Q. Did you talk with him as to where he would probably be found?

A. Now, I am not quite clear on that, but I think we discussed that he would probably find him knocking around Federation headquarters.

Q. How you think you'd, do you? A. Yes. I wouldn't say for sure as to that.

Q. Now, being a special service man, didn't you think that would be a pretty close guess, Mr. Scott? A. Yes, that would be a pretty close guess.

Q. You wouldn't expect to earn a hundred dollars a month unless you could guess that close. Didn't you know that Orchard was going to Federation headquarters when you furnished him a pass and gave him the money? A. No. He said he would go down and see Westery. He told me he wasn't acquainted at headquarters.

Q. Then you talked about headquarters, did you? A. Well, it appears to me we did, although I wouldn't say for certain.

Q. What did you say about it? A. I don't know as I said anything if we didn't talk about it.

Q. How did he happen to tell you he wasn't acquainted there?

A. At headquarters?

Q. Yes. A. I say I think that we had a conversation there and Orchard said to me that he wasn't acquainted at headquarters.

Q. Well, is that all that you can remember that was said about headquarters? A. That is practically all.

Q. Headquarters of what? A. Of the Western Federation of Miners.

- Q. Oh, yes. Was anything said at all who was connected with it, the officers, or didn't he appear to know who was the president and who was the secretary? A. I am not sure whether that was discussed or not, Mr. Darrow. He certainly knew the name as I know.
- Q. You really did know at the time, did you? A. I was satisfied I know.
- Q. Well, he did say he had never seen Meyer or Heywood, didn't he? A. No, I don't think he said that. I don't recollect that.
- Q. He said he wasn't acquainted with the officers, didn't he? A. I think the remark that he made is that he wasn't acquainted at headquarters.
- Q. You understood that to mean that he wasn't acquainted with Meyer and Heywood, didn't you? A. I didn't hear him say that.
- Q. Wasn't that what you understood when he said he wasn't acquainted at headquarters? A. No, I wouldn't have taken it for that. He might have known them when he saw them and not been acquainted with them.
- Q. Did you understand by that he was not acquainted with Meyer and Heywood? A. Well, I would naturally take it that way.
- Q. And you understood and it was arranged that he should go up there and see Bill Mastorly? A. He was to go down to Denver to see Bill Mastorly.
- Q. And you thought he would see him at headquarters? A. And as I say, my best recollection is that he said something about he might find him around headquarters, but he wasn't acquainted there.
- Q. And as you know, Mr. Scott, that the very first time this man

- ever went to meet Moyer or Haywood, you, a special agent or detective, whatever you may call it, of the Florence & Cripple Creek railroad gave him a pass and gave him some money?
- A. I gave him a pass and gave him some money.
- Q. Did you go with him? A. No sir.
- Q. How soon after he left before you went? A. I went down there a day or so afterwards.
- Q. Where did you go? A. To the Adams hotel.
- Q. Did you see Orchard at the Adams hotel? A. I did.
- Q. How did he know you was at the Adams hotel? A. I told him where I would be and the day I would come down.
- Q. Then before you started him off up there you told him you would be down the next day, did you? A. A day or so afterwards.
- Q. And he was to come to see you at the Adams hotel? A. Yes sir.
- Q. For what? A. To let me know if he found out anything more in connection with the train wrecking from Bill Senterly.
- Q. Anything else? A. That was all that I wanted to find out.
- Q. Well, did you see him more than once at the Adams hotel?
- A. Now I am not quite sure. I may have seen him twice before I went home. I went home I think the next day. I didn't stay down. He said Senterly was in Pueblo.
- Q. And he made you think, two reports to you? A. I think I talked with him there twice. I am not quite sure as to that.
- Q. Then you saw him again after that, didn't you? A. I saw him when he came back to Cripple Creek.
- Q. How long did he stay up there? A. He stayed down there quite a number of days.

- Q. Did he come back then to your office? A. He came to see me when he came back; yes sir.
- Q. Did he tell you whether he had met Bill Kantorly? A. Yes.
- Q. Did he tell you whether he had met Mayer and Hayward? A. He did.
- Q. Did you ask him whether he had met Mayer and Hayward?
- A. I think I did.
- Q. Did you have any conversation with him about Mayer and Hayward?
- A. I did.
- Q. How long a conference did you have with him after he got back there? A. Not very long, not over thirty minutes probably.
- Q. And part of this money that you gave him did you give after he got back? A. No sir.
- Q. About what date would that be that he got back, if you can tell? A. What was that you said?
- Q. About what date would that be, Mr. Scott, that he got back?
- A. I think he was down there about ten days, I should judge, a week or ten days; might have been a little longer.
- Q. How as near as you can get at it, will you tell me the last day you ever saw Orchard to speak to him, the date?
- A. I think the last time that I talked to Orchard was that time I told you that I met him in the saloon with Steve Adams.
- Q. Well, can you give me the date of it? A. It was during that trial, it was either the last, might have been the last of February or first part of March.
- Q. You were a witness in that trial, were you not? A. Yes sir.
- Q. You know Aller, don't you? A. Yes sir.
- Q. How long have you known him? A. Since about 1900.

- Q. Was he ever in your office? A. Yes sir.
- Q. What doing? A. Well, I don't just recollect what he would come there for. Perhaps somebody might have wanted me on the phone and he might have come and asked me.
- Q. Was he a clerk in the building there? A. Yes sir.
- Q. For a considerable length of time? A. Yes sir.
- Q. You were boarding when you were down in the Cripple Creek district about this time? You weren't keeping house, you were boarding? A. I was eating at the Merchants' Cafe.
- Q. Was Aller keeping house? A. Well, he got married after I went there and kept house.
- Q. Did he ever invite you to his home to supper? A. He invited me to dinner, you sir.
- Q. Did you go? A. I did.
- Q. Do you remember when it was? A. Yes.
- Q. When? A. I went to his house to eat dinner on Sunday after I came back from Denver, in I think the latter part of June, 1904.
- Q. Did you ever eat with him more than once at his house?
- A. I think just once.
- Q. Did you ever make any engagement to take dinner with him that didn't materialize for any reason? A. I think at that time that I disappointed him once or twice.
- Q. You did? A. Yes sir.
- Q. You were going to take dinner with him and something happened and you didn't take it? A. I think that I disappointed him once or twice about going to dinner with him at that time, yes sir.

- Q. That is, you were going to his house to take dinner with him? A. Yes sir.
- Q. You do know a man named Moore who keeps a railroad boarding house? A. Well, he isn't there now I don't think.
- Q. Well, he did at this time? A. Yes sir, he was our section foreman.
- Q. You have been to his house, have you? A. I have been to the back door of that house once.
- Q. Never to the front door? A. No. You can't get in through the front. There is a sort of a store or something of that kind.
- Q. So the back door is the front door? A. The back door is the front door.
- Q. You have never been inside of the house? A. I don't recollect, I don't think I was ever inside of that house.
- Q. Would you swear positively you never were? A. Well, I will swear positively I was never any further than standing inside of the door.
- Q. You don't know Mrs. Joyce? A. No sir, I don't think I do.
- Q. Did you ever see her that you know of?
- A. Not that I know of. I might know her by sight if I saw her.

Q Did you ever see Mr. Orchard in the presence of Sterling?

A Yes sir.

Q How many times? A I think a couple times.

Q Whereabouts? A In my office in the depot.

Q Did you introduce them? A I introduced them.

Q When was the time you introduced them? A It was very close to the first time he came to see me.

Q Did Mr. Sterling give him any money? A Not that I ever know of.

Q I mean, in your presence? A No sir.

Q You are still connected with the railroad in the same capacity?

A I am now, yes sir.

Darrow:

Q MR. WARDEN: I guess that is all, Mr. Scott,-- just one moment. There is one question more.

Q Did you say you ever talked with Mr. Allery? A Yes sir, when he first came here.

Q Did you talk with him last night? A No sir.

Q At any time yesterday? A No sir, I have not spoken to the man except to say, "How do you do," to him since he got off the stand.

MR. DARROW: That is all.

RE-DIRECT EXAMINATION

BY MR. HAWLEY:

Q You say you saw Orchard and Sterling together? A Yes sir, in my company.

- Q Was that on one of the times you stated you had an interview with Orchard? A Yes sir.
- Q And which interview was that? A That Sterling was there?
- Q Yes, the first, second or third? A It was the second interview I had with Mr. Orchard. I arranged with Mr. Sterling to come and meet him and I think he saw him after that in my office.
- Q Then Sterling was present at the second interview between Orchard and yourself? A To the best of my recollection.
- Q Was that the time you introduced him? A It was, yes sir.
- Q You said that you disappointed Mr. Aller in regard to a dinner, or going to dinner with him once or twice? A I did, yes sir.
- Q When was that that this disappointment happened? A That was a Sunday or so before I went to dinner with him there in the early part of July or latter part of June after I came back from Denver.
- Q That was after the Independence dept explosion? A Oh, yes sir, a long time after.
- Q I understood you to say in your cross examination that you had done some work for the railway company at Cripple Creek in August, 1904? A Yes sir.
- Q Was this -- was you working generally for them or was it some particular work? A Well, my best recollection is that I went to work for them about the 1st of August. I had done some special work for some of their attorneys before that. If

I remember right I went to work for the company in the month of August.

Q As special agent? A Yes sir.

Q Where did this first conversation occur between Graham and yourself? A In my office in the depot.

Q Who brought it about -- how did it come about that you and Graham had this talk? A I was introduced to him by a man named Jones who was a conductor on one of our suburban trains and a union.

Q Was Jones present at the conversation you had with Graham?

A He was not.

Q This conversation you say occurred in your room at the depot?

A Yes sir.

Q You may state what was said on that occasion?

MR. DAWSON: Just excuse me, Mr. Hawley, the conversation between whom?

MR. HAWLEY: Certainly --

MR. DAWSON: I was reading a telegram and did not quite understand.

MR. HAWLEY: Between Graham and himself at the first interview.

MR. DAWSON: We object to that.

MR. HAWLEY: They have gone into these matters as part of their cross examination. They have talked about --

THE COURT: That was simply for the purpose of fixing

dates, as I understand it.

MR. HANLEY: I don't so understand it. There is something further than that. They have gone into the conversation, or the substance of them to a limited extent, not inquiring what the conversation was, but the subject matter of that conversation. They are not permitted under the guise of cross examination --

THE COURT: You made no objection to it.

MR. HANLEY: I have made an examination upon the questions of the same kind, and they have been partial, but whenever they go into matters of that kind or in regard to or inquiring of the conversation, I submit they are not privileged to go partially into it and build up the foundation for an argument without any real foundation. If they start in at all and intimate any matter which could be used for argument, then I have a right to the conversation and the entire conversation in order to prosecute my defense or my argument or to prevent the jury from being deceived in regard to the occurrence.

MR. BARBER: This question is asking this witness for a conversation with another witness who is hostile to us, and I don't see how it can be claimed for a moment that one witness can be asked concerning a conversation with another witness. It certainly could not be done as a matter of original evidence. So far as cross examination is concerned I have asked for no conversation.

THE COURT: That is my understanding of it.

MR. HAWLEY: They have talked in regard to conversations at the Adams Hotel, they have made intimations and insinuations with reference to those conversations which could have had but one object, and that was not the object of fixing a date, but to build up an argument to the jury.

THE COURT: The only thing material in the cross examination was for the purpose of fixing the date, and I will sustain the objection.

MR. HAWLEY: Will your Honor caution the jury that it is not for any other purpose?

THE COURT: Yes.

MR. DARRON: I will take an exception to that. I think I have a right to show the connection between this witness and the other if I can.

MR. HAWLEY: Then I have a right to this conversation.

THE COURT: If you have a right to any such conclusion they have a right to the conversation.

MR. DARRON: I have a right to show the connection between them and I did not go into the conversations between them.

MR. HAWLEY: I understand in all these conversations I will not be permitted to go into any of these conversations?

MR. DARRON: No sir, not unless some portion of the conversation was brought out on the cross examination.

MR. HAWLEY: No matter what the intimations were --

- Q The last talk you had with Orchard you say was in a session at the time of the trial? A To my best recollection.
- Q And about what month was that? A It was during our trial; it was either the latter part of February or perhaps the first of March.
- Q As part of that conversation you say Orchard introduced evidence to you? A He did, yes sir.
- Q Did you have any further conversation outside of this introduction? A No, I simply invited them to have come here with me.
- Q That was all, was it? A That was practically all, yes sir.
- Q Had you ever had any conversation with Orchard over time before? A Yes sir.
- Q When was that -- which one of these other conversations? A When I went for him to come down after the blowing up of the Vindicator shaft.
- Q Did he give you any information in reference -- or I believe there is one of these conversations you say that the names were mentioned of Parker and others? A Yes sir.
- Q Which one of these conversations was that? A That name was mentioned in the first conversation and also in about every conversation I had in my office with him.
- Q Then when you spoke, in answer to Mr. Darrow's question, that you had a conversation in reference to Parker and to Davis and to others you are speaking of the first conversation and the other conversations are you? A Yes sir.

Q How you can tell the rest of that first conversation, and relate it all.

MR. DANROW: I object.

MR. HANLEY: We insist that they have gone into the conversation and we are entitled to it all. This is the conversation it comes upon which he was directly questioned as to Parker and Davis and others being mentioned. There was an attempt there, if your Honor please, in bringing out that portion of the conversation to base an argument upon it in the future, without going into what that argument would be.

THE COURT: The court does not recall just what was brought out but if there was any portion of the conversation brought out, the court will permit you --

MR. DANROW: I asked him whether there was any conversation in reference to Parker and Davis and he said he thought there was, and that is as far as I went.

MR. HANLEY: Then we are entitled to that conversation, we insist.

MR. DANROW: I cannot see any reason why any such argument as that could be made. I asked him if he had a conversation, and that does not mean that you should let a witness on the stand state what some other witness told him.

MR. HANLEY: But when counsel go out of their road upon cross examination to inquire into matters that are not

part of the direct examination then the whole subject matter becomes open to inquiry and question later. They can only be asked for one purpose. The learned counsel has pretended before that the only reason in these questions that they were inquired into was to fix a date and I would ask how this conversation or the subject matter of the conversation could help fix a date? Doesn't it demonstrate that there was some ulterior motive?

THE COURT: If the fact of this conversation could be used by the defense you are entitled to the conversation and the court will overrule this objection.

MR. BARNOW: Then I want to take an exception. I want to correct you, Mr. Hawley; the learned counsel that you refer to never said he merely used this to fix a date, for he did not,-- the court said that. I did not bring it out for any such purpose and I would not pretend so either.

THE COURT: The witness may answer the question.

MR. BARNOW: I want to state the grounds: We object to it because it is hearsay and not re-direct examination.

THE COURT: I shall limit you in that to the general subject. I don't see the necessity for going into all the details.

MR. HAWLEY: I don't care to go into the details except to take the sting out of these questions, and necessarily --

MR. BARNOW: If I may suggest a moment, if it is a question -- if the court is going to permit counsel to examine

in full as to what Mr. Orchard said -- is permitting one witness to testify to what another one said, both of whom are hostile to us, we want the right to cross-examine fully upon that point.

THE COURT: The court won't refuse at any time to permit you to examine.

MR. HAWLEY: It shows the danger of cross examination.

MR. RICHARDSON: It does seem to be dangerous.

Q Go ahead and answer the question. A What was that question?

MR. BOWEN: Read the question to him.

The previous question was then read.

A The first time I met him?

Q Yes sir.

MR. BARRON: Now, your Honor, does the court intend that he shall relate it all?

THE COURT: Is this the conversation in relation to where Parker was referred to?

MR. BARRON: And Davis.

MR. HAWLEY: And these other W. J. K. men are referred to.

THE COURT: That is the conversation the court has ruled upon.

MR. BARRON: The question says to relate it all, and my objection goes to all of this.

THE COURT: Proceed.

Q Now answer the question? A After I was introduced to him he came up into my office and he asked me what my business was and he said that the reason he came to see me was on the recommendation of Mr. Jones who was a brother nigger; that after talking with me and getting me to promise that I would not tell where I got this information and would never use his name if anything should come up that I could use him as a witness, or anything else, and after I made him that promise, I told him he would have to speak as he said they were going to make an attempt to wreck one of our trains, and I asked him who, and he said some of the Bull Hill boys; and he went on and related that they had made one attempt and it failed; that the tools had broken, and that they could not get the rail out, and they were going to try it again and he wanted to tell me. He related that they were going to try at the same place they had tried the first one, and he had not mentioned at this time at that conversation the name of Parker or Davis. When he got through I said, "Mr. Orchard you have told us the truth." He said, "How do you know?" I said, "They have made the attempt." He said, "You don't understand me; they made the first attempt and they are going to do it again." I said that they did do it again, they tried it last night; and he said, "No, it snowed last night and they did not try it;" and I said, "They did attempt it and I was near there and we have one man now under arrest in the guard house at camp Colorado, and I told him his name was McKinney; and I said

that I did not know who the two men were who was to wreck the train but that the man who walked by Sunday and saw some men working there, on looking at the track, he thought that they were detectives and was not going to make the attempt that night, but he came back to report, and I said who to, Parker and Davis? And he sort of laughed and said, "You seem to know something about it;" and I said, "Yes, I have some information regarding it;" and he said, "I was talking with them last night and it started to snow and they would not go out to make this attempt because they would leave some tracks."

Q Did you ever have any further talk with him about Parker or Davis? A Yes sir, every time he came down there I tried to get him to give me some more information as to who was putting up the money, but I could not seem to get it out of him.

Q Did he give you any information in regard to that matter?

MR. RICHARDSON: He object to that as not re-direct examination.

THE COURT: The objection is sustained.

Q You said that he gave you \$20. at one time -- or you gave him \$20. at one time, and he gave you -- or that you gave him fifteen or twenty dollars afterwards? A Yes sir.

Q When was it you gave him the twenty dollars? A Well, the first time I gave him twenty dollars it was on one of those visits -- I am not quite sure whether it was the first one or

second one bit he was sitting on my left, -- we were talking, and he told me about being out of work. He had worked at the Vindicator, and I took out some money and I was satisfied it was a twenty dollar bill, and he got rather indignant; he said I could not buy him or bribe him, and I said I was not trying to do that; I said to him, "You have been out of work for some time," and he had told me that he was married and had two step children, and I made the remark to him, "I want to give you this to buy your children some shoes," or something of that kind, to help him, and he finally took it.

- Q When was the other fifteen dollars? -- when was it that the other fifteen dollars was given to this man? A Just before he went to Denver.
- Q Where was this Masterly -- this conversation in reference to Masterly? You have mentioned a conversation in reference to Masterly? A Yes.
- Q Where was that conversation had? A In my office in the depot.
- Q You may relate that conversation so far as it relates to Masterly.

MR. DARRON: To that we object, your Honor.

MR. HAWLEY: We urge it for the same reason as the other.

THE COURT: What was the testimony in relation to that matter.

MR. HAWLEY: My recollection is that on three or four

occasions they inquired into the fact of his having had a conversation with Orchard or otherwise,— or there was a conversation between Orchard and himself in regard to Bill Masterly as they called it.

MR. BARRON: I will state just how this arose. I asked Mr. Scott whether he ever gave him anything else and he said he gave him transportation when he sent him up to see a man; I asked him who the man was, and he said, Billy Masterly, and then I asked him whether he saw him and he said that he learned he was in Pueblo, and that is all there was of it.

MR. BORAH: No, go ahead a little farther. If your Honor please, you will remember the counsel interrogated. The point which the counsel drew out of the conversation in regard to Masterly was in reference to the objects and purpose for which Orchard was sent to headquarters and the inference was left that he was sent in not to see Masterly so much as to get in touch with Moyer and Haywood at headquarters.

MR. BARRON: That still leaves it exactly as I stated it, which is that this witness has said he sent him up to see another man; I asked him who, and he said Masterly; I did ask him as to where he was to look for Masterly and he said something in his answer as to Federation headquarters, and I asked him if he knew who was president and secretary at Federation headquarters.

find out that you asked him what was this conversation in reference to headquarters.

MR. DARROW: Oh, no. He said he sent him up there to see Easterly, as I recall it.

MR. HAWLEY: He is trying to build up two or three different theories.

MR. DARROW: I object to it as pure hearsay and you cannot let Mr. Graham speak here by hearsay evidence after he has told all his story.

THE COURT: I think I will sustain this objection.

MR. HAWLEY: Will you warn the jury not to take this into consideration?

THE COURT: At the proper time.

MR. HAWLEY: That is all.

RE-CROSS EXAMINATION

BY MR. DARROW:

Q Mr. Scott, you say he came to your office and told you he wanted to give you some information and when you said something about Parker and Davis he smiled about it? After we had had the conversation, yes sir.

Q And you said you told him that you had already had a man arrested for that? A Yes sir.

Q And that man was McKinney? A Yes sir.

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Q And what became of McKinney? A I don't know where he is. I heard he was in the Nebraska.

Q Well, you know that you did not prosecute Mr. McKinney, do you not, sir? A Yes sir.

Q And that you and Mr. Sterling prevented him from being prosecuted.

MR. HAWLEY: We object to all this as not competent, and not proper cross examination.

MR. DARROW: We want to show who McKinney was and his interest in it.

THE COURT: You have shown that, haven't you, Mr. Darrow?

MR. DARROW: Perhaps so; I will withdraw that for a minute.

Q He was not sent to the penitentiary on this charge?

MR. HAWLEY: We object to that as not proper cross examination.

MR. DARROW: His answer was that McKinney was arrested for this, and we want to go further.

MR. HAWLEY: They build up a house of cards and now they want to blow it over.

MR. DARROW: Oh no, we are pulling no house of cards.

MR. HAWLEY: Then what is it?

THE COURT: The objection is sustained.

MR. DARROW: We will save an exception. That is all.

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MRS. L. BAKER, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q What is your name? A Mrs. L. Baker.
- Q Where do you reside? A Chicago.
- Q What is your husband's name? A Lloyd Baker.
- Q And when you speak of yourself as Mrs. L. Baker you are taking your husband's initial? A Yes sir.
- Q What is your own given name? A Ida.
- Q Where did you reside in 1904, Mrs. Baker? A 1853 Welton Street, Denver, Colorado.
- Q What was your name at that time? A Ida McKee.
- Q What was your business at that time? A I kept what is known as the Miles hotel, an apartment house.
- Q Are you acquainted with D. C. Scott the last witness?
- A Yes sir.
- Q Did Mr. Scott stay at your hotel in Denver at any time in 1904? A He did.
- Q At what time? A He came to the house in April, the 25th day.
- Q Did you keep, Mrs. Baker, books when you kept that hotel?
- A Yes sir.
- Q What kind of books did you keep -- what particular books?

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A I kept a cash book and record book of the time.

MR. HAMILTON: Please mark this as State's exhibit T-2, and you can mark this book as State's exhibit for identification U-2.

Q You can take this book marked exhibit T-2 and state what it is?

A That is the record of the time they kept the rooms.

Q Kept the rooms?

THE COURT: What was that answer.

The answer was read.

Q You had no register? A Yes sir.

Q But this is -- was this a book kept by you at the time?

A Yes sir.

Q And is this the book of original entries kept by you at that time? A Yes sir.

Q And kept there as part of your business? A Yes sir.

Q Will you turn to Mr. Scott's name if it appears there and state whether from that you can ascertain anything about his coming? A Here is a memorandum,, I don't know --

Q Who was it made by? A Here is Mr. Scott's name. The name of each guest appeared at the end of their time and was taken out of the original entry.

Q I notice here upon page 16, the name of Mr. Scott. Does that show, madam, under your system of keeping books what time he commenced occupying that room and when he left it? I am not asking you to give the date? A Yes sir.

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MR. HAWLEY: I will offer to introduce this portion of exhibit T-2 embraced on page 16, and on the line marked with Mr. Scott's name.

Q Will you please look at this other?

THE COURT: Any objection?

MR. RICHARDSON: You want her to explain it,--- you have not offered it yet.

MR. HAWLEY: Yes, I have offered it.

MR. RICHARDSON: We object to it as immaterial, incompetent and irrelevant, and not rebutting or tending to rebut any evidence in this case.

THE COURT: Mr. Hawley, have you sufficiently identified that book and shown its correctness?

MR. HAWLEY: She has stated that this is a peculiar system of bookkeeping by this witness and I have not asked for the explanation because I did not think it was the proper time. If the court desires I shall ask for the explanation of this. I will withdraw the offer until I do.

Q I will ask you to explain this entry that I have offered, and explain what that shows, in that system, upon that line?

A I would say that the names are put in this book as the guest arrives opposite the number of his room, and the date that he arrives is put on that same line. Then cash payment that he makes is put in the cash book and is checked from the cash book back to this book up to the time the roomer pays his bill. When the guest gives up the room I place his name at

the end of the time, take it out of the original entry and put the next occupant of the room there and so on, when he leaves by putting his name at the end of the time he occupied the room, and it is a record sufficiently plain to me to turn to any business I had with any person in the house from the time I took the house until I gave it up.

- Q And it shows the time he stopped correctly? A The books agree. The cash book entries agree with the number of weeks he occupied the room.
- Q Then I ask you whether it shows the number of weeks he occupied the room and when he came and when he went and gave it up? A It shows exactly the time he came and exactly the time he left.
- Q I will ask you to take that book and refresh your recollection and say when he came to your hotel and when he left? A He came the 25th day of April.
- Q What year? A 1904.
- Q And what time did he leave? A The 15th day of June, 1904.
- Q Was he there continuously, can you tell from this book?
- A He was away three days. He told me when he took the room he would be away.
- MR. DARROW: Wait a minute.
- Q What part of the time was it he was away the three days?
- A When he first engaged the room.
- Q In what month? A April.

Q And how long after he first engaged the room? A He stayed the first night and I think he went away the next day and came back on Sunday the 1st day of May.

Q This was the latter part of April that he was away? A The latter part of April.

Q After May, you may state whether or not he was away at all until after the date in June on which he left? A Well, he was away one night.

Q And when was that? A I don't know exactly the night, but it was possibly three weeks after he came.

MR. HANCOCK: Is this witness testifying from her memory or from the book?

MR. HARLEY: That is her memory.

Q You may take this other book marked States exhibit U-3 and state what that is? A That is a cash book.

Q Is that a cash book kept in the regular course of your business as proprietress of that hotel in 1904? A Yes, sir, it is a record of all money received and disbursed.

Q Is it a book kept in the regular course of business? A Yes sir.

Q And it correctly shows the state of the business? A Yes sir.

Q Does that book show also the dates that Mr. Scott stayed at your house? A It shows the dates he paid his money.

Q And what does it show as to payment of rents from the latter part of April until the middle of June, 1904? A He paid me

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April 25th, May 1st, May 15th, May 24th, June 4, and June 12.

- Q Did he paid for two weeks at any time, or were those payments just for single weeks? A He paid on June 4th for two weeks.
- Q Then he paid altogether for seven or eight weeks, which was it? A Seven weeks.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

- Q Mrs. B her, you rented your rooms to him by the week?
- A By the week.
- Q And he paid you in advance except on one occasion when he paid you for two weeks? A Not always, in advance, he did not.
- Q That is substantially true,-- the first payment you got was for a week in advance? A Yes sir.
- Q And there is nothing here that shows that he was away at all?
- A No sir.
- Q You simply have an independent recollection that he went away for three nights? A Yes sir.
- Q Did you get that independent recollection from talking with Mr. Scott about it? A I remember that I -- when Mr. Scott came up to engage a room I met him myself.
- Q I ask you if your memory was refreshed on that matter at

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- all by talking with Mr. Scott since you came here? A No sir.
- Q You came here on a telegram, did you? A No sir.
- Q Or a letter that was written you? A No sir.
- Q Did Mr. Scott go down after you to Chicago? A No sir.
- Q How did you come from Chicago out here? A How did I come?
- Q How did you happen to come? A I was asked to come by a gentleman who came to the house in Chicago.
- Q From the Winterston agency? A He did not say, and I did not ask him.
- Q But you found out afterwards that he was? A I found out before I started from Chicago that he was.
- Q And did you have these books with you at Chicago? A I got them at the Miles, in Denver.
- Q If a person was looking at this book on page 18 which has been sought to be introduced here as defendant's exhibit 7-2 all the information he could get from the book would be the word Scott written beside the word SO? A SI.
- Q Yes, SI. Then a V marked with 6-22, 6-23, 7-6, that is all the information he could get from this book? A I could explain.
- Q I see you have got to know something in your own head outside of that? A Oh yes.
- Q Now, 6-22 means that he came there on the 22nd day of the month, or at least he paid for the room on the 22nd for one week? A No sir.

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- Q What does it mean? A You will see at the other end of the line there is \$8.00.
- Q \$3.00? A Yes, and then 51, that is the number of the room, and then there is a name.
- Q That is Mr. Austin? A Yes, Mr. Austin. Then you see dots along there, that is a check mark which you called a Y. Then you see immediately in front of 4-25, a check mark and Mr. Scott began there.
- Q Oh, he began at 4-25? A Yes sir.
- Q You wrote his name over on the other end of the book?
- A I wrote the name when they left the house. His name was in the line.
- Q Yes, I was looking at the H written after the name? A That refers to the next person.
- Q That next person never did get his name written in on that page? A He may have stayed longer.
- Q Then 4-25 means that Scott came on the 25th day of April and that Y means he was paid in advance for a while? A No sir.
- Q That refers you to the other book, doesn't it? A 4-25 is the date he engaged the room.
- Q You have to refer to another book to see when he paid?
- A The next date is on the --
- Q The next date is the second? A You will see by the cash book that he paid the 25th and that paid until the 2nd.
- Q These figures do have some relation to the time of payment?
- A The cash book shows that.

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- Q These also refer to the time of payment, don't they? A They refer to the amount paid.
- Q Suppose a man went there on the 25th and paid you for a room until the 31st you would not know whether he stayed there or not -- you would ordinarily presume he had? A Ordinarily, unless there was some reason I would not absolutely know.
- Q You would know the room was being paid for? A Yes sir.
- Q And at the time you would doubtless know whether it was being occupied, but a single gentleman going into a room and hiring it for a week might go out and stay three nights for all you would know? A Well, he might, but if anything has drawn my special attention to him I would be apt to know.
- Q Well, people do, I suppose rent rooms by the week from you and sometimes they did not occupy those rooms? A Yes.
- Q That was not perhaps the general rule but it happened occasionally? A Yes sir.
- Q And you could not say of your own knowledge that Mr. Scott stayed there every night, except the four nights you have mentioned, could you? A Well, I would not ordinarily have paid much attention to Mr. Scott.
- Q I notice you got your pay in advance from him?

MR. HAWLEY: Hold on. We ask that the witness be allowed to conclude her answer. Go ahead.

THE WITNESS: I had reasons for paying attention to Mr. Scott.

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- Q You had some reasons for that, did you, and so you knew he was only gone four nights of the entire time he had the room rented from you? A I know he was gone four nights.
- Q Do you know he was not gone more than four nights? A I don't believe he was out of the house another night excepting these four nights.
- Q But you are not quite positive about that? A I did not just watch his room exactly, but we watched for him the next day and inquired about him every day.
- Q You had some special reason to watch for this particular roomer, did you, over and above all your other roomers?
- A Yes sir.
- Q You had how many rooms in the house? A 53 rooms.
- Q You had 53 rooms? A Yes sir.
- Q And you could remember this particular roomer over and above all the other roomers that you had? A I remember a few others.
- Q Without regard to your book? A Yes sir.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. HAWLEY:

- Q What was that particular reason?

MR. RICHARDSON: We object to that.

THE COURT: The objection will be overruled.

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MR. RICHARDSON: Note our exception.

A What was that question?

Q Read the question.

The question was then read.

A Mr. Scott had not been there very long until we found notes under his door that frightened us and we were alarmed all the time that something might take place in the house and we were hoping all the time that Mr. Scott would give up his room.

Q What kind of notes?

MR. RICHARDSON: We object to that.

THE COURT: That objection will be sustained.

MR. HAWLEY: Your Honor rules we cannot inquire generally into these notes?

THE COURT: Yes.

MR. HAWLEY: Very well then.

Q What was your reason for observing Mr. Scott so closely and you have --

THE COURT: She has answered that question, Mr. Hawley.

Q You have answered that question partly; I did not know whether you had answered it fully or not? A From the nature of the notes --

THE COURT: You need not answer that question, witness.

MR. HAWLEY: That is all.

RE-CROSS EXAMINATION

BY MR. RICHARDSON:

- Q Taking this back, you have testified to, you say the use of the room precedes the name; now I will ask you if you take the same line, if there is not a Mr. Austin as preceding in use of the room, whatsoever -- A In use of the room?
- Q Yes, Mr. Austin's name precedes in date with respect to the room, doesn't it? A He occupied the room preceding Mr. Scott.
- Q Is that the reason you got his name over here? A Mr. Scott's name was here when he first came, and there being no other figures here we naturally know the name there is the name that belongs to the last figures.
- Q That is to say you used the name all through the ledger before you come back and put it in the column that is preserved for the names? A For instance, there is Mr. Galvin. His name is after his time of occupancy, but Mr. Galvin's name is there; Mr. Galvin's name is there (indicating). Mr. Scott, -- or possibly the room was occupied one night and I would not put a name in for one night; it would be on the register and in the cash book possibly, just the number of the room. Then when Mr. Scott took the room his name would be there; after the room was given up his name was put there

MR. RICHARDSON: That is all.

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MR. HAWLEY: I think that is all, Mrs. Baber.

THE COURT: Call your next witness.

MR. HAWLEY: I will next call Mr. Cogan.

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J. J. COGAN, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q What is your name, Mr. Cogan? A Jeremiah J. Cogan.
- Q Where do you reside, Mr. Cogan? A Colorado Springs.
- Q What is your business or occupation? A Assistant general manager of the Cripple Creek line.
- Q What was your business or occupation in 1903 and 1904?
- A Chief Clerk of the Florence and Cripple Creek railroad.
- Q Where did you reside in the latter part of 1903 and early part of 1904? A Cripple Creek.
- Q Where, if anywhere, did you have your office? A We had our offices in the Midland Terminal depot at Cripple Creek.
- Q Are you acquainted with D. C. Scott? A Yes sir.
- Q What position, if any, did he occupy in the company, in the early part of 1904, and the latter part of 1903? A Special agent.
- Q When did he commence work as special agent, if you know?
- A Why, he was working for the company when I came to work for them.
- 4451 Q And what time was that? A That was in 1901.
- Q What year? A June, 1901.

- Q What time did Mr. Scott quit work for the company if he quit at all? A March 31st, 1904.
- Q Did he afterwards resume work? A Yes sir.
- Q What time was it that he resumed work in the district or for the company? A August, 1904.
- Q Where were you living, you say, in the early part of 1904?
- A In Cripple Creek.
- Q How long did you live at Cripple Creek? A I lived at Cripple Creek until March.
- Q What part of March -- what time in March? A I left Cripple Creek I think on -- I think it was the 15th of March.
- Q And where did you go? A To Canon City.
- Q State whether or not you severed your connection with the company? A No sir.
- Q How long did you remain in Canon City? A Until the 10th day of April, 1904.
- Q And after the 10th day of April, 1904, where did you go?
- A Denver.
- Q Still in the company employ? A Yes sir.
- Q In Denver? A Yes sir.
- Q In the same capacity? A Yes sir.
- Q How long did you stay in Denver after you went there in April, 1904? A Until August, 1904.
- Q Did you see Scott in Denver after you went there in April?
- A Yes sir.

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Q About what time in April did you see him? A I could not place the exact date, but it was between the 15th and 20th of April.

Q Where did you see him? A In our office in the Boston Building.

Q How often did you see him from that time on until he resumed work for the company? A I saw him two or three times a week up to some time about the middle of June, and then I did not see him until I went to Cripple Creek in August.

Q Can you state whether or not after Scott left Cripple Creek, whether or not he retained his room he had, or whether he had any rights there in the office of the company at Cripple Creek?

MR. RICHARDSON: We object to that for several reasons.

THE COURT: The witness may state what he knows.

MR. RICHARDSON: Note our exception.

Q Do you know as an officer of the company? A He had no right to any room in Cripple Creek.

Q Have you the books of the company and the vouchers of the company in regard to payments? A Yes sir.

Q Please examine that book and say what it is? A It is the original payroll of the Florence and Cripple Creek railroad Company for the year 1904.

Q That is the original payroll? A Yes sir.

Q In whose custody is this book? A It is kept in the custody of our auditor in the vault at Colorado Springs.

Q You know it is a book of original entry? A Yes sir.

Q Kept in the course of business? A Yes sir.

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- Q Of the business of the company? A Yes sir.
- Q And one depended upon by the company in its business? A Yes sir.
- Q In its business affairs? A Yes sir.
- Q Is there any reference in that book to the date of Mr. Scott's quitting the employ of the company? A There is no reference in here except the negative that he does not show on the roll.
- Q Does he show upon the payroll after the month of March at any time? A No sir.
- Q Until August? A Not until September.
- Q Or until September? A Yes sir. It shows here in March.
- Q The book shows in March? A Yes sir.
- Q And when does it next show? A He is not on the roll until September.
- Q You have examined that book and know that to be the fact, have you? A Yes sir.
- Q Then there is no reference from March until September?
- A No sir.

MR. HAWLEY: Gentlemen, this book I do not care for introducing it, but it is there for your examination.

- Q Do you know whether Mr. Scott did any work for the company?
- A Yes sir, he did extra work in the month of August.
- Q State whether or not this extra work calls for his name appearing upon the payroll? A No sir, not necessarily.
- Q And that is paid by voucher, is it? A Yes sir.
- Q Examine this paper, and state what it is? A That is the

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voucher given him for services that he rendered the legal department under an agreement with our attorneys.

Q Is that the August work that you have testified in regard to?

A Yes sir.

MR. HAWLEY: You may examine, gentlemen.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q You paid him in August just the same as you paid him regularly? A I don't know what the agreement was; it was made with our attorney.

Q Now, the book, so far as that is concerned, you testified from it simply because it does not show that Scott was on the book? A From the book, yes.

Q You have an independent recollection of it also? A Yes sir.

Q Did you have charge of the hiring and discharging of Scott?
A No sir, but I handled the time.

Q You are the man who wrote this book, I suppose? A Most of it.

Q That was made up from some other book? A Yes sir.

Q And there were several other books, and this was the payroll of the company is it, this book? A Yes sir.

Q Does this book show the expense accounts of Mr. Scott?

A No sir.

Q Just his salary account in common with other employees of the road? A Yes sir.

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- Q And you are testifying that he did not work during the months of April, May and June. A Yes sir.
- Q In addition to the fact that the book does not show that he worked.
- Q Yes sir.
- Q Now, do you know simply because you have charge of this book?
- A I know he had been discharged.*
- Q Did you discharge him? A The order came through me.
- Q Did you re-employ him? A Finally, when he was re-employed I did.
- Q And you have an independent recollection on that subject?
- A I did not re-employ him for the month of August.
- Q But where he spent his time during April, May, June and July you have no knowledge? A No more than I saw him in Denver two or three times a week during the latter part of April and month of May.
- Q Did you live where he did? A No, he used to come to our office more or less.
- Q He used to come there two or three times a week? A No, I met him on the streets some times.
- Q How many times a week would he come to the office? A Some times once a week, or a couple of times.
- Q Did he come to see you? A He came to see me and some of the others, Mr. Shoemaker and some of the other boys.
- Q How many boys were there in your office there? A Some 15 or 20.

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- Q He would come up and joke with the boys there? A A couple times.
- Q Who paid Scott's expenses in addition to his salary? A The Company up to March.
- Q Where is that voucher? A I did not bring it back of March.
- Q And you haven't anything here that you can refresh your recollection on? A I looked at that voucher before coming up.
- Q For how many months? A For the month of March.
- Q For simply that one month? A They were made separate.

MR. RICHARDSON: That is all.

MR. HAZARD: That is all.

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JAMES B. WIDDAGH, being called as a witness in rebuttal on behalf of the State and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q What is your name? A James B. Widdaugh.
- Q Where do you reside? A Chicago, Illinois.
- Q What is your business or occupation? A Assistant trainmaster on the Chicago and Western Indiana and Bell railway of Chicago.
- Q Where were you residing in the early part of 1904?
- A In the Cripple Creek district.
- Q What was your occupation at that time? A Trainmaster of the Florence and Cripple Creek railroad.
- Q How long have you occupied that position? A From the 15th day of June, 1901.
- Q Do you know D. C. Scott? A Yes sir.
- Q Was you acquainted with him in the early part of 1904?
- A Yes sir.
- Q What position, official position with your company did he hold?
- A Special agent.
- Q State, if you know, when he ceased to be special agent in the spring of 1904? A The last of March.
- Q The last day of March? A Yes sir.
- Q How long was it from that time on until he again went into

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the employ of the company, if he again went into their employ? A Either August or September.

Q Where was your office in April, May and June? A My office at that particular period was in Victor.

Q You was not in the station at Cripple Creek? A No sir.

Q Do you know whether or not Scott was in Cripple Creek after about the middle of April until the middle or latter part of June, 1904? A Mr. Hawley, let me correct that other statement.

Q Yes sir. A Just about that time I moved my office from Victor to the Midland Terminal station at Cripple Creek.

Q Is that the Florence and Cripple Creek? A No sir.

Q What is that other question? A I don't remember it.

Q Read that other question, Mr. Reporter.

The question was then read.

A I did not see Mr. Scott during that month.

MR. HAWLEY: That is all at the present. I may desire to recall him on some other matters, on another subject, but you may cross examine.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q The Midland Terminal station in Cripple Creek is in the neighborhood of a mile from the F. & C. C. station? A No, not quite that.

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- Q Aren't those stations about a mile apart? A No, I think it is about three - quarters of a mile.
- Q About three-quarters of a mile? A I think it is some less than three-quarters of a mile.
- Q The two stations are not together? A No.
- Q And the two stations are not together in Victor? A No sir.
- Q How far apart are they? A They are about a block apart.
- Q Well, the W. & C.C. and the Midland Terminal are all under one management there, although separate railroads? They were at that time.
- Q So far as Scott's personal whereabouts were concerned you had no personal knowledge of them at that time? A No sir.
- Q He might have been in the district for all you know? A He might have been, yes sir.
- Q He might have come in there frequently and gone out frequently? A Yes sir.
- Q You simply know that he was not in the employ of the company during the months of April, June and July? A Yes sir.
- Q At least not as a regular employe? A Yes sir.
- Q You don't know who he was working for at that time? A No sir.
- Q And you did not know but that he was working for some one there? A No sir.
- Q And in fact you did not know anything about it? A No sir.
- Q Only that you did not see him about there in the employ of that company? A Yes sir.

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MR. RICHARDSON: That is all.

MR. HAWLEY: That is all.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded to custody, and an adjournment was taken until 9:30 o'clock A. M., Tuesday, July 16, 1907.

ADJOURNED.

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Boise, Idaho, Tuesday, July 16th, 1907.

9:30 o'clock A. M.

Parties convened pursuant to adjournment.

Minutes of the session of Monday, July 15th, 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. HAWLEY: Do you desire to recall some witness?

MR. BARRON: Yes, I desire to ask some further questions of Mr. Giubbini. There is a witness you are going to call, or put on in rebuttal and we may want to get some impeaching evidence, and I don't want to ask for time.

MR. HAWLEY: We will put on our evidence in the order in which we see fit.

MR. BARRON: Mr. Hawley explicitly told me that this witness would be the first witness put on yesterday morning; now I don't want to dictate at all, but if he does not put this witness on I will have to ask for time to get witnesses here.

THE COURT: You can make any showing you desire when the time comes, Mr. Barron.

MR. BARRON: I only want to say in advance that we

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expect to have to send for some witnesses in the matter, but I cannot tell until we know what the evidence is.

THE COURT: Well, you may proceed.

MR. BRUNNEN HAWLEY: I will recall Mr. Ciubbini, if you want.

MR. BARROW: Yes, I want to ask him a few more questions.

LAWRENCE GIUBBINI, being recalled as a witness in rebuttal, for further cross examination, and having been heretofore duly sworn, on oath testified as follows:

RE-CROSS EXAMINATION

BY MR. DANKOW:

- Q Mr. Giubbini, have you thought of the name of this place back of the flat building -- back in the big yard? A Do you mean Shafer's building?
- Q Yes, whose place was that? A A new building?
- Q No, the old building? A I don't remember who the old one was. I know Mr. Shafer tore it down.
- Q How long do you say you have lived around there? A About four years.
- Q Do you remember Wise? A Yes sir, but it did not belong to Wise -- it used to belong to Wise.
- Q It was known all over town as the Wise place? A Yes sir, it used to be.
- Q How large was this house -- the Wise house I am talking about.
- A A pretty good large mansion house.
- Q Can you give us any idea about it? A Maybe 35 or 40 feet wide -- maybe more.
- Q How deep? A I could not tell you; I guess a little deeper -- a little bit longer than it is square.
- Q The same height all around, or was part of it lower than the

- Q What color was it? A I don't remember. I believe --
- Q You don't remember the color of that house? A I believe it was a whitehouse.
- Q Wasn't it red? A No sir.
- Q Are you sure it was white? A I am sure it was not red.
- Q Are you sure it was white? A It looks to me that way, yes.
- Q You can tell white when you see it? A Yes sir, but I have so much other business with my friends --
- Q So you could not remember its color? A It was white or a little bit darker than white.
- Q You are not sure whether it was white or brown? A No sir, it was a little bit dark.
- Q Now, hadn't it been just freshly painted a year before it was taken down? A Not since I was there.
- Q How many doors were there in the front of it? A One upstairs and one down.
- Q How is that? A One upstairs and one down.
- Q In the front? A Yes sir.
- Q Where did the stairs go to? A It was a back stairs here going up to the porch.
- Q On the outside? A On the outside.
- Q How many windows in front? A I don't recollect that.
- Q You don't remember? A No sir, about two big windows I believe.

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- Q Any doors on the side? A Not that I remember.
- Q Will you swear there was not? A Not that I remember.
- Q You don't remember whether there was any windows or not?
- A Oh, there must have been, sure.
- Q Do you remember how many? A No sir, there was windows all around but how many I don't know.
- Q Were there any trees in the yard? A I don't remember.
- There was a tree in the front,-- a small tree in front as I remember.
- Q Do you know what kind of a tree? A No sir, I don't remember.
- Q How long did you live around there? A Four years about.
- Q Didn't pay my attention to it? A No sir, I did not look out for anybody's else's property only my own interests.
- Q And this was a block away from you? A No sir, right across the street.
- Q Right across the street? A Well, pretty near it.
- Q And you cannot tell any more about it than you have told now?
- A I did not put my mind to that building.
- Q Do you know when it was taken down? A Yes sir.
- Q When? A It was taken down the winter of 1905, I believe; they must have started in along the first of the year.
- Q Do you remember? A I remember they took it down.
- Q What month? A I could not tell you the month. I know they finished the new building along in August.
- Q Didn't you say last night that you did not know whether it was

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taken down before 1904 or not? A No sir. I said I did not know at the time of the explosion whether the building was going to be taken down or not.

Q Did you see them take it down? A Yes sir.

Q How long did it take them to do it? A Not very long, I don't think.

Q Do you know? A I don't remember, but they had a large amount of men working there.

MR. DAWSON: That is all.

THE WITNESS: I want to correct a statement.

MR. HAWLEY: Go ahead.

THE WITNESS: He asked me yesterday if I had charge of that old building up to the fire. The old building was taken down in the winter of that explosion and I had charge of the new building up to within two or three weeks previous to the fire. Mr. Shafer sold the building to somebody else and I quit the job.

MR. HAWLEY: That is all.

MR. DAWSON: That is all, Mr. Ciubini.

A. C. COGSWELL, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY

- Q What is your name, sir? A A. C. Cogswell.
- Q Where do you reside? A Wallace, Idaho.
- Q How long have you resided there? A In Wallace, since May, 1906.
- Q How long have you been a resident of that county, Shoshone county? A Since 1898.
- Q What is your business or occupation? A In the mining brokerage business at the present time.
- Q What was your business before that? A I was manager of the Tiger Mercantile Company.
- Q Where was you residing in 1904? A Burro, Idaho.
- Q Do you remember when the Republican county convention of Shoshone county was held at Wallace, if it was held at all, in 1904? A There was one held in Wallace in 1904.
- Q What time? A In September.
- Q Do you remember the time in September? A The first.
- Q Was there any other county convention -- Republican county convention held in Wallace that year? A No sir.
- 4471 Q State whether or not you was a member of that convention.

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A I was.

Q Did you hold any official position there in it? A I was permanent chairman of the convention.

Q And prior to that time who had been chairman of the county committee of the Republican party in Shoshone county?

A C. W. Beal.

Q And if any one was elected to that position by that convention, who was it? A F. H. Johnson.

Q And you have been a resident of that county since 1895, you say? A 1895.

Q Do you take the newspaper published in that county?

A Yes sir.

MR. HANLEY: Please mark this paper State's exhibit for identification Y-2.

The paper was so marked as an exhibit.

Q Are you acquainted with the paper called the Idaho State Tribune, published at Wallace, in 1899, and before that?

A Yes sir.

Q Was you a subscriber to that paper? A No sir.

Q You read that paper, did you? A I read it quite generally.

Q I would like to call your attention to State's exhibit Y-3 and state what that is, if you know? A That is the account of the blowing up of the Bunker Hill and Sullivan mill.

Q You may state whether this paper was a daily, a weekly or what? A I don't understand the question.

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Q Was this paper a daily or weekly paper? A A weekly paper.

Q Do you remember the day of the week it was published?

A I ain't sure whether it was Wednesday or Saturday.

MR. HAWLEY: You may take the witness.

MR. RICHARDSON: I move to strike out all the evidence of this witness as immaterial, incompetent and irrelevant, as not rebuttal evidence, and not pertaining to any issue in the case.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception. We have no cross examination.

MR. HAWLEY: I desire at this time to tender in evidence this issue of the Idaho State Tribune, or that part of it that is in blue, referring to the blowing up of the Banker Hill and Sullivan mill. It is those articles that are marked blue.

MR. RICHARDSON: We object to this as immaterial, incompetent and irrelevant, not rebuttal evidence, not binding upon the defendant in any way, and having no relation to any issue in this case. If your Honor please, at all the methods I have ever heard of introducing evidence in my life, it seems to me that this is the worst. Here is a paper published by somebody in Idaho, in 1899, and a newspaper article in respect to this matter is sought to be made substantive evidence.

THE COURT: This paper was the official organ of the

Western Federation, as I understand the showing that has been made.

MR. RICHARDSON: Well, suppose it is, how can a matter of that character be made substantive evidence in this case at any time or under any circumstances?

MR. HAWLEY: Now, the comments counsel upon this matter reflect not only upon counsel but also upon the court and I think he should have a reprimand. I suppose his individual views in respect to this are characteristic, but possibly he will be able to ascertain something from an inspection of this that he was not aware of before, in regard to the rules of evidence. This method of arguing as to its being a surprise to him or something that he has never heard of before it strikes me as insulting to both the court and counsel. We urge this as proper evidence and upon legal principles. In the first place it has been testified to by Marion Moore, one of the executive committee of the controlling board of the Western Federation of Miners, that this paper was at the particular time the organ of the Western Federation of Miners in Shoshone county.

MR. RICHARDSON: That is not right.

MR. HAWLEY: If it is wrong I would like to be shown. That is my recollection of the evidence, but we will refer to this evidence and see who was right.

MR. RICHARDSON: That was an organ of the local unions of the Western Federation of that district, that was the

organ of these unions.

MR. HAWLEY: Yes, so it was the organ, I insist, of the Western Federation of Miners in that district. If it was the organ of the Western Federation of the district, then there would be no doubt of its admissibility. The question might arise whether or not the fact that it represented the local organizations would make it the official organ, but we claim it would be proper evidence and it would directly rebut the contentions, or the intimations contained in the evidence upon the part of the defense. If your Honor will recollect, the learned counsel that made the opening address to the jury in this case for the defense, made a distinct claim that they would prove that the outfit that destroyed the Banker Hill and Sullivan mill was a disorganized mob composed of miners and merchants and lawyers and even preachers, as he expressed it, and here is the official organ of this organization upon that. They have introduced other substance testimony in direct, and sufficient to argue that this statement made in the opening address was correct, and showing that that is one of the theories that they will urge. It must be taken as one of the theories that will be urged because it was one of the theories directly advanced in the opening address and has not been repudiated, and it was not the result, so I take it, of a slip of the tongue at all.

THE COURT: Was any evidence offered in behalf of that

statement made by Mr. Darrow, and if there was not any doubt the fact of his making the statement open the door for you to introduce rebuttal testimony?

MR. HAWLEY: I doubt very much whether we would be entitled to introduce rebuttal testimony unless there was something in the testimony to warrant it, but if the testimony would warrant the opening address, then I urge it would be proper to introduce rebuttal testimony and as I take it the evidence of those parties who testified in regard to these actions are calculated to create an impression upon the minds of the jury and to enable the defense to build up a theory in accordance with the statement of the opening address, and this would be proper rebuttal as showing it was responsible to this matter.

MR. DARROW: You are going to rebut the opening statement?

MR. HAWLEY: Followed by the evidence, yes sir.

MR. RICHARDSON: If your Honor please, it does not follow because I have never heard of a certain legal principle that therefore it does not exist; it does not follow, because Mr. Hawley asserts the existence of a certain legal principle that it does exist. The principle I had in mind, -- I may be entirely mistaken about it, but it is this. How does the narration of a newspaper report of an event which has occurred, even though it be published in what is claimed to be an official organ become substantive of any fact in a case that is on

trial? Now, there is a legal principle I would like to invite your Honor's attention: Here is a matter of news, an item which occurs in the course of the events in the Occur d'Alone country; a newspaper reporter attends that occurrence and he writes up a report of that occurrence and he puts it in the newspaper and it is circulated without action of any local union of the Western Federation of Miners, or of anybody else,-- it is inserted in the newspaper and published as a matter of news, and is read by certain people there; and thereafter, six years, in a murder case, it is sought to introduce that as substantive evidence-- all the events therein narrated. Now, that is a substitute for evidence. It is not sworn to, but they attempt to introduce that before this jury, the mere narration of some newspaper reporter, and it seems to me, with my limited learning,-- I don't pretend that it compares at all with Mr. Hawley's either in the use of the English language or in a knowledge of the principles of law, but it seems to me that upon the introduction of such a narration, not in the course of a judicial proceeding, can that be introduced in a criminal or civil or any other case whatsoever?

THE COURT: Gentlemen, I will examine this article at the noon hour and will pass upon this matter at the opening of the court this afternoon.

MR. BARROW: Might I suggest a word on the question of rebuttal?

THE COURT: You sir.

MR. BARRON: I insist, if there could be any warrant for introducing a newspaper article as proof of a fact, which there could not be, there is not the slightest foundation for rebuttal in this case. Going back, if it is evidence at all, to show the facts that transpired at that time, and I want to say that we have not offered a word of evidence on that question, and if they have, they went into it themselves.

THE COURT: I understand you plain you introduced no evidence here?

MR. BARRON: We introduced none, your Honor.

THE COURT: To the effect that the Bunkerhill mill was destroyed by an unorganized mob?

MR. BARRON: We introduced no witnesses on the subject at all. Whatever there is is what the other side offered. We put no witnesses on the stand in reference to that mill. I did make a statement in my opening in this case in reference to it, and upon that branch of the opening we have offered no evidence, and I shall tell the jury so in my argument of this case.

THE COURT: The court will pass upon this question, and under your statement will take that into consideration.

EDWARD R. ALWARD, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAVERTY:

- Q What is your name? A Edward R. Alward.
- Q Where do you reside? A Burke, Idaho.
- Q What is your business at the present? A Druggist.
- Q How long have you been a resident of Burke, Idaho?
- A Since September, 1894.
- Q Have you been in business there? A Yes sir.
- Q Are you acquainted with Harry Orchard? A Yes sir.
- Q Did you know him in the year 1897? A Yes sir.
- Q Where did you know him? A Why, I saw him every few days at -- the last I remember of him he was in the wood business, the last business he did.
- Q Do you remember the explosion of the Bunker Hill and Sullivan mill? A Yes sir.
- Q On April 29th, 1897? A Yes sir.
- Q Where was you upon that day? A I was in my store at Burke.
- Q State whether or not you saw Harry Orchard on that day or the morning of that day.

MR. BULLOCK: We object to that because if he did not see Harry Orchard that is not evidence that he was not there.

MR. HAWLEY: No, I am asking whether or not he did see Orchard on that day.

MR. RICHARDSON: That is not rebuttal testimony. They gave their testimony on where Orchard was on that day and what he did and all that; they took that testimony of Harry Orchard, and we have introduced testimony as to Harry Orchard by showing that he was at a different place on that day. If they want to show that the parties who testified with respect to that matter did not testify correctly, that would be rebuttal evidence for them, if they did not see him or something of that kind, but to show where he was on that day is something they have shown and which we have answered, therefore it would not be rebuttal.

THE COURT: The objection is overruled.

MR. RICHARDSON: Not an exception.

Q Read the question, Mr. Reporter.

The last question was then read.

A I did.

Q Do you remember the time the train went down that morning?

A Yes sir.

Q From Durke to Wallace? A I do.

Q What time did you see Orchard with reference to the departure of that train on that morning of April 29th, 1899? A He came into my place just before the train left.

Q You may state whether or not you saw him around the town

afterwards on that day?

MR. DAWSON: To that we object. Whether he saw him around the town afterwards, -- that would not prove anything.

THE COURT: He may answer.

MR. DAWSON: Save an exception. We object on the ground -- I want to state the grounds of our objection -- it is incompetent, immaterial and irrelevant and not rebuttal.

Q Go ahead. A The only time I saw him afterwards was when the train came back that afternoon. He came back and passed me as I was standing in the door and he was going up the street.

Q How long was it after the train reached there that afternoon before you saw him on the street passing your place? A The depot is only a hundred yards, and he came up with the crowd.

Q Up the street? A From the depot, yes. The train came up through the town and stopped right in the center of the town and he was ahead and he passed me on the sidewalk.

Q There was a crowd coming up from the depot? A Yes sir.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q How long had you known Mr. Orchard? A Why, almost ever since I had been there. I had been taking milk from him.

Q How well did you know him? A I saw him every day.

Q He had been selling milk all the time he had been there, had

he? A He was running a milk wagon every morning for what was called Hariswell Brothers.

Q And he had run that milk wagon up to this time, had he?

A No, he had quit the milk wagon and was in the wood business.

Q When did he quit the milk wagon? A I could not say the time.

Q You say you went to that country to live in 1895? A 1894.

Q Was he running the milk wagon then? A No sir, I was not acquainted with him at that time.

Q Do you know when he ceased running the milk wagon? A Not exactly.

Q Do you know when he commenced selling wood? A Well, he must have run the milk wagon in the neighborhood of a year.

Q And then he commenced running the wood wagon, did he, or selling wood? A He cut wood and brought it out that winter.

Q How long did he sell wood? A Well, I could not say. I never bought any of his. He was getting out green wood in the winter time so as to let it dry and sell it the next summer.

Q You had no business dealings with him after he ceased being on the milk wagon? A Yes, I did. I sold him goods.

Q He purchased goods from you? A Yes sir.

Q He ceased working on the milk wagon early in 1897, didn't he?

A I don't think so, no sir.

Q Wasn't that the time? A No sir.

Q What time he did he cease running the milk wagon? A I could not say positively.

Q You would think it was as late as 1888 or '89, would you?

A I should think about 1888.

Q The summer or fall, spring or winter? A I think it must have been in the fall, because I remember he was cutting wood that winter.

Q And that is the only winter you do remember of his cutting wood? A Yes.

Q Was else did you see when that train came back that day?

A I knew pretty near everybody in the town.

Q You know pretty near everybody in the town? A Yes sir.

Q Well, name about half of them, or two-thirds of them, say.

A Well, I saw Mr. Brant, he came in and handed me \$500, and said if he did not come back, he said I could keep it.

Q I did not ask you about that,-- I asked you to name those whom you saw? A Well, I saw Mr. Davis -- Mr. W. P. Davis; I saw Fred Uhl,-- and well I could name over lots of them.

Q So about, that is what I am asking you to do,-- name over lots of them. A Dan Kelly.

Q Dan Kelly? A Yes sir. Fred Uhl -- I named him. Is there any more you want particularly?

Q Yes, there was several hundred people up there at Lurke?

A Yes, I guess there was.

Q How is that? A I can tell you better who was left in the town.

Q You said you could mention lots of them who came back, and

you have mentioned four so far. A Well, Jack Kennedy.

Q That makes five. A Pot Lambert.

Q That is six. A Paul Corcoran.

Q That is seven. A Lots see, I named Dave Porter, didn't I?

Q No, I don't think so. That is eight.

MR. DAWSON: What is that name?

THE WITNESS: Dave Porter.

Q That is eight. A I named Mr. Grant, didn't I?

Q Yes, you have named him, but you cannot count him but once. A Well, I don't recollect --

Q What is Grant's first name? A I forget what his first name is.

Q Right is all you can name? A I don't know whether it is or not.

Q It is all you did name, isn't it? A It is all I remember of exactly. I did not pay much attention to the big crowd.

Q You want some opportunity to think of some more? A No, I don't know as it makes any particular difference to me.

Q You think about eight is all you can think of now? A It seems to me that that is enough, isn't it?

Q Did you ever tell the authorities about these eight men you saw coming back on that train? A I did not.

Q Or any of the others? A No sir.

Q Did you testify in the Paul Corcoran case? A No sir.

Q How did you come to testify in this case? A I was subpoenaed

by the sheriff.

- Q That is the first you know that you were going to testify in the case? A The first I know of it, yes sir.
- Q Did you tell or furnish evidence to anybody that you had testimony that was valuable in the case? A No sir.
- Q Haven't any idea of what you were coming down here to testify to? A Only in a general way.
- Q How did you get it in a general way and who from? A I have lived there enough years.
- Q Did anybody talk with you about it, what your testimony was going to be? A No sir.
- Q When did the State first know what your testimony was going to be? A I don't know as they know yet.
- Q Notwithstanding the fact that you have testified here under oath you don't think they know now? A What?
- Q You haven't talked with anybody about your testimony at all?
- A I have talked with Mr. Hawley.
- Q And nobody but him? A Yes, I went out to the natatorium last night and talked with two or three fellows.
- Q You came down from Durke and had not talked with anybody about your testifying? A I don't remember whether I did or not.
- Q You just came down here supposing they were going to ask you some general questions and you would answer them; is that right?
- A Well,--
- Q Don't you know whether you talked with anybody or not?
- A I suppose I did,-- I talked with men every day.

- Q About this matter? A I might have.
- Q About this case? A I might have.
- Q Do you know whether you did or not? Of course it is possible that anything could happen, but do you know whether you did or not? A I might have done that too.
- Q You don't know whether you talked to anybody before you came down here, but you might have? A I think I did. I read the papers every day.
- Q You don't know how you came to be subpoenaed? A Only that they wanted me and I was requested to come.
- Q Who were the three people you were in the natatorium with last night? A One was Mr. Cogswell, and Dr. Breen. We went out there to take a bath.
- Q And who was the other one? A Nobody that I know.
- Q You have been constantly in business in Wallace or Burke all the time? A No sir.
- Q What other business have you been engaged in? A I have been out of business the last year.
- Q Are you a practicing physician? A I have, yes sir.
- Q Were you a practicing physician when you ran that drug store? A Yes sir.
- Q Have you recently become a practicing physician? A I was the only one in town.
- Q How many people lived in Burke in 1897, approximately?
- A Well, I think the vote cast there at that time would be something

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about 200.

Q Have you ever had any trouble on the ground of being insane, with your wife? A No sir.

Q Did your wife get a divorce from you on the ground of insanity?

A No sir, not that I know of.

Q You don't know about that? A No sir.

Q Does your wife live with you? A No sir.

Q Did she file a petition for divorce on that ground against you? A No sir, not that I know of.

Q Wasn't there a petition filed against you by your wife asking for a divorce on the ground of insanity and that you had made an attack upon her with razors or something of that kind?

A No sir.

Q There was not? A Not to my knowledge.

Q Did she file a petition against you? A Not that I know of.

Q She just simply got up and left you, did she?

MR. HANLEY: No object to that as incompetent, immaterial and irrelevant and not proper cross examination.

MR. RICHARDSON: I think it is. We have a right to test this witness in that way, I think.

THE COURT: The objection will be sustained.

MR. RICHARDSON: Note our exception.

THE COURT: The exception will be noted.

Q You are not living with your family and have not been for some years? A No sir.

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Q Do you know John Kelly? A Yes sir.

Q He is not one of the men that you mentioned here?

THE COURT: Doctor, the jurors must hear your answers.

THE WITNESS: All right, your Honor, I will speak louder.

Q Do you know Charles A. Johnson? A Well, I know a Charlie Johnson. I forget whether his name is Charles A. Johnson.

Q Both of them were members of the Miners' union? A I don't know.

Q Did you ever have any trouble with them on account of mining matters and get any animosity against them on that account?

A I remember I had Mr. Johnson arrested for ordering me out of the country.

Q You took a few shots at him and Kelly, didn't you, before having him arrested? A No sir.

Q Was there any altercation of that character between you?

A No sir.

Q How was that in respect to Johnson -- did you have any shooting scrape with Johnson? A No sir.

Q Neither with Johnson or Kelly? A No sir.

Q Are those people whose names you have mentioned, Brent, Kelly, Kennedy, Lambert, Porter and Ohi still residing in Burne? A No sir, not all of them.

Q Which ones are residing there? A Read them over again.

Q Grant, is he there? A No sir.

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Q Oh, is he there? A No sir.

Q Kelly there? A Dan Kelly?

Q Dan Kelly? A Yes.

Q He is there? A Yes sir.

Q Kennedy? A Yes sir.

Q He is there? A Yes sir.

Q Lambert? A No sir.

Q Porter? A No sir.

Q Then there are only, of all the men you have mentioned, two of them residing in Durbin? A That is all.

MR. RICHARDSON: That is all.

MR. HANLEY: That is all. I will recall Roy Kingsbury.

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ROY H. KINGBURY, being recalled as a witness in rebuttal on behalf of the State, and having been heretofore duly sworn, on oath testified as follows:

DETECT EXAMINATION

BY MR. HAWLEY:

MR. HAWLEY: This witness was withdrawn, your Honor, a few days ago in order to make further examination.

Q Please take this book marked State's exhibit B-2 for identification, and state what it is? A I recognize this as the time book of the Consolidated Tiger and Peerman Mining Company.

Q Is this book kept in the regular course of business of that Company? A Yes sir.

MR. RICHARDSON: Let me inquire if that is the same book?

MR. HAWLEY: Yes sir, that is the same book that we had the other day.

Q Who is the custodian of that book? A The book is kept in the vaults of the company and the successors to that company.

Q And are you the custodian of that book? A Well, I with others.

Q It is part of your business to look after these books? A Yes sir.

Q You may state what it is, or what this book consists of --

what in the account -- just simply state in a general way what its object and purpose is, what objects it serves?

A This book consists of the daily entries of time for every man that worked.

Q You may state whether or not it is the book from which the company settles with its men? A Yes.

Q What book is it that the payrolls of the company are made up from? A The payrolls are made up from this book.

Q Have you testified already -- I have forgotten -- in regard to Harry 'Richard's name showing in that book for the months of April and May? A Yes sir, I have testified to it.

Q You have already testified to that? A Yes sir.

Q Have you those particular pieces? A Yes sir.

Q In the month of April and May? A Yes sir.

Q Are they marked? A They are marked with papers.

Q Here is one, is it not? A Yes sir, and there is another one later.

Q That was in the May payroll. What other evidence is there here of any men working in the mine besides this book, what other books or documents are kept? A Besides that book is the payroll on which the time is kept.

Q The payroll, have you that payroll? A No sir.

Q Do you know what became of that payroll? A No sir, I do not.

Q Have you looked for it? A Yes sir.

4491 Q State whether or not it is in the company's office? A It was

not as far as I could tell.

- Q How are the parties there paid, by check or in cash? A By check.
- Q Have you the check stubs in your custody that refers to the payments of April and May, 1899? A Part of them were in the vaults of the company.
- Q You may look at this particular book marked exhibit Q-2 and state what that is? A This is a check book containing the stubs only of the Consolidated Tiger and Poorman Mining Company.
- Q Is there a check payable to Graham that shows up in this? A Yes sir, check No. 9.
- Q For what month? A For the month of May, 1899.
- Q Have you looked for the payment, or for the stub of the paid check of April, 1899? A Yes sir.
- Q You may state whether or not that is in the company archives or records? A I cannot find it in the vaults of the company.
- Q You don't know what has become of it? A No sir.
- Q But you know it is not there? A No sir.
- Q Is there any transfer or other reference to these accounts in these books? A The totals of each month's labor expense are carried to the company journal.
- Q And that is the book you have identified as being State's exhibit R I think it is? A It is the book I have identified. I don't remember the exhibit.

MR. HAWLEY: That is exhibit 9-9. Now, if the court please, we desire to renew our offer to introduce these books in evidence. We desire to offer in evidence that portion of State's exhibit P-2 for identification, being the reference to Harry Orchard in the time for April, 1899. We also would offer the May time as part of this.

Q Did you look at this May time and point it out? A Yes sir.

Q Will you take that May time and show the May time there that we are referring to? What are all this stuff in here?

A Most of it is rubbish.

MR. HAWLEY: Will you kindly mark that entry there, just that line anyway to identify it? It is part of exhibit P-2 and it don't make any difference whether it is numbered or not. We will offer that portion of State's exhibit P-2 for identification showing the time of Harry Orchard for the month of April, and also for the month of May, 1899. I will state, we will follow it up by the introduction of the stub of the check for the May time.

MR. RICHARDSON: We object to the introduction in evidence of State's exhibit P-2 for the following reasons: First, it is not the primary evidence, and there is not sufficient ground laid for the introduction of secondary evidence; Second, it is not properly authenticated; third, it is immaterial, incompetent and irrelevant; and fourth it has no tendency to rebut any evidence in this case. By way

of argument I desire to say that all that was said upon this subject was said by Mr. Orchard himself, and nobody has paid any attention to it by refuting it in any way.

THE COURT: What do you mean, Mr. Richardson, by it is not properly authenticated?

MR. RICHARDSON: As I understand this witness, he did not live there at the time, he was not working for this company at that time, or have charge of these books at the time the books were made. He says he is custodian of the books since he went there, and found them in the vault, and looking through the vault he found these books and brought them here.

THE COURT: In other words, you raise the question whether these books are entitled to admission without any proof as to their contents?

MR. RICHARDSON: Yes sir, that is it exactly.

THE COURT: And that is the question the court was in doubt about. There is another question though, and that is as to the shifts that are represented by these entries, whether they are day or night shifts.

MR. HAWLEY: How is that?

THE COURT: Whether the shifts represented are day or night shifts and as to whether that is rebuttal testimony.

MR. HAWLEY: I intended to call that up later, but whatever that might show in that regard I think it would be

admissible in any event, but we are prepared to show that after the admission of the book, but we did not think it proper to show it before, because it was practically getting the entries in without the book being presented, and that is the only reason we do not inquire at this time.

MR. RICHARDSON: I don't remember any dispute whatsoever upon the fact of whether Cronart worked on the day preceding the event which occurred at Wardner, nor do I remember any dispute on the evidence that he worked some time after that in the Tiger Footman mine, and this book don't pretend to show that he worked either on the 29th or 30th.

MR. HAWLEY: The point we are attempting to make, and that makes this admissible, is the fact of their attempting to prove the whereabouts of Cronart at a different point, and one of those times it may --

THE COURT: Some days afterwards?

MR. HAWLEY: Yes sir, on the 2nd day of May. But I would call the attention of the court that it was on the 2nd day of May that Mr. Ramey met him at a certain point and he attempted to sell him an interest in the Hercules mine.

MR. RICHARDSON: Now, my remembrance in regard to that is that Mr. Ramey did testify that it was on or about the 2nd day of May, but my view of it would be that the day would not be a material matter in the controversy. Suppose it was the 2nd of May, according to the best of his recollection, --

if it occurred on the 4th or 5th it is the same. The proposition is the event itself, and not the particular moment when it occurred, and the fact that he may have worked upon that day an eight hour shift can be no evidence to break the evidence to show that he had a talk with Mr. Roney.

MR. HAWLEY: That would be a matter of argument, but as far as the referencing that is made by counsel --

THE COURT: The court is satisfied as to whether or not this would be rebuttal evidence, but the court is not satisfied on the question of whether it is admissible evidence.

MR. HAWLEY: I will follow that with one or two citations which your Honor may take up and examine at noon. I would like to call your Honor's attention to 1st Elliott on Evidence, Section 483, and to page 1898 and the succeeding pages of Wigmore on Evidence.

THE COURT: Page what?

MR. HAWLEY: Page 1898 of Wigmore on Evidence, 2nd volume. These are the only authorities we care about calling to the attention of the court, and we will leave the volumes here. I believe there will be no need of further recalling Mr. Kingsbury. We will make a presentation of that portion.

THE COURT: I would suggest, Mr. Hawley, that you make your additional offers by this witness and submit the entire matter to the court and I will pass on them all at once.

MR. HAWLEY: Then we will offer that portion of State's exhibit Q-2 for identification, showing the amount due to Harry Orchard, or the stub of the check paid to Harry Orchard for his work.

MR. RICHARDSON: To which we object for the reasons already stated in our objection to State's exhibit P-2 and for the additional reasons that this book does not conform to the witness' testimony, in that it does not purport to be a check at all, but simply the stub of a check, and furthermore for the following reason, that it appears upon the face of it, if there was a check drawn, it was drawn to the Riger Mercantile Company and had the words Harry Orchard upon it.

THE COURT: The court will take that under consideration also. Are those stubs numbered?

MR. HAWLEY: No sir, they are not, but I will have this marked as a part of exhibit Q-2 and we will content ourselves with those two offers. That is all, Mr. Kingsbury.

CROSS EXAMINATION

BY MR. RICHARDSON:

- Q You were not acquainted, or connected with the Federal Mining Company in 1899? A No sir.
- Q It was some years after that before you went into the office?
- A I went into the office January 19th, 1900.

- Q And you found these papers and books in the office when you made the search for them the other day? A Yes sir.
- Q That was the first you knew anything about them? A No sir.
- Q You had no occasion to have anything to do with these books before? A Not these particular books.
- Q They were just simply in the vault? A Yes sir.
- Q And because you are occupying the position of clerk or book-keeper there at the present time you are a convenient man to come down here and bring the books, and that is all you know about them? A No, I know about them.
- Q Who is the Tiger Mercantile Company? A It is a general merchandise store.
- Q It belongs to the Federal Mining Company? A No sir.
- Q Isn't it the way you handle the business of the Federal Mercantile Company? A We buy considerable of the company, but it is not connected with the Mining Company.
- Q You don't know whether at that time it did or not? A I don't know, but I don't think so.
- Q Isn't it customary for the company to issue checks to the Tiger Mercantile Company and the checks are handled by that company for the employe of the mine? A No sir.
- Q So as to compel them to trade at the Company's store? A No sir.
- Q That has not been the custom? A Not that I know of.
- Q Can you tell us then, I suppose you can, why the check should

he made out to the Tiger Mercantile Company and the words "Harry Orchard" put under it? A From the notations on the check stub I think that the Tiger Mercantile Company held an order given by Harry Orchard in favor of Frank Murphy.

Q And that was the customary way, wasn't it? A That was customary at the time I went to the mine.

Q That custom has since been abolished by law? A I don't know about that.

Q It has been abolished anyway? A I think it is still carried on.

Q So when this employe, who had only worked for you one month, came to you, his check was in the hands of the Tiger Mercantile Company? A They were apparently making collections for another party.

MR. RICHARDSON: That is all.

A. T. HOLMAN, having called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q What is your name, sir? A A. T. Holman.
- Q Where do you reside, Mr. Holman? A Victor, Colorado.
- Q What is your business or occupation? A Mines and mining.
- Q How long have you been a resident of the Cripple Creek country? A About ten years -- or eleven years now.
- Q Continuously? A Yes sir.
- Q What mine was you -- what particular mine was you running, if any, in 1903 and 1904? A The Golden Cycle mine.
- Q Where is the Golden Cycle mine with reference to the Vindicator mine? A It joins the Vindicator on the southwest.
- Q Had you ever been in the employ of the Vindicator Company?
- A Yes, I had charge of their works for over four years prior to taking charge of the --
- Q What years did you have charge of the Vindicator? A I was with the Vindicator from 1896 until June the 2nd, 1902.
- Q Do you at the time of this trouble, you had charge of the Golden Cycle, you say? A Yes sir.
- Q Was there any trouble at that time or prior to the Vindicator

explosion? A Yes sir.

Q When did this strike that has been spoken of occur prior to the Vindicator explosion? A The strike was called, I believe, on August 10th.

Q What year? A 1903.

Q 1903? A Yes sir.

Q And do you recollect the date of the explosion? A Yes sir.

Q What was the date? A About the date, I think it was November 21st or 22nd.

Q After the calling of the strike you may state the general condition of that district so far as disturbances, etc., were concerned? A The mines were vacated and picketed before the soldiers came in, and the men were released.

Q What do you mean by the mines were picketed?

MR. HARRON: Now, I object unless this witness is testifying to what he saw.

THE COURT: You can only testify to what you know.

MR. HANLEY: That is all we want.

Q State what you know in regard to these matters? A Well, I know the Golden Cycle mine was picketed, the men were stopped from coming to work.

Q What do you mean by the term, "picketed"? A The miners crowded around the men -- the miners that would not work prevented the men that wanted to go to work from working in that country.

Q Do you know who it was that constituted the leaders of the strikers at that place, at that time? A Yes sir.

MR. RICHARDSON: That would be a conclusion and we object to that.

Q Are you acquainted with W. E. Davis? A Yes sir.

Q And Sherman Parker? A Yes sir.

Q And Kemison? A Yes sir.

Q State whether you had any ~~any~~ trouble with those parties and the others in the works of the Cycle mine? A I had trouble with them.

Q Of what nature? A Mr. Parker and Kemison and Davis called on me in my office in regard to a fence that I was building, and told me that I could not build that fence.

Q What kind of a fence was it? A It was a fence about eight feet high being built around the Company's buildings and works.

Q When was this that they so informed you? A It was after the strike was called -- after August the 10th, and some time--

Q What time was it the military was brought in there? A I think some time in the fore part of September.

Q Of the same year? A Of the same year.

Q Did you know old man Stewart, I forget his first name?

A Yes sir. His name --

Q Do you remember the time that it is stated that he was beaten up? A Yes sir.

Q In whose employ was he at that time? A In the employ of the

Golden Cycle Company.

Q And how long had he been in your employ at that time?

A I think only one day, I am not sure of that, but I think he was wounded the first day he started to work. I won't be positive on that though.

Q Where was you, Mr. Holman, on the day the Vindicator explosion occurred, the day of the death of Beck and McCormick?

A At the time of the explosion I was in the town of Independence.

Q Did you go to the Vindicator mine after that explosion?

A I did.

Q You had formerly been the manager of the mine, I believe?

A The superintendent of the mine.

Q Had you constructed the shaft or any part of it for the mine?

A I had charge of the construction of the shaft from the 250 feet to the 1200 feet level.

Q What time did you reach the Vindicator with reference to the explosion? A Oh, I should judge about half an hour afterwards or fifteen or twenty minutes maybe.

Q What if anything did you do about going down the shaft to the scene of the explosion? A When I got there at the Vindicator mine I immediately climbed down from the surface 650 feet to the explosion, where it happened.

Q On what level? A On the 650 foot level, generally known as the 6th level at that time. It used to be called, when I was there, the 10th level.

Q Who went with you, if any one? A I don't know the man's name;

some mining man that was on the surface, was working there, got some cables and we went down together followed by other men.

Q After you got down to the vicinity of the 6th level what did you find so far as the cage was concerned? A I got down on top of the cage; the cable was fast and I released the cable and rung one bell to hoist the cable up, which was done.

Q The cable was fast to the cage when you reached there?

A Yes sir.

Q And you yourself unhooked it? A Yes sir, I unhooked it myself.

Q After unhooking the cable state what you did so far as going on to the level was concerned? A I climbed down on the level as soon as I released that, and there were probably eight or, well, not over ten men sitting around there,-- one man in particular, he was the spokesman there, I don't know his name, I did not know any of them in the level.

Q You did not know any of the men's names that were there?

A No sir.

MR. HARTLEY: Have we anything here, a tripod or anything that will hold a map? Please mark this as State's exhibit W-2.

An easel was then obtained and exhibit W-2 was fastened to the easel.

Q You may take State's exhibit W-2 for identification and state what that is, first taking the drawing to the right? A This

is a plan of the level, showing where the cage was.

THE COURT: Describe the portion of it so it will be in the record.

MR. HAWLEY: Yes, he is describing that part to the right now, your Honor.

THE WITNESS: This (indicating on the diagram) is a plan of the station of the 650 foot level on the right hand side of this map, which will be to my left.

Q What is that part upon the other side? A That is a vertical memorandum I drew there showing about the position of the cage and one of the posts at the level.

Q Who drew this? A I did.

Q Is it practically correct? A Practically correct, yes sir.

MR. HAWLEY: I desire to offer this in evidence so as to use it.

MR. RICHARDSON: We have no objection to its being used.

MR. HAWLEY: I offer this in evidence as State's exhibit V-2. I desire to place this easel here and fasten this diagram so the witness-- so I can have the witness explain it to the jury without passing it around. Mr. Helman, will you please --

THE COURT: I presume you want a description of this map to go into the record?

MR. HAWLEY: Yes sir.

- Q I will ask you to take that part of the map to the left, looking at it upon the easel and state to the jury what it represents or is intended to represent? A It is intended to represent the station on the 650 foot level of the Vindicator mine. This portion of it here (indicating) is the shaft.
- Q That portion of the parallelogram, one part of which is marked "cage" is what? A That is the cage compartment of the three compartment shaft.
- Q What are the two squares to the right of the compartment marked "cage"? A These are the other compartments of the shaft, one used as a man-way and pipe-way and the other as a pipe-way.
- Q What are these lines marked "track"? A These are tracks laid from the station into the level.
- Q How about the lines marked "track" to the extreme left?
- A These are a switch joining the two lines together for the cars to pass.
- Q This is a track joining the other two tracks? A Yes sir.
- Q You may state whether or not this space represents the opening that constituted the level -- this space enclosed by a line? A It represents a plan of the opening.
- Q I mean a plan of the opening? A Yes sir.
- Q How was the cage used as far as taking miners onto the cage from the mine? A The car would be on the cage, and an empty car would be taken off one way and the loaded car put on the other way, from either side.

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- Q And run from this track directly on the cage? A Run from this track directly onto the cage.
- Q What are the dimensions of this shaft? A This compartment is four by four.
- Q That is the cage compartment? A It is four feet square. These other compartments are about the same. I think the size of that shaft in the clear is 4 x 14 or 13 -- I won't be sure.
- Q The shaft extends pretty close to the right hand side of the level, does it? A It goes right up to this station.
- Q And what is the distance between the shaft and the left hand side of the level? A Probably about eight feet.
- Q How far is it from the cage to -- what direction would this be (indicating)? A That would be southwest.
- Q To the south, up to where the level closes in a small tunnel, there is a single track? A You mean here (indicating)?
- Q Yes sir. A That is about 15 feet.
- Q And how does it extend upon the other side? A About the same.
- Q That would make the level proper about 30 feet long? A The level proper is a thousand feet long.
- Q I mean the station? A It would be a little longer than 15 feet.
- Q And it runs into the -- A Into the workings of the mine.
- Q Take this portion of this diagram upon this right hand side, looking at the map, the way it is situated, and what is it

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intended to represent? A That is simply a memorandum sketch of the vertical section of the shaft at this point showing the condition of one of the timbers and the position of the cage at this level.

- Q Take the point marked 1, and what would that be? A The top of the cage where the cable fastens on.
- Q That is the place where you unfastened the cable? A Yes sir.
- Q What would be the point marked 2? A That is the upper deck of the cage.
- Q Is there more than one deck to the cage? A Yes sir.
- Q How many? A Two.
- Q And what is the point marked three? A That is the lower deck of the cage which does not show here.
- Q I will ask you to describe that compartment of the shaft to the left, so far as the timbers were concerned, and state to the jury how it was timbered and what kind of timbers?
- A They were timbered with ten by ten and some flats and ten by ten posts, and eight by ten braces, and twelve-foot high.
- Q What kind of safety guards was used there upon that level, if you know? A When I built the station they were wooden.
- Q Was there any iron or steel safety guards in any part of the mine when you quit the work? A No sir.
- Q Did you know anything about there being a change in that regard afterward? A I understood at the --

MR. RICHARDSON: No, no, not what you understood.

A No, I don't know.

- Q After you reached the level on the day of the explosion what did you find so far as the evidences of an explosion was concerned? A I found on the north side of the station the floor of the station torn up from below, Mr. McDonnick's body lay about two feet from the shaft.
- Q At the point where the cross is? A At the point of the star.
- Q And you may state what the condition of the ground or floor of the level was at that point? A It was very badly torn up; a hole there eight or nine feet long and six feet wide.
- Q And how deep? A Well, two or three feet down to the solid rock.
- Q Is this line below the cage and to the north of the cage, this irregular line -- what is that intended to represent?
- A It represents a hole made by the powder explosion on the level.
- Q Was the floor of the level or station solid rock or was it filled in? A The floor was planked and filled in under with dirt, underneath, -- it was levelled off.
- Q What was the condition of the plank there at that time?
- A It was torn away and broken up.
- Q You have spoken of the timber being ten feet square, I believe? A Ten inches square.
- Q Look at the right hand part of this diagram, this part representing the cage, and state what the part marked "4" is intended to represent? A That represents one of the legs or posts of the station.

- Q Where it was shot and broken into. A Yes sir.
- Q The ten inch timber? A Ten by ten.
- Q What particular post was broke, did you find there when you reached there? A This post right here (indicating).
- Q That is the post to the right hand side of the compartment that the cage was in? A Yes sir.
- Q Did you find any of the other posts that were broken? A Not nearly as badly broken as that one.
- Q This post would be at the point marked with the cross one?
- A Yes sir, it would come right square with that.
- Q How badly broken was it, did you say? A It was cut right in two.
- Q How was the floor of the cage itself, the floor between the two compartments of the cage, so far as being broken or otherwise was concerned? A The floor of the cage was bent a little but one of the angle irons was bent in toward the shaft.
- Q What do you call the angle irons? A It is the support of the cage, holding the upper deck, and connecting it with that.
- Q Then this line marked five would be an angle iron? A Yes sir.
- Q This line marked 5 on the left hand side of the drawing?
- A Yes sir.
- Q And what was the situation of that angle iron with reference to the ten inch timber that was broken? A It was bent in from the station in toward the shaft right opposite where the post is

and the angle iron would come down about there (indicating) while the post would be six inches away from it, and it was bent in to the shaft.

Q Oh, it was the angle iron nearest to the broken post? A Yes sir.

Q You have described the situation of McCormick's body when you reached there. Did you examine and ascertain the condition of that body? A No sir, except to look at it, that was all.

Q What was the condition of the legs? A Both legs shot off.

Q Shot off where, with reference to the knee? A About here (indicating) I should judge.

Q Between the knees and the thighs? A Yes sir.

Q Did you examine to find anything farther with regard to the effect of the explosion upon Mr. McCormick's body? A No sir.

Q Where was the body of Beck? A About 15 feet southwest of the shaft.

Q Then the body of Beck was about at the point here (indicating) marked with a star? A Yes sir, up against the wall.

Q And Beck's body would be on the southerly side of the shaft?
A Yes sir.

Q And McCormick's body on the northerly side? A Yes sir.

Q Did you examine to see if he was dead? A I put my hand on

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his chest and I saw there was no life in the body.

Q Did you examine the body to see if it was mutilated? A I did not.

MR. RICHARDSON: I don't know of any dispute upon that. I don't think it is rebuttal testimony at all, and I object to it.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note an exception.

THE COURT: The exception will be noted.

Q Did you examine the body at all except to take a cursory glance at it? A I put my hand on the body, that is all.

Q How was the track both to the north and south of the cage?
A To the south it was not nearly as badly torn up as it was on this side (indicating).

Q On the northerly side it was torn up? A All twisted to pieces.

Q And on the north side what effect did it have? A The plank was broken there but it was not torn up and shot away like on this side.

Q What did you find in the shape of safety bars, if anything, there in and around that shaft? A I did not find any.

Q Do you know whether there was any safety bar there upon either side -- on either side of that cage when you went down there on that occasion? A I don't know, -- if there were they were shot away.

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Q I mean when you reached there? A No sir.

Q How was it about the other compartment? A I did not make an examination of the condition down there at all, but there was a bar I think on this side still there. I won't be certain about it -- I am pretty certain there was nothing on this side though at all -- there was no bar there.

MR. HAWLEY: Mark those as exhibits.

The photographs were then marked exhibits Y-2 and X-2 for identification.

Q Look at these two photographs marked State's exhibit Y-2 and X-2, and see if you recognize them? A I recognize them as being the general condition of the station.

Q What do you recognize them as? A One a ^{view} ~~shot~~ of the south side of the cage way, and the other from the north end.

Q Which is the north side and which is the south side? A This exhibit X-2 is the north side of the station.

Q Do you recognize that as a correct representation of the conditions there when you was there after the explosion? A Yes sir.

Q What is the other photograph? A State's exhibit Y.

Q And that is of what side of the -- A The south.

Q Shaft? A The south side of the shaft.

Q And you recognize that as a correct representation of the conditions there? A Yes sir.

MR. HAWLEY: We will offer this in evidence.

MR. RICHARDSON: We object to those as not being

rebuttal evidence.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

THE COURT: Did the witness say which was the south side of the shaft?

MR. HAWLEY: Exhibit Y-3, I believe.

Q Say if exhibit Y-3 is the south? A Y-3 is the south.

Q Yes sir. Now, you may state if you will -- come right up here again -- I hate to bother you too much, but I would like to have you show here to the jury where was the safety bar to the shaft when the safety bar was in position? A This is the cage standing there in the shaft way (indicating) and the flat bar would be across, the same as that would be across this compartment (again indicating) and would prevent anybody from walking into the shaft.

MR. DARNOW: I don't see why this witness should not sit in the witness chair like anybody else.

MR. HAWLEY: We are asking that this witness be allowed to identify this here where the jury can have the benefit of his testimony.

THE COURT: You may examine the witness here. The court will permit the witness to explain the photograph to the jury. I want this explanation so that his explanation will go into the record intelligently.

MR. HAWLEY: That is what I am trying to get right now.

I am asking the witness as to the safety bar and some marks on the photograph that would enable us to identify it in the record.

THE COURT: Now state which one you mean? A

MR. HAWLEY: I am going to have it on both photographs.

Q Now, mark a cross with a number to it upon each where the safety bar would be?

Witness marks the exhibits as requested.

Q Is it marked upon both? A Yes sir.

Q Upon both of these photographs, I mean? A Yes sir.

Q Now, you may explain, Mr. Holman, taking State's exhibit Y-2 and show to the jury where the safety bar would be, referring to those marks? A A safety bar would cross the shaft at this point, across one, on that side.

Q Would it go straight across? A Straight across, yes sir.

Q And what was the size of the safety bar? A It was not there when I was there.

Q I mean as it was generally used.

MR. BARROW: I object to that.

THE COURT: No, that answer may be stricken out.

Q You may take State's exhibit X-2 and say now where the safety bar was on the south side of the shaft? A There wasn't any there.

Q Where would it be if it weren't placed? At cross B.

Q What was the size of the safety bars used on the various

levels of the Vindicator mine when you was in control of it? A Made out of two by six timber planed down by a carpenter.

Q Do you know Major Haylor? A Yes sir.

Q Did you see him at the Vindicator that day? A Yes sir.

Q Was he down the shaft? A I think he came down on the first or second cage, the first cage when I was there.

Q How long did you stay in the mine, or on the level there?

A I went back to the surface on either the first or second cage to the top.

Q About how long was that? A I don't believe it was over half or three quarters of an hour.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q The greatest force of the explosion which you saw on the 6th level occurred right in the vicinity of the cage and right in front of it, did it not? A Well, a little bit to the west of the cage -- not exactly in front of it. The force of the explosion was a little off from being in front.

Q The greatest effect upon the timbering of the cage was upon the side posts on the right hand side as you face the cage, wasn't it? A Looking from the north?

Q Yes sir. A Yes sir.

Q And the greatest force of the explosion was practically between the bodies of Beck and McCormick as you found them there at that time? A No sir.

Q The hole that was supposed to be caused by the effect of the explosion which blew away the floor was partially under McCormick's body, was it not? A McCormick was lying right in the hole.

Q Wasn't he lying partly on the edge of the hole? A He was lying toward the short end of the hole.

Q So that there was a portion of the hole between the body of McCormick and Beck? A Yes sir.

Q And the timbering was shattered right between the body of McCormick and Beck as shown on the photograph, the timbering you pointed out on the right hand side here? A Yes.

Q I don't suppose, Mr. Holman, that the stars marked absolutely the locations of the bodies of Beck and McCormick -- they don't pretend to do that? A No sir.

Q But as near as you remember? A One was about 15 feet and the other about 5 feet.

Q You made the plat I suppose recently? A Yes sir, day before yesterday.

Q And so far as the bodies of the two men are concerned, they are placed there from memory? A Yes sir.

4517 Q And the measurements of the shaft were practically correct?
A Yes sir.

Q There was several men there when you got there? A Six or eight.

Q There was no evidence of the bodies having been moved?

A They were supposed to be right where we found them.

Q They were right wherethy were found? A I suppose they were.

Q You did not hear anything to the contrary? A No sir.

Q You have been asked about a fence that you was building about the Golden Cycle mine, that was being built at the time Stewart was beaten up? A It was pretty near finished. Stewart I think worked an hour or two on the fence that day.

Q Who had built the fence? A The Golden Cycle Company.

Q I understand that, but it was built by somebody, I assume?

A The men that actually worked on it?

Q Yes. A Frank Evanston was one of the men, a mine carpenter, and several other men -- I cannot call their names.

Q All of those men were non-union men? A No sir, the carpenter was a union man.

Q Was he a union man at that time or was there a strike on?

A There was a strike on, but he was still working on the fence.

Q So far as the building of that fence was concerned there was no more reason why Stewart should be beaten up than anybody else? A Yes sir.

Q Why, because the men had been called out and he did not go.

Q Were they called off on the day that Stewart was beaten up?

4518 A I don't think so.

- Q You don't think so? A No sir, it was some time before Stewart was beaten up.
- Q Had the fence been standing still there? A No sir, I helped to finish it myself.
- Q Then there was no more reason why Stewart should be beaten up than that you should? A Well, Stewart worked on a building there too.
- Q Did you ever hear that Stewart went down town that night and got some whisky and went home and had a racket with his wife?
- A No sir.
- Q You don't know whether or not that may be the fact so far as your knowledge goes? A I visited his house just after he was beaten up.
- Q You did not visit it just before he was beaten up? A No sir, but his wife was not beaten up.
- Q You did not know of your own personal knowledge of the beating up of Stewart except that he was beaten up? A No sir.
- Q Was this fence built for a military stockade? A No sir.
- Q The military had not been called in yet? A No sir.
- Q For what purpose were you building that fence? A The protection of the Company's property.
- Q The property had not up to that time suffered any? A We had contemplated building that fence for a year before that.
- Q Then really the fence had nothing to do with the strikers?
- A No sir.

- Q You was going to build the fence anyhow? A When we got around to it, yes.
- Q And up to the time of the building of that fence, or rather up to the 4th day of September of 1903, had there been any disturbance from the time of the calling of the strike, or any more disturbance than there had been prior in the district? A Yes sir.
- Q How many offenses of that character had occurred from August 10th to September 4th? A Oh, two of my men were assaulted at the mine coming to work.
- Q What do you mean by their being assaulted? A They were stopped from going to work and a gun was pulled on them and they were told that they could not go to work.
- Q Did you see that? A I did not see the gun, but I saw the men stop and I went and got them.
- Q You saw these pickets and you assumed that they were soliciting the men not to go to work? A I went up and got my men from the pickets and took them down.
- Q You did not see any guns when you got there? A I saw guns but I did not see them pulled on my men.
- Q Did you have a gun on? A I did.
- Q How long had you been running the Golden Cycle? A That I had charge of it, you mean?
- Q Yes. A I think I went there in 1901, -- I wasn't be certain.
- Q Were there any more troubles now, coming back to the other

proposition, prior to the 4th day of September, and after the 1st day of August than there had been prior to the 10th day of August? A There were around my particular place, yes sir.

Q Had you had any trouble around there? A Not before the strike, no sir.

Q And did you ever have any trouble after that except this one man you mention that was stopped by the pickets? A There were two men.

Q Two men? A Yes sir.

Q Did you ever have any other trouble besides that? A That of Mr. Stewart.

Q You don't know what the cause of that was? A No, only he worked on the mine.

Q In the Cripple Creek district, generally speaking, was there any more difficulty after the calling of the strike than before? A Yes sir.

Q Throughout the district? A Yes sir.

Q Now, isn't it true that so far as the administration of justice was concerned there was no substantial difference then before? A We had no justice after the strike.

Q There has always been beatings up in that district? A Yes sir.

Q Men will get drunk and they will fight? A I suppose they will.

Q They always have in all mining camps wherever you have been?

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A Yes sir.

Q Did you see any fights after August 10th or 1903? A Yes, I saw --

Q Well, which ones did you see? Name the fights that you saw.

A I got in a little racket myself, and I saw that.

Q Where was that? A That was in a saloon in Cripple Creek.

Q You got into a row with somebody? A Yes, it did not amount to much.

Q That was on account of the strike? A Yes sir.

Q You were quite prominent in all, and all through the Cripple Creek troubles? A I took part in it.

Q One of the members of the mine owners' association from the start? A Yes sir.

Q When was your mine owners' association formed? A I think about August 10th or 14th.

Q Of what year? A 1903.

Q Hadn't you had an organization prior to that time known as the Cripple Creek Mine Owners' Association, dating back to 1901? A No sir, not that I know of.

Q You did not know about that? A No sir.

Q And you did not know that the Mine Owners Association in Colorado Springs went out of business and was succeeded by the Mine Owners Association in Cripple Creek with headquarters in Victor? A Yes, I know when we organized there in Victor. We did not succeed anything that I know of.

4522

- Q And you know it went out of business for the reason it was composed of the same men as in Colorado Springs, substantially?
- A I know it was the same men.
- Q You know about their passing a resolution? A No sir.
- Q And that they turned over the funds on hand to you people, such funds as they had? A I suppose they did if they had any.
- Q And you know that at the time you organized your association you followed a custom which had existed with the old association in assessing monthly each mine that was in the association? A We had that custom.
- Q And you levied an assessment on the owners of the mines which produced a large amount of money each month? A Yes sir.
- Q What amount of money did the Golden Cycle pay into the Mine Owners' association in 1903 during the trouble?

MR. HAWLEY: We object to that.

THE COURT: What is the question?

The question was then read to the court.

MR. HAWLEY: Now, we are not disputing the fact that it would be proper evidence to show generally that there was a contribution of that kind, but we do submit that even if it was held that that was proper evidence that the question of amounts and all that would not be proper. That would not show the interest, and besides the interest of the contribution, as I understand, it was made by the mine itself, from the men

of course, it was made through the superintendent perhaps, but I hardly believe it would be proper to show that the interest because the mine contributed -- in any event, taking all the other reasons and eliminating them from the objection, I submit that the question of amount could not be material under the view even that counsel puts upon the question.

THE COURT: Has the witness testified that he knew how much his company contributed?

MR. RICHARDSON: I am asking him about it. We know that the extent of a person's interest may be shown that way if they show they have any interest at all.

THE COURT: He may answer the question.

A I don't know the exact amount.

Q It is the Golden Eye Sickle mine, is it? A Golden Cycle mine.

Q You know approximately the amount? A The total amount?

Q Yes. A I don't know.

Q What was your monthly assessment? A At that time I think it was \$300. a quarter.

Q And you think it increased during the course of the strike?

MR. HAWLEY: We object to that as incompetent, immaterial and irrelevant and not proper cross examination.

THE COURT: The objection will be sustained.

MR. RICHARDSON: Note our exception.

Q The mines were classified? A Yes sir.

Q Upon the basis of their production or the number of men they worked?

MR. HAWLEY: We object to that as incompetent, immaterial and irrelevant, and not proper cross examination.

MR. RICHARDSON: We want to show that they combined for the purpose of carrying on the things they did carry on there against our people.

THE COURT: The objection is sustained.

MR. RICHARDSON: Note our exception.

THE COURT: The exception will be noted.

Q Did you have anything to do with getting the military to come in there? A No sir.

Q Did the Golden Cycle mine or corporation guarantee any part of the expenses of the militia? A No sir.

Q Did they subscribe or make any statement to the Governor of Colorado that they would make any subscription? A They bought the State's paper.

Q And that was understood and agreed upon as a condition upon which the Governor ordered the troops into the district?

A I don't know about that.

Q What was the State's paper? A The certificates of indebtedness issued by the State.

Q For the military occupancy of the district? A Yes sir.

Q You had that arrangement, did you, before the troops came into the district? A I don't know.

Q Did you join in a call for the troops? A No sir.

Q And the only thing you know of that that caused the troops to come into the district was the busting up of Mr. Stewart?

Archives

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at Boulder Libraries

- A Turning loose Minster and the inability of the sheriff to keep order and protect our mines there and other things.
- Q When had Minster been turned loose? A I think it was two or three days before the troops came in there.
- Q Who turned him loose? A The sheriff.
- Q What had he been arrested for? A Assault.
- Q On whom? A Mr. McDonald made the complaint.
- Q And because he had been turned loose thereupon you got the troops in there? A He was identified as drawing a gun on Mr. McDonald by Mr. McDonald.
- Q Was there any warrant or complaint out against Minster that you know of? A There would have been one in fifteen minutes if the sheriff had not let him get away.
- Q Were you the one who was pursuing him? A No sir.
- Q Were you making any complaints against him? A No sir.
- Q Did you make any effort to get him? A I certainly did.
- Q Did you swear out a warrant for him? A Mr. McDonald swore out a warrant.
- Q And he got away before the warrant was served? A Yes sir.
- Q And thereupon you made up your mind to depose the sheriff and get the military in there? A The sheriff was not deposed for a year after that.
- Q Wasn't it, as a matter of fact, a part of your policy to rid the district of the Western Federation of Miners because they had called a strike? A It was not.

- Q And hadn't you contemplated it long before that? A No sir.
- Q There had been a talk of a strike there during the entire time of that spring and summer had there not, there being a strike on at Colorado City? A Yes sir.
- Q And that was against the Standard Oil outfit at Colorado City?
- A I don't know anything about that.
- Q The American Smelting & Refining Company? A I don't know about that.
- Q Do you know whether the stock of that company is owned by the Standard Oil Company? A I don't know about it.
- Q You don't know whether it is a Rockefeller Company or not?
- A No sir.
- Q Is the Golden Cycle one of the mines that ship its ore?
- A No sir.
- Q You shipped to the Telluride mill, did you? A Yes sir.
- Q That was not involved at first, was it? A I don't think it was.
- Q Did you form a citizens' alliance at Victor? A I did not.
- Q Were you a member of the citizens' alliance? A I never attended a meeting of the citizens' alliance.
- Q Were you a member of the citizens' alliance? A I don't think I was. I contributed money to it, but if they made me a member it was all right.
- Q You were a member of the mine owners' association? A Yes sir.
- Q And you contributed to the citizens' alliance? A Yes sir.

- Q And the mine owners' association and the citizens' alliance and the military all had their headquarters in the same building? A No sir.
- Q Near the same place? A No sir.
- Q Did the Mine owners' association and the citizens' alliance have offices together? A No sir.
- Q Where were they, where did they have their offices? A The mine owners' association first place of business was in the National hotel on the third floor.
- Q Suppose we go over to Victor? A The Golden Cycle is at Independence.
- Q Victor is your town there, practically, isn't it? A Cripple Creek is the town.
- Q The national hotel was the headquarters of the militia too, wasn't it? A No sir.
- Q Didn't Sherman Bell have his office there? A No sir.
- Q It was the headquarters of the mine owners' association? A Yes sir.
- Q And of the citizens' alliance? A No sir.
- Q Where was their headquarters? A I think they had rooms two blocks from there.
- Q Now, let us go over to Victor. Now, at Victor, did the mine owners' association have its office with the citizens' alliance? A No sir, it is lately I think.
- Q Did it have its office at any time with the military? A No sir.

- Q Did it have it in the same building with the military?
- A I don't think it did.
- Q Didn't the military, the mine owners' association and the citizens' alliance all work together -- the military carrying out the orders of the citizens alliance and the mine owners' association? A Why, all the law and order people worked together. I don't know as the mine owners or the citizens' alliance worked together in that way.
- Q You know about the military commission? A Yes sir.
- Q That was appointed by the citizens' alliance and the mine owners' association? A It was appointed by the Governor of the state.
- Q The commission? A Yes sir.
- Q They took and deported people? A Yes sir.
- Q And that had nothing to do with the military, did it?
- A There was no military men on it.
- Q There was one ex-military man on it, General Frank Reardon.
- A He may have been, but I don't know that he was connected with the military.
- Q That is, he had an ex-military title? A General, we called him.
- Q But he had no military record that you know about? A Not that I know of.
- Q Do you know a man named Hagg? A Yes sir.
- Q He was an officer in the military? A Yes sir.

- Q And acting secretary of the citizens' alliance? A I think he was after it was formed.
- Q Do you know where the Cunningham block is in Victor? A Yes sir.
- Q That was the headquarters of the military, wasn't it?
- A No, I don't think it was. It was at the hall -- the armory hall, I think they called it.
- Q If it was the headquarters at any time you did not know about it personally? A No sir.
- Q Were you in Teller county on September 22nd, 1903 -- September 21st, 1903? A I won't be sure, but probably I was.
- Q That was the day they had court over there in Judge Goodie court, the day the military dragged some men out? A Yes.
- Q Were you there that day? A I think so.
- Q Don't you remember that the military was at the National hotel on the opposite corner of the street? A No sir, I don't.
- Q That Sherman Bell had his headquarters there? A No sir, I don't.

MR. RICHARDSON: Well, it don't make much difference. That is all.

MR. HAWLEY: That is all, I will call Mr. Rousay.

L. G. RAMSEY, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

Q What is your name, sir? A L. G. Ramsey.

Q Where do you reside, Mr. Ramsey? A Victor, Colorado.

Q How long have you been a resident of that vicinity?

A Thirteen years.

Q What is your business or occupation? A Assayer at the Vindicator mine.

Q How long have you been the assayer at the Vindicator mine?

A I have been there nearly two years.

Q Prior to your employment as assayer what was your business?

A I was employed as powder man on the Vindicator.

Q How long was you powder man on the Vindicator and what years? A About two years and a half, including 1902, 1903, and part of 1904.

Q Have you at any time been a member of the Western Federation of Miners? A Yes sir.

Q What years? A 1903. I joined about June of 1903.

Q Where was you working in November, 1903, at the time of the explosion? A I was working on top.

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Q Did you know Mr. McCormick? A Yes sir.

Q Was you related to him in any way? A His step son.

Q Did you know Beck? A Yes sir.

Q How long had you known Mr. Beck? A I had known Mr. Beck about four years.

Q What did you know in regard to the habit and custom of Beck so far as carrying arms was concerned at that time?

MR. RICHARDSON: We object to that as not rebuttal evidence.

THE COURT: He may testify.

MR. RICHARDSON: Note our exception.

A He never carried a gun to my knowledge.

MR. RICHARDSON: Now, we move to strike out that question and answer on the ground that he does not appear to know anything about it.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note an exception to the ruling.

Q How often did you see Mr. Beck at that time? A Six or seven times a day.

Q Could he have carried a gun in his pocket without your seeing it?

MR. RICHARDSON: Now, we object to that on the ground that it is argument.

MR. HAWLEY: It is not argument, your Honor, it is a fact we are making for.

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THE COURT: I think you can show how he was dressed can't you?

Q What was his usual custom when he was around the mine?

MR. RICHARDSON: We object to that because it may not cover this period.

THE COURT: He may answer the question.

MR. RICHARDSON: Note our exception.

A I had an office upstairs where Mr. Beck used to change his clothes every morning before going into the mine and every night when he went out, and if he had carried a gun I would have seen it.

MR. RICHARDSON: I object to that as a conclusion on the part of the witness.

THE COURT: The motion is denied.

MR. RICHARDSON: Note an exception.

Q Was this state of affairs in existence in November, 1903, at the time of his death and immediately preceding his death?

MR. RICHARDSON: We object to that as not rebuttal and not specific enough.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

Q You say answer? A Yes sir.

Q What do you know in regard to McCormick's habit or custom about carrying arms? A He never carried a gun.

Q What was your duty as powder man at that time? A To throw out old powder used on both shifts and put up the powder orders

of the men.

- Q State whether all the powder used in the mine came through your hands? A Yes sir.
- Q How often was it issued and who to? A It was issued to the machine men, and I took the orders at noon and put them up and they went down in the mine at three o'clock in the afternoon.
- Q How much, or how large a lot? A There would be different orders from different men.
- Q From the machine men on the different levels? A Yes sir.
- Q What was the kind of powder used in the mine at that time? A Johnson powder, 35 per cent.
- Q Did you have any duties with reference to going to the levels and looking for powder? A Yes sir.
- Q What was your duty in that regard? A Every morning the first thing I did was to go down in the mine and look on all levels for powder, and the same thing in the evening.
- Q Before going off shift? A Yes sir.
- Q You say the same thing in the evening? A Yes sir.
- Q Are you acquainted with the different levels in that mine? A Yes sir, or as they existed there in November, 1903, at that time.
- Q State whether or not there was a water barrel on the 300 foot level in that mine? A No sir.
- Q You are positive of that, are you? A Yes sir.
- Q You may state, if you know, Mr. Ramsey, the kind of protection

provided in the different levels to keep parties from falling down the shaft -- safety bars? A Guard rails?

Q Guard rails or safety bars, whatever you would call them?

A There was a wooden safety guard on the 800 and a pipe on the 900 and a pipe on nine and ten.

Q When you say there was a pipe on the 800, the 900, and ten hundred foot levels what do you mean? A The guard rail was formed in kind of a U shape.

Q What kind of a pipe? A A piece of inch and a half pipe.

Q What kind -- what material? A Just ordinary iron pipe.

Q That was used as a guard rail on the 8th, 9th and 10th levels?

A Yes sir.

Q What kind of a guard rail was used on the 600 foot level?

A A wooden guard rail that was tapered down to a point about an inch and a half to two inches thick on the small end.

Q How long had you been working at that mine in November, 1903?

A I had been there somewhere around a year.

Q Was you working there when Holman was superintendent? A No sir.

Q How long after he quit did you go to work? A A very short time.

Q Was there any change made in the safety bars at the 600 foot level after Holman left? A No sir, the level was not in use.

Q Had it been used at all from the time he left until the time of the explosion? A No, not to my knowledge.

Q Did you see Mr. McCormick on the day of the explosion? A Yes

sir.

- Q And after he had went to the mine? A Yes sir.
- Q Do you know whether or not after going to the mine -- going down in the mine, McCormick came to the surface? A He did.
- Q At what time did he come out of the mine and to the surface?
- A Right around ten o'clock.
- Q What if anything did he do after coming out at ten o'clock?
- A He walked around the different parts of the mine, as was his custom, and went over to the office.
- Q Did he change his clothing? A He changed his shoes.
- Q And changed -- what kind of shoes had he been wearing before he changed them? A He always used his heavy shoes in climbing around the mine, taking samples.
- Q And changed them to what kind of a pair? A An ordinary light pair of shoes.
- Q Ordinary street shoes? A Yes sir.
- Q Did you see Beck at that time, or about this time? A Beck came up some where about half past ten.
- Q After Beck came up, or how much later was that than McCormick came up? A Oh, McCormick, must have been up a little over half an hour.
- Q After Beck came up what did he do, if anything, that you observed? A He was standing in the compressor room cleaning his pipework; McCormick came over from the office and said something and they all went over to the engine room and they told

the engineer they were going to the 600 --

MR. DARRON: Wait a minute. We object. We don't want a number of conversations between this witness and anybody else.

MR. HAWLEY: We think that conversation is a part of the res gestae.

THE COURT: If it related to the directions to the engineer in reference to lowering the cage --

MR. DARRON: That is a conversation.

THE COURT: -- the court will admit it.

MR. DARRON: Save an exception.

THE COURT: The exception will be noted.

THE WITNESS: He told the engineer to run slowly and when he thought he was about at the 6th level -- it had not been used recently and he did not know where the marks were.

Q Did you see them start down? A Yes sir, I rang them down.

Q Did you see what they took with them? A Nothing that I could see but their picks and conule sticks.

Q Was there anything in the cage when they started down? A No sir.

Q What was the result after they started? A After they started I went over and sat with the engineer, and a little later the bell rang and was supposed to be the stop bell, and in a second another bell rang and the engineer tried to hoist and could not; he tried to lower the cage and could not. I went over to the shaft and put my head over the shaft and could smell

powder make, and I just stood around there a little while and a little later the cage came up.

Q Who was the engineer? A Charles Johnson.

Q What was his business or duty? A To send up the cage and he had the cage under his command at all times.

Q There was ~~man~~ one on the cage when it went down on that trip except Beck and McCormick.

Q Did anybody else come up besides Johnson? A Not at that time.

Q Did you go down the shaft yourself? A No sir.

Q Did you know anything about powder being found in the shaft after this explosion? A Two weeks after the explosion, or about two weeks, we cleaned the shaft and found some fulminate powder, marked 40 per cent., and dated July the 13th.

Q How much of this powder did you find? A One stick.

Q State whether or not any of that kind of powder had been used around that mine? A No sir, not during my time.

MR. HAWLEY: I may call his attention to another subject but I see it is just twelve now.

THE COURT: All right, we will stop here.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded to custody and a recess was taken until 2:00 o'clock P. M.

R E S E S S E.

BOHR, INHO, Tuesday, July 16th, 1907.

2.00 o'clock P. M.

Court convened pursuant to adjournment.

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

THE COURT: Gentlemen, with reference to this offer of the article in the Idaho State Tribune, in May, 1899, the court has no doubt but that this would be proper evidence if there was anything in the testimony of the defense for it to meet, but in view of the statement of counsel that they have introduced no testimony in support of the statement they made and in relation to the subject matter, I am satisfied that there has been nothing introduced by the defense that would warrant the introduction of this at this time.

MR. HAWLEY: I beg your Honor's pardon, that is, in view of the statement of counsel?

THE COURT: Yes sir. It will be the ruling of the court that as nothing was introduced that this was intended to meet in reference to the other offer, it will be ruled out. And in reference to the offer of the books, of the time book of the Federal Mining Company, I have examined the authorities cited by counsel for the State, and have read the evidence, and the sections called to my attention by the State, and the examina-

tion of them fails to disclose the rule as contended for by counsel for the State. I have made some examination of the authorities gentlemen, and I have found only one criminal case where the rule sought or invoked here by the State was applied, and that was a case in the District of Columbia. Now, there seems to be so much doubt in the mind of the court as to the showing that has been here, that the court will sustain the objection and deny the admission of the testimony at this time.

MR. HAWLEY: We will allow the exhibits to remain in the possession of the clerk for identification, and if it is possible to eliminate the difficulty suggested by the court we will do so.

THE COURT: Now, the evidence already introduced fails to show what day, or what shift Crohard was on -- what portion of the day Crohard was working, and I think it will be necessary that that should be shown to make this admissible.

MR. HAWLEY: That would have to be shown by the books themselves, your Honor. If we can introduce the books at all -- if we can meet the objections raised by the court we could make that proof from the books.

THE COURT: I don't think you could make that proof from the books themselves.

MR. HAWLEY: We can prove it aliunde.

THE COURT: You may proceed, gentlemen.

WILLIAM L. G. BERRY, on the stand.

CROSS EXAMINATION

BY MR. RICHARDSON:

- Q Did you ever know about a carload of powder being in the Vinlander mine? A Yes sir.
- Q When was that? A The 18th day of August, at the time of the strike.
- Q Did you put a carload of powder in there on the 18th day of August? A Not a car load.
- Q What? A Not a carload,-- there was four four tons.
- Q On the 18th day of August you had four tons of powder?
- A Yes sir,-- not on the 18th day of August-- on the 15th.
- Q How long did it stay there? A Until September the 11th.
- Q Was it where it could be used during that period of time?
- A No sir.
- Q What level was it on? A On the 300.
- Q On the 300 foot level? A Yes sir.
- Q And near the elevator -- near the cage? A No, it was 300 feet from the cage, it was not near the shaft at all.
- Q How far from the place where the men were working? A The men were not working there at all.
- Q The mine was closed down? A Yes sir.
- Q And you put four tons of powder in the mine? A Yes sir.

- Q That was Rapaune powder? A No sir, Johnson.
- Q All machine powder? A Yes sir.
- Q seven-eighths diameter? A Seven-eighths, and an inch and a quarter.
- Q You had both kinds of machines? A Yes sir.
- Q How many feet of levels were therein that mine in the month of November of 1903 -- how many linear feet of levels? A That I could not say.
- Q You said it was your duty to go all through the levels twice a day? A At the stations.
- Q You said in your direct examination that you had to go all through the levels picking up the powder? A The levels was all off -- it would have been impossible for me to do that.
- Q That is what I thought. A No, it was just at the stations.
- Q You could not have walked through the levels twice a day there and done anything else there could you? A No sir.
- Q It would not have been possible for you to have done that much walking? A No sir.
- Q Now, around the shaft there is a station out I suppose about every hundred feet? A Yes sir.
- Q That is sort of a room excavated in the rock? A Yes sir.
- Q And it is customary to leave powder at that station by the men who have used powder and have drawn too much, they leave it there? A No, if they had too much they were to bring it up.
- 4548 Q They did not do it always, and for that reason you were re-

quired to go there twice a day and see if there was any?

MR. HAWLEY: We object to that. The answer of the question might show acquiescence.

THE COURT: He may answer.

A That is the question, please?

Q Read it.

The question was then read.

A Yes sir.

Q What were you designated at that time? What was your job?

A I was called the powder monkey.

Q That means the man who distributes the powder to the men and goes around and collects it after they are through with it?

A Yes sir.

Q Very frequently the men drew more than they used? A But they would bring it up on top. The only powder left on the level would be a stick or so that the timber men might use.

Q It was not true that you were making these trips twice a day at that time? A Yes sir, I was.

Q What for? A Because it was orders for us.

Q Although you never found any powder? A No sir, I did not.

Q What was the custom with respect to having water barrels in that mine? A We did not have any water barrels.

Q There never was any water barrel in the mine at all? A There was one at the 900 at one time.

Q And none on any of the other levels? A There was oil barrels on the 8th level back of the timber.

- Q What was the object of having a water barrel in the mine?
What is that for, do you know? A It depends a whole lot.
- Q I ask you what is the object of having a water barrel in the mine? Did they have it for any purpose? A Yes, they use it.
- Q Do you know anything about any other mine than this? A Yes sir.
- Q What others have you worked on? A That is the only one -- the only mine I ever worked on.
- Q What is the object of having a water barrel therein the mine? A The machine men use it at times for drift work.
- Q When was your attention first called to this water barrel? Since you came up to Boise? A No sir, I was thinking the thing over.
- Q Since you got to Boise? A No sir, before I came to Boise.
- Q When did you first tell any one that there was no water barrel in that mine? A In Cripple Creek.
- Q Who was it you told? A Mr. Arnold. After reading Mr. Wood's statement in the paper, that was the time --
- Q That was really the first time you thought of it, wasn't it?

MR. BORAH: Wait a moment. Let him finish his statement.

MR. RICHARDSON: I was going to let him state that as soon as he got that preliminary matter disposed of.

THE COURT: Answer the question, if you wish to.

THE WITNESS: Which one?

MR. BORAH: How far had he got?

The last question and answer were then read.

MR. BORAH: After reading Mr. Wood's testimony, what after that?

THE WITNESS: I phoned to Mr. Arnold and told him I knew absolutely that there was no barrel in that shaft at that time and that there was several points in Mr. Wood's story that I knew was false, and if it had be I was ready to come out here and testify to that effect.

Q You had no talk with anybody else except Mr. Arnold in respect to it? A Not at that time.

Q Who was running the Vindicator at that time? Who were you responsible to at the Vindicator? A Mr. Treraro.

Q What business did he have on the mine at the time your step-father was killed? A He was not there at that time.

Q He came there after your step-father was killed? A Yes sir.

Q You testified about this matter on one other occasion, didn't you? A Sir?

Q You testified about this matter on one other occasion, didn't you? A I attended the coroner's jury and testified.

Q Yes, and that was shortly after the accident occurred, is it was an accident by which they met their death? A About a week.

Q About a week? A Yes sir.

Q At that time were you not asked: "How long were they in the shaft house before they went down?" A. Mr. Deak was standing

by the the compressor man cleaning his pipe; I could not say how long before."

MR. HAWLEY: I ask that the witness be allowed to look at that testimony.

Q "I came through just three or four minutes before they went down,-- then I went back again."

THE COURT: If the witness desires to examine the testimony he may do so.

MR. DARROW: I object. That is not the rule. He is asked whether he made that statement?

MR. HAWLEY: He can read all of his evidence, sir.

MR. DARROW: I don't think there is any such rule.

THE COURT: The statute provides for that, Mr. Darrow.

MR. DARROW: I would like to read it.

MR. HAWLEY: They would probably not read it as it is interpretal.

Q What do you say about that? A I made that remark.

Q Now, not at that time you could not say how long it was that they were up there before they went down in the mine, but you can say today? A I did not say today any more than it was more than a half an hour.

Q Didn't you say that they got on the cage and got to the 600 foot level and they stopped and the engineer undertook to run the cage up and then undertook to run the cage down and found he could not do it? A Yes sir, but I don't think that is

- what they mean. It means in the compressor room when I came in.
- Q You are referring to not the time when they were in the mine but to the amount of time they spent on top? A At the time I saw them in the compressor room, from the time we all went over to the engine room.
- Q I see. Now, at that time you were asked, were you not:
- "Q. Referring to McCormick, how many guns has he? A. Two revolvers. Q. Are both at the house? A. Yes sir."
- A That is right, yes sir.
- Q He had two revolvers then at the house, whether he had any on him or not; you did not see any on him? A Yes sir.
- Q What did he keep those revolvers for, do you know? A What was that question?
- Q What did he keep those revolvers for, if he never carried them? A One was one he had had for years and the other was one he bought for mother shortly after they were held up there in Independence.
- Q You say he never carried a gun, don't you, today? A He carried one out of the mine.
- Q You say he never carried a gun, don't you? A Yes sir, in the evidence. He had that privilege.
- Q I know, but didn't you say this morning that he never carried a gun? A I meant in the mine; probably I did not add that.
- Q I understand you to limit it that way then? A I understand it that way.

- Q You mean he did carry a gun but not down in the mine? A Yes sir.
- Q Do you suppose it was probable that at any time he forgot to take his gun out? A He never went down in the clothes that he was dressed in in the evening to my knowledge.
- Q To your knowledge? A To my knowledge.
- Q Or to your recollection what? A I know it.
- Q He had been down in the mine before he came up that morning? A Yes sir.
- Q And you saw him? A Yes sir.
- Q Had he changed his clothes when he came up that time? A No sir.
- Q You told that jury also about a bundle of powder that you found wrapped up in a piece of newspaper in the powder house a short time before that? A Yes sir.
- Q That was a bundle of a different kind of powder? A You could not tell anything about it.
- Q It was wrapped up in a newspaper? A Yes, it was wrapped up in a newspaper. It came in a car of coal.
- Q You did not know how it got there? A It came there in a car of coal, I presume. The fireman gave it to me.
- Q Was that a bundle of powder? A Yes sir, wrapped up in newspaper, yes sir.
- Q And you found it in the powder house and did not know anything about it at that time, is that right? A The fireman

gave it to me.

Q That was ten sticks of powder, wasn't it? A About that, I think.

Q You said, didn't you: "Q. You may tell the jury about the powder that one one picked up in the powder house a short time ago? A. I went to the museum one morning and there was a bundle there wrapped up in a piece of newspaper and I opened it and found it was powder, about the same as that. Q. How much? A. I think about ten sticks." A Yes sir.

Q That was powder in the stick form so that you could count the sticks, was it? A Yes sir.

Q When did you have your talk with the fireman about that ten sticks of powder? A I don't remember when it was.

Q Was it before or after you found the powder? A It was after.

Q After you found the powder; and was it after you testified to the coroner's jury that you talked to the fireman? A No.

Q You did not say anything about that in your testimony, that you remember off? A No, I don't think so.

Q That powder you sent down in the mine? A Yes sir.

Q And it was used up down there, at least you have never seen it since, the same as any other? A I remember sending it down in the mine.

Q You have never seen it since? A No sir.

Q You sent it down to be used in the machine, didn't you?

A Yes sir.

- Q On cross examination before the coroner's jury with reference to that powder, wasn't this question asked you, and did you not make this answer: "Q. You say you found about ten sticks of powder done up in a newspaper about five weeks ago? A. Yes sir. Q. How did it get in the powder house? A. I don't know." Did you give that answer? A Well, as to that part of the powder I don't know to this day.
- Q You say now that the fireman told you something about it?
- A That was not the same powder at all.
- Q It was not? A No sir.
- Q This refers to ten sticks of powder done up in a newspaper about five weeks ago? A The powder the fireman gave me was a bundle, I presume of about ten sticks, but there was a bundle found in the powder warmer there.
- Q About ten sticks, so you found two bundles, did you?
- A The one the fireman gave me.
- Q Was that the one you took to the warmer one morning? A I found the other in the warmer.
- Q So you found two bundles of powder, did you? A Yes sir.
- Q One in the powder house and the other in the powder warmer?
- A The one the fireman gave me was not in a newspaper, it was in a sack; it came out of the coal car, I think.
- Q Was this question asked you by Mr. Hange who cross-examined you "You say you found about ten sticks of powder done up in a newspaper? A. Yes sir. Q. About five weeks ago? A. Yes sir. Q. How did it get in the powder house? A. I don't

know. Q. Did you ever have up there any other powder done up in bundles that way? A. Never before to my knowledge. Do you want to look at this testimony and see if I read it correctly? A. I guess you read it correctly.

Q. You have got more confidence in me than Mr. Hawley has. You testified to that, did you? A. I think so.

Q. And you did not testify to any two packages of powder at that time? A. No.

Q. And on the contrary you said there never was two packages, didn't you? A. I may have.

Q. And which time do you think would serve your memory the best, the nearer to the occasion or farther from it? A. At that time I was not responsible for anything.

Q. When did you get to be responsible? A. I think I have grown a little better.

Q. Think you have? A. Yes sir.

Q. So, when you was testifying before the coroner's jury your idea is that you was not responsible for whether you told the truth or not? A. No, I would not vouch for that. If you had been there you would not, either.

Q. At that time you had no remembrance, however, of but one package of powder, is that right? A. Yes sir.

Q. And with reference to that same powder, was this question asked you: "And was it still done up in the newspaper --

was it done up carefully or distributed? A. I took the paper

off and counted the sticks and put the powder in the box with the powder going to the 10th." A I could not say as to that.

Q Did you make that answer, do you think? A I suppose I did.

Q "Q. Did you make any inquiries to find how the powder got there? A. I don't know." You answered that at that time, did you? A Yes sir.

Q But you know now all about it? A Yes sir.

Q At least, so far as being told by the fireman is concerned?

A I was told by him.

Q You said Mrs. McCormick was your mother? A Yes sir.

Q And she married Mr. McCormick? A Yes sir.

Q And she was a widow? A Yes sir.

Q And you was a son by a former husband? A Yes sir.

Q Beck had a revolver, did he not? A Yes sir, he had one.

Q And he kept it, did he not, in the office—the mining company's office? A Yes.

Q In a desk? A In my desk?

Q Yes. A Yes sir.

Q Was your desk upstairs? A Yes sir.

Q You said, did you not, I remember seeing it upstairs in the desk. "Q. Mr. Beck's revolver? A. Yes. Q. So he had a revolver there at the mine, as well as your step-father?"

A Yes.

Q Did your father have more than one revolver at the mine?

- A He had the two at the house.
- Q He took them down to the mine, as I understood you, and when he changed his clothes he left them on top while he went down in the mine? A He never took them down in the mine with him.
- Q He took them down to the company's building? A No, we lived there at the mine.
- Q So that the house and the office was the same thing? A No, but there was a space of about ten feet between them.
- Q About ten feet? A Yes sir.
- Q The safety bars on the different levels were part of these iron bars and part of these wooden bars? A There were some iron bars.
- Q I asked if some weren't wooden bars and some iron bars? A Yes sir.
- Q Has there been any change in these bars during the time you have been there on any level? A No, I don't think so.
- Q What is that? A No, I don't think so.
- Q The lower levels have iron bars and the upper levels have wooden bars? A Eight, nine and ten, and the below that, they have iron bars.
- Q How about those above the 5th? A They have not been working those.
- Q Had they been working the 5th level prior to 1893? A I think about two years prior to that.
- Q That was before you came on the mine? A Yes sir.

- Q So really you had no occasion to notice what kind of bar there was at the 6th level? A I noticed it for the reason I was helping the chain gang I suppose about 30 days before the explosion, and I noticed it was a wooden bar.
- Q You took particular notice of it did you? A No, but the minute you get hold of that you form an impression when you take hold of a wooden bar.
- Q Is there anything so different between a wooden and an iron bar which would cause you to reflect and recollect upon it two or three years afterwards so you could say with any degree of positiveness whether it was wood or iron? A No more than that the wooden bar is square and the iron bar is round.
- Q Then the reason you remember it is because there was a square bar there some thirty days before the explosion? A Yes sir.
- Q And you remember it from some time in October of 1903 down to the present time that there was a wooden bar there at that particular point? A I am very sure it was a wooden bar.
- Q Although there was nothing to call your attention specially to it and you made no examination of it? A No.
- Q When you stuck your head over that shaft you say you smelled powder? A I smelled powder smoke.
- Q How does it smell? A I can not tell you how it smells. You can tell it.
- Q Does it smell any different from anything else you ever smelled off? A Yes sir.

- Q You would know it? A I presumed it was powder smoke-- didn't I make that statement?
- Q You said it was powder smoke. A That is what I thought, but I could not tell you how it smelled.
- Q Suppose there had been an explosion of gas down there would you know the difference -- illuminating gas, say? A I don't know how gas smells.
- Q So, you have not the remotest idea whether it smells like powder or not? A No sir.
- Q Well, powder has a heavy, sickening smell, doesn't it? A Yes sir.
- Q It nauseates you when you smell it? A Yes sir.
- Q And you have an intense headache after it? A Yes, I do.
- Q If you should breathe the fumes of that powder standing over the shaft there the result would be that you would have a headache for three or four hours afterward? A No, I have handled powder and it never affected me that way.
- Q It would make you sick? A Yes.
- Q The fact of the matter is that the handling of powder itself will give you a headache and nauseate you? A I think so.
- Q And before it is exploded? A Yes.
- Q So you have not a particle of doubt when an explosion occurs and you smell it, whether it is dynamite or not,-- you know whether or not it is dynamite.
- A I have been in a lot of powder smoke, and it smelled like

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that.

- Q You know it instantly? A Yes sir.
- Q After you have once smelled powder smoke there is no danger of your confusing it with any other smell? A No sir, I don't think there is.
- Q It has a distinct and complete smell for itself? A Yes sir.
- Q And in a class by itself? A Yes sir.
- Q There could not be any mistake as to that? A I think no.
- Q That is, as to whether it was dynamite or not? A Yes sir.

MR. RICHARDSON: That is all.

MR. HAWLEY: That is all.

A JUROR: Would I be allowed to ask a question of the witness?

THE COURT: Yes sir, any juror may ask any question of a witness.

THE JUROR: I would like to ask what is your age?

THE WITNESS: 22 the coming September.

JUROR: This was in 1903?

THE WITNESS: In 1903, I was about 12. I will be 22 this coming September.

JUROR: And was there gas used in the mine?

THE WITNESS: No.

JUROR: That is all.

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J. C. RUTAN, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. H AWLEY:

- Q What is your name sir? A J. C. Rutan.
- Q Where do you reside? A Telluride, Colorado, San Miguel county.
- Q What is your business? A I am holding the office of sheriff at present.
- Q Of what county? A Of San Miguel County.
- Q That is the county of which Telluride is the county seat?
- A Yes sir.
- Q How long have you filled that position? A Since 1901.
- Q Continuously? A Yes sir.
- Q How many times have you been elected? A I held the office two terms previous to that. This is my fifth term in all.
- Q You were sheriff of that county then in 1904? A Yes sir.
- Q What time was it that martial law was declared in San Miguel county, or around Telluride? A I think it was January 3, 1904.
- Q What had been the condition of affairs prior to that time that resulted in the declaration of martial law? A Well,

they had had more or less trouble there for months, and for some time previous to that.

Q For how long had these troubles continued? A Why, since 1901.

Q All of the time these troubles consisted? A Well, in the riot -- they had a riot there in 1901.

Q What was that riot -- who between -- what was the cause of it if you know? Go on and relate it. A A strike was declared.

Q Declared by whom? A By the union miners.

Q Western Federation men? A Western Federation men.

Q On May the 1st, 1901? A I think that was the date.

Q Yes, well, what was the result? A The result was that the mines were all closed down for a time, but a few men went back to work occasionally along, and on July 3, 1901, that was the day of the riot, about 250 or 300 armed men came out and undertook to run the working men who were working out of the mines.

Q Who was -- who were these 250 or 300 armed men? A They were supposed to be Western Federation men.

MR. RICHARDSON: Wait a minute. He moves to strike out his supposition.

THE COURT: That may be stricken out. The witness may answer as to what he knows.

Q Who was in command of these men? A Vincent St. John.

Q Who was Vincent St. John? A He was president of the union at

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that time.

Q What union? A The union at Telluride.

Q The Western Federation? A The Western Federation, the 10 to 1 union it was called.

Q And do you know whether or not these people that were under him in that riot were members of that Western Federation? A I know a great many of them were.

Q What was done in that riot? A Well, they opened up fire on the main buildings in the morning about daylight and that firing was kept up until about ten o'clock.

Q The main buildings of what mine? A The Smuggler union mine.

MR. RICHARDSON: Was this of your own knowledge or from hearsay? A I was in Telluride at the time.

MR. RICHARDSON: I move to strike it out.

THE COURT: It will be stricken out.

Q Go on and give us a brief statement of what you know in regard to this riot. A I was not at the mine at all. I did not see it.

Q Where was the Smuggler Union in relation to Telluride? A It is about two miles and a half from Telluride.

Q Did you go out there afterwards? A Afterwards, you sir.

Q How long after? A I don't remember just the time,-- it was several days, however.

Q What was the condition of affairs there in that community afterwards so far as troubles were concerned of various kinds?

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A Well, the office building was riddled and shot full of holes, and the tram building was shot up.

Q Well, was the situation -- had the situation quieted down when you reached there and went out A Yes sir.

Q Were there other troubles there following? A Yes, there were lesser troubles on.

Q Who was superintendent at this time of the Gangster Union?

A Why, Mr. Collins was the head man, I believe Arthur Collins.

Q Who? A Arthur Collins.

Q Who --

MR. RICHARDSON: We move to strike out his supposition and belief.

Q Don't you know he was? A Yes sir, I know he was.

Q Why you say you suppose then? Do you know of his having been killed afterwards? A Yes sir.

Q When was he killed? A He was killed the 19th day of November, 1902.

Q Did you investigate his murder? A To some extent, yes sir.

Q Do you know what it was that killed him?

MR. RICHARDSON: We object to this.

MR. HAWLEY: I am asking if he knows.

MR. RICHARDSON: We object to it for the reason that it is not rebuttal.

MR. HAWLEY: I think all these matters are rebuttal, your Honor.

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THE COURT: When did the witness testify that martial law was declared?

MR. RICHARDSON: The testimony is that it was the 1st of September, 1903, when the millmen went out on a strike.

MR. HAWLEY: We have a right to show that that condition did not exist and had not existed there for years that have been testified to here xxx x by witnesses for the defense.

THE COURT: You may show the conditions that lead up to the declaration of martial law.

MR. RICHARDSON: Note our exception, and we object to it further because it is not asking for a condition general or special -- either one.

MR. HANCOCK: And in addition to that it is asking for a conclusion. This man was not there.

THE COURT: What was the question?

The question was read to the court.

THE COURT: The question is, does he know, and he can answer it by yes or no.

A I was not at Falluride at the time he was killed.

Q Do you know how he was killed, whether it was a knife or a gun or what? A Yes sir.

MR. RICHARDSON: We object to that. He is cross-examining his own witness and the witness has declared that he does not know.

THE WITNESS: I said I was not there.

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Q Now you may state what it was.

MR. DANROW: I object to that. He says he was not there, and the presumption is that he does not know by any legal evidence.

THE COURT: You may cross examine, if you want to.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q You were not in Telluride at that time? A Not at that particular time.

Q And did not get back for some time afterwards? A The following day.

Q And in the mean time the body had been prepared for burial and it was shipped to Denver -- it was shipped to Denver before he died? A No sir.

Q Well, on the next train after he did die? A Yes sir, the next train I believe.

Q And went out of San Miguel county and went to England, didn't it? A I don't know that it went to England.

Q It went to Denver? A Yes sir.

Q And all you know about the manner and method and means by which he was killed was what you heard from the different people who were around there -- from your deputies and others, isn't that right? You have no personal knowledge on the subject? A I was not there.

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- Q And what you got concerning it was what you heard? A And what I saw.
- Q And from what you saw of the body? A I did not see the body.
- Q You did not see the body? A No sir.

MR. RICHARDSON: Then he cannot answer, I submit.

DIRECT EXAMINATION Continued

BY MR. HAWLEY:

- Q What did you see? A I saw the window --

MR. DAWSON: We object to that.

- Q Did you investigate the circumstances surrounding the killing?
A To some extent, yes sir.

- Q What did you ascertain?

MR. DAWSON: We object.

MR. HAWLEY: If he ascertained it of his own knowledge, it is competent.

THE COURT: He could not obtain that information if he was not there except from other parties.

MR. HAWLEY: He could ascertain it from other parties.

THE COURT: But he would have to get his information from some one else.

- Q Were there any other men killed or missing? A Yes sir.

- Q Or any other troubles? A Yes sir.

- Q Go on and state what there was? A A man, on June 23rd, *

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man named Barney, was missing very mysteriously.

Q Who was he? A An employe of the Smuggler Union Company.

Q Was he a Federation man or a non union man? A He was a non-union man.

Q Do you know of any other disappearances about that time?

A I know a man named Smith, he was missing very suddenly and mysteriously.

MR. RICHARDSON: I don't suppose we can be held responsible for every man who was missing down there. We object to that.

THE COURT: I will overrule the objection.

MR. RICHARDSON: Note an exception.

Q Was this Wesley Smith? A Yes sir.

THE COURT: This is only admitted for the purpose of showing the conditions there.

Q Do you know a man named James Phillips? A Yes sir.

MR. RICHARDSON: Note our objection for the same reason and an exception.

THE COURT: Yes sir, the exception may be noted.

Q What was the condition in regard to him? A He was shot through the arm and beat up.

Q Do you know of the killing of a Mexican there? A Yes sir.

Q When was that? A I cannot -- I don't just remember the date.

Q Before the declaration of martial law -- before the troops came in? A I think it was.

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Q There was some trouble at the Tomboy mine? A Yes, some trouble there.

What was that, and what did it consist of? A That was on, I think, the 24th of November, 1903.

Q Well, what was that trouble?

MR. RICHARDSON: Note our objection to this for the same reason.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note an exception.

A Why, they were trying to start up the Tomboy mine.

MR. RICHARDSON: We would like to inquire if this is from his own knowledge?

THE COURT: You may ask him.

Q Do you know about that? A It is my own knowledge. I was there, back out forth to the Tomboy.

Q Was you there when they were starting up the Tomboy mine?

A Yes sir.

Q And when this trouble occurred? A No sir.

Q You was not anywhere near there, was you? A Not that particular evening.

Q And you did not get there until some time after the trouble was over? A My men got there.

Q I am asking about you? A I was not there.

Q I was not there, you say; I want to know what you are testifying to and not what your men might testify to? A I was not

there.

Q And at none of these troubles that you have told about were you present personally, and if you had been you would not have allowed it to have taken place? A No sir, not if I could help it.

MR. HAWKINS: I would like to ask if a person has to actually see these troubles when it is a matter of general report?

THE COURT: The court will rule on that when we get through with the examination.

MR. DAWSON: Do you think you can prove any report that went around?

THE COURT: Gentlemen, go on with your examination.

Q None of these matters that you have been testifying about where violence occurred were within your personal presence or hearing or sight? A I was not there just at the time, no sir.

Q At the time of any one of these? A No sir.

MR. RICHARDSON: Then I submit he can testify about it.

THE COURT: What is the question that is objected to? The previous question was then read.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. DAWSON: I want to ask the court to instruct this witness that he can only testify to what he saw and heard.

THE COURT: The court will not instruct the witness any further than he has, and you may move to strike out any portion of this testimony that you see fit.

MR. DARRON: It is a poor remedy to strike out something after it has gone in. I want to take an exception to that ruling.

THE COURT: The exception will be noted.

Q Go on? A About the Tomboy business? A

Q Yes sir. A How far had I gotten along?

Q I don't know. A I said they were starting up the Tomboy mine.

MR. RICHARDSON: I object to that on the ground that he did not see it or hear it.

THE COURT: The objection will be overruled.

MR. RICHARDSON: We will take an exception.

THE COURT: The exception will be noted.

Q Proceed and tell about that trouble at the Tomboy mine.

A Well, I had several deputies up there at the time and the men were going up to work and they were being stopped.

MR. DARRON: I object to that.

THE COURT: The objection will be overruled.

MR. DARRON: Save an exception.

THE COURT: The exception will be noted.

A The union had sent up half a dozen deputies and they were just outside the Tomboy line, and men going up there to work were

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stopped and threatened.

MR. DAWSON: I object to that on the ground that he did not see the union send anybody up, and it is all pure hearsay.

Q Who was there?

MR. DAWSON: Wait a minute. We want this passed on.

MR. HAWLEY: I am asking it as a preliminary, that is all.

MR. DAWSON: He is proceeding to answer, and we want a ruling on this.

THE COURT: Did you get this information from your deputies?

THE WITNESS: From my deputies and the managers of the Teaboy mine.

THE COURT: Were you present during any portion of that difficulty?

THE WITNESS: Was I present?

THE COURT: Yes sir.

THE WITNESS: I was not at the mine.

THE COURT: Did you know from any other source that those men were being turned back than from your deputies or the managers?

THE WITNESS: One man told me himself that he was turned back.

THE COURT: I am asking if you knew it from anybody else?

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THE WITNESS: No sir, I do not.

THE COURT: Did you see the men coming back?

THE WITNESS: I cannot say that I did.

MR. DARROW: I asked to have this all stricken out.

THE COURT: The motion will be allowed.

Q Do you know anything about that of your own knowledge?

A I was up there, back and forth.

Q Was there any trouble occurred while you was up there?

A No sir.

Q Was you there when this trouble occurred? A Everything was quiet when I was there.

Q What was your object in going back and forth? A I heard of this and made trips up there.

Q Was those trips made on account of this trouble? A Yes sir.

MR. DARROW: Wait a minute, we object.

Q And how long did you continue--

MR. DARROW: I asked to have it stricken out.

THE COURT: Make your motion.

MR. DARROW: I move to strike out the last answer he made as to what he heard.

THE COURT: It may be stricken out.

Q How long did you continue to go up and down to the mine from the town on account of these reports of trouble? A I made repeated trips up there.

Q For how long a time? A Perhaps for several weeks.

Q You were going up there officially, were you? A Yes sir.

Q And for what purpose?

MR. DARROW: We object to that.

THE COURT: The objection is overruled.

MR. DARROW: Save an exception.

A Looking into the situation there.

Q Do you know of other troubles in that vicinity besides those you have mentioned? A There is not particularly any trouble that was had at any of the other mines.

Q Was there any trouble in the community generally? A Yes sir, there was.

Q What did those troubles consist of so far as brought to your attention officially?

MR. DARROW: I object to that question. He can only testify to what he saw or heard.

THE COURT: I think this witness may testify to what attempts he made and actions he took to preserve the peace in his county.

MR. DARROW: But that is not the question.

MR. HANLEY: That is the question, and it is leading up to it.

THE COURT: And he may also testify to what he personally knows as to the disturbances.

MR. DARROW: We have not objected to that.

Q Read the question.

The last question was read.

A Well, this Tombody trouble was brought to my --

Q But I am asking you what they consisted of -- what was done generally? A Why, in town there were men threatened -- there were men beaten up in town.

MR. RICHARDSON: I object to that and ask to have it stricken out.

THE COURT: What?

MR. RICHARDSON: That there were men beaten up in town.

THE COURT: He has testified that they were.

MR. RICHARDSON: I think we have no right to assume it, that this witness --

THE COURT: The motion will be denied, and he has answered the question.

MR. RICHARDSON: Note our exception.

MR. DAWSON: I move to strike it out on the ground that it is hearsay.

THE COURT: The motion will be denied.

MR. DAWSON: Save an exception. Now I want to ask your Honor to instruct this witness to testify to only the matters he knows of his own personal knowledge.

THE COURT: We have been here for weeks listening to that kind of testimony --

MR. RICHARDSON: Your Honor has permitted it.

MR. HAWLEY: And any matter coming to the attention of a public officer in regard to matters of this kind is proper to go before the jury as showing the cause that led up to the declaration of martial law and the calling out of the troops.

THE COURT: The court has indicated what this witness may testify, and along these lines he may testify to what steps he took to preserve the peace and as to what he knows of any acts of violence that were committed, whether he was present at the time they were committed or from seeing the parties after they were assaulted.

Q Go ahead, sheriff, and tell what you did in regard to keeping the peace? A I did not see --

Q Go ahead and tell what you did.

MR. DARRON: I object. Let him finish his answer.

MR. HAWLEY: He will have a chance to finish his answer when it is responsive. I would like an answer to that.

THE COURT: To what?

MR. HAWLEY: I will ask another question.

Q Are you through with the answer? A I did not see them beaten up, but I saw them afterwards.

Q I am asking you what you did officially there as sheriff of the county towards keeping the peace? A What I did in town?

Q What you did anywhere in the Telluride district? A I had deputies appointed around these different mines and had them in town day and night, watching all these points.

- Q About how many deputies did you have? A I had as many as 50, I think, all together.
- Q And how long did it continue? A For a couple years perhaps.
- Q A couple years? A As much as that.
- Q And what was the object and purpose of appointing this large number of deputies? A Well, I could not look after it personally and I had to appoint these men.
- Q Well, for what reason? A As I said, there was trouble; there threats made and men were being beaten up.
- Q Was it to keep the peace or for some other reason? A Yes sir, to preserve the peace.
- Q What year was this that you had this large number of deputies?
- A 1902 and '03.
- MR. BORAH: 1902 and three, you mean?
- THE WITNESS: Yes sir.
- Q Was Charles H. Moyer up there at any time in that section? A Yes sir.
- Q What time was he in that country? A In March, I think it was March, 1904. I brought him to Telluride from Ouray and that was the first time I ever met him.
- Q Was he under arrest at that time? A Yes sir.
- Q When was it the troops were brought into Telluride?
- A November -- I think it was November 4, 1903, -- I think that is the date.
- Q That they were brought in? A That the troops first came in.

- Q How many were brought there? A By recollection in there were about 500.
- Q At whose request were those troops brought into that county? Who made the request for their -- A Well, Mr. Wells, Bulkeley Wells, Mr. Wheeler, I think Mr. Venette and myself.
- Q Upon whom did you call for the troops? A The Governor of the state.
- Q And when was it you made the call? A In November, 1903.
- Q And the troops reached there you say about the 24th? A The 26th, I believe.
- Q And martial law was declared when? A In January -- the following January.
- Q After the arrival of the troops were there any deportations? A Yes sir.
- Q By what authority, or by whom, -- by what body was this conducted, this matter of deportations? A By the troops after their arrival.
- Q And after martial law was declared? A Yes sir.
- Q Had there prior to that time been any troubles of that kind, prior to the arrival of the troops? A Do you mean deportations?
- Q Yes sir. A Yes sir.
- Q And when prior to that time? A Well, it was not but a short time before their arrival.
- Q By what body was this done? A By the citizens of the town.

Q As an organized body, do you know?

MR. RICHARDSON: If your Honor please, that would be a conclusion. He could tell what was done.

MR. HAWLEY: I am asking if it was an organized body, and I am entitled to know.

Q Was there an organized body of citizens there? A Yes sir.

MR. RICHARDSON: Note our exception.

Q What was the name of this association? A Well, the Citizens' Alliance.

Q Of whom was this citizens alliance composed? A Of the business men of the town.

Q Any one besides the business men? A Yes sir, there were others.

Q What others -- what class? A Well, a big per cent of the citizens of the town.

Q Besides the business men? A Yes sir.

Q Who were these parties that were sent out by these men?

A Who were they?

Q Yes, what class? A Well, some of them were miners and some were citizens.

Q Was you -- I am asking what class, -- what had they been doing? What were they charged with? A Why, they had been -- it was for disturbance and congregating on the streets and making threats.

Q Do you know of any mine owners' association there that at

that time -- that engaged in any of these troubles? A Yes, there was a mine owners' association as well.

Q Was it the mine owners' association or the citizens alliance who sent out these people?

MR. DAWSON: I object. That is leading. Let him tell.

MR. HAWLEY: I don't know how it is leading. It is in the alternative.

MR. DAWSON: That is the reason it is leading.

MR. HAWLEY: I will withdraw the question.

MR. DARROW: I will withdraw the objection.

Q When was this citizens' alliance organized? A I don't remember the date.

Q What year was it organized?

THE COURT: Is this for the purpose of showing the necessity of martial law?

MR. HAWLEY: No, they have been charging these deportations up to the Pinkertons and the mine owners' association --

MR. DARROW: We are making no objection, your Honor.

Q What was that last question.

The question was read.

A 1903, I think.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q There was a mine owners' association there? A Yes sir.

Q And that mine owners' association was waging war upon the miners' union, wasn't it?

MR. HAWLEY: We object to that as indefinite.

THE COURT: The objection is overruled.

Q Go ahead? A What was your question.

Q Read the question.

The question was then read.

A I don't think they were.

Q They were opposed to the miners' union, were they not?

A Most of the men in the camp were union men.

Q And the mine owners' association, after the strike occurred, insisted that the members of the union should be driven out of the camp or leave the union? A Some of them did and some did not.

Q And many of these miners owned their own houses and had been residents of the town for years?

MR. HAWLEY: I ask that the same rule be invoked as has been invoked on the other side.

THE COURT: If the witness does not know he will say so.

MR. HAWLEY: If you don't know so state.

MR. DARNOW: Now, don't instruct your own witness.

MR. HAWLEY: I am not instructing him.

MR. RICHARDSON: What do you call it?

- Q Many of these miners had lived there for years? A Many of them had, you sir.
- Q Many of them were citizens and voters there? A They were not all voters.
- Q Some of them were, I say? A Yes sir.
- Q Many of them were? A Yes sir.
- Q Many of them had their homes there? A Yes sir.
- Q And owned property there? A Yes sir.
- Q But the thing that drew the line was the fact that they belonged to the union? A There was never any trouble up to the time of the strike.
- Q I notice you say that some of them were miners and some citizens; you draw a distinction between miners and citizens, don't you? A No sir.
- Q You did? A I did not mean to.
- Q You meant to put the members of the union in one class and everybody else in another class? A I did not intend to.
- Q You said the citizens' alliance was composed of the merchants and business men and practically every body except the miners?
- A No sir, there were miners in it too.
- Q There were miners in the citizens alliance? A Yes sir.
- Q You said all the business men were in it, didn't you?
- A I don't know as all of them.

- Q How about A. H. Fenton? A Yes sir, he was there.
- Q And conducting a business there? A Yes sir.
- Q And conducting the largest business in Telluride? A He was conducting a business there.
- Q And a large business? A A fairly large business.
- Q Now, you know that after the strike the miners all stopped patronizing the gambling houses, that there was a boycott declared on the gambling houses? A I don't know that.
- Q Never heard of it? A I never heard of that.

MR. HAWLEY: We object to that as calling for hearsay.

MR. RICHARDSON: I want to show how this trouble arose in Telluride.

THE COURT: I don't see or understand the materiality of this.

MR. RICHARDSON: I want to show who the people were who combined together on the one side, and the reason why they made the combination, and I think Mr. Hutten knows that, and it is cross examination, when he has been allowed to testify as to the conditions there in Telluride.

MR. HAWLEY: We object to that as incompetent, immaterial and irrelevant. The only materiality of it is to combat the idea that it was the mine owners who caused these assaults, over our objection, on the promise of the other party to show a conspiracy which really committed the crimes which have been the subject of this investigation. Now how

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could this be material? And it calls for hearsay in any event.

MR. RICHARDSON: In other words, they may prove a series of events from which a conspiracy occurred, and we will not be allowed to prove a series of events from which the same event occurred. Now, he has inquired as to the conditions in Telluride, and your Honor has permitted him to testify with respect to that condition, and now we have a perfect right to go into any matters that will throw light upon the conditions. And we --

MR. HAWLEY: What I mean to say is this, that they cannot under the guise of cross examination procure the admission of conclusions or hearsay any more than they can on direct examination. They have no more latitude in that than they have so far as the direct examination is concerned and it is immaterial for these other reasons.

THE COURT: He may answer the question.

A What was the question?

Q Read the question.

The question was then read.

A Well --

Q They stopped patronizing all stores except Mr. Weston's store, didn't they, or practically so? A I don't think so.

Q They stopped patronizing the banks, didn't they, and did their banking with Mr. Weston? A Some of them did I think.

Q The whole town of Telluride depends upon the mineral industry,

Q

doesn't it? A To some extent.

Q There is no great amount of agricultural country there?

A There is some.

Q Right there near the town of Telluride? A Not right in the town, but near there.

Q The men there are mostly miners? A Yes sir.

Q And the mines there situated are, so far as the production is concerned, practically confined to two very large mines, the Tombay and Smuggler Union? A They have been the principal mines for some years.

Q They employed the larger part of the population? A The Liberty Bell employs about the same number.

Q Well, we will say three, then, quite large mines, and the rest are comparatively small? A Yes sir.

Q Now, at the time that this strike was declared you immediately made the managers of these mines your deputies, didn't you?

A I did not hold the office of sheriff at the time the strike was declared.

Q Well, as soon as you became sheriff, did you? A I was elected that fall.

Q You know Tom Herron? A I don't know Tom Herron.

Q Haver did know him? A No sir.

Q John Herron? A Yes sir.

Q The manager of the Tombay mine? A Yes sir.

Q And he was your deputy? A He held a commission as deputy,

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yes sir.

Q All the time that you were sheriff of San Miguel county, or during the strike? A Most of the time.

Q And he was your counselor, wasn't he, in all matters pertaining to the strike? A Oh no.

Q Did you select any member of the miners' union to make a deputy sheriff out of him? A I think not.

Q Bulkley Wells was a deputy sheriff too? A I believe so, yes sir.

Q And he who was the manager of the Liberty Bell? A Mr. Chase.

Q And he was a deputy? A Part of the time.

Q You made all the mine owners and bankers and some of the gamblers deputy sheriffs? A I don't remember that I made all the bankers deputies.

Q Didn't Wheeler hold a commission, of the First National Bank? A I don't think he did.

Q And French? A I think he did.

Q And you made Mr. Curry a deputy, who was connected with the newspaper there? A I don't think he was.

Q Now, this call for troops was made at the request of Tom Harron and Bulkley Wells and yourself, was it not? A Not all together, I think.

Q Wasn't they the principal ones? A They had something to say about it.

Q Bulkley Wells was the manager of the Smuggler Union?

A Yes sir.

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Q And Venetta was the mine owners' attorney? A No sir.

Q Wasn't he? A No sir, he is not an attorney at all.

Q He is a merchant? A Yes sir.

Q And you say yes? A Yes sir.

Q You were the four who called for the troops in November, 1903?

A Yes sir.

Q You did not call for them to take full charge down there at that time, but to aid and assist you? A Yes sir.

Q And the aid and assistance you wanted was to run the miners' union out of there? A No sir, it was not to run the union out.

Q Didn't you have a large number of the members of the miners' union arrested and charged with vagrancy because there was no other charge that could be made against them, and when you examined them you yourself took off of them sums ranging from three dollars to six hundred dollars? A No sir, I don't remember that at all.

Q Don't remember about that vagrancy charge being tried there?

A I remember there was a vagrancy charge at one time.

Q And the only one whom you got who was a real vagrant was a man who hung around the saloons there, and you let him off?

A I don't remember as to that.

Q And the miners had anywhere from forty to six hundred dollars which you had in your possession at the time they were tried?

4583 A I don't remember of taking any amount of money off of them

men at all.

Q Don't remember of returning it to them after they were discharged? A I don't remember of it at all.

Q And don't remember of running them out of town after they were discharged? A Some of them were, yes sir.

Q And they were run out by what you are pleased to term the citizens of Telluride, weren't they, a mob composed of the citizens of Telluride, and headed by Hukley Wells, without any warrant or authority of law? A I don't remember of Wells playing any prominent part in it.

Q Didn't he lead the forces? -- Didn't he?

A I am not sure as to that.

Q There was no martial law at that time, was there? A I think not.

Q A. H. Flosten was one of the men that was run out? A I believe so.

Q And he was beaten over the head by one of your deputies?

A I did not see it.

Q And I went down there to try a law suit and one of your deputies beat me over the head? A I did not see it.

Q You was not there at that time?

MR. HAWLEY: I object to this.

THE COURT: The witness has already been instructed to testify only to what he knows.

Q You r deputies and yourself aided the mine owners' association and inflicted punishment upon any miner or any one who

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- represented them? A Oh no, we didn't do that at all.
- Q There was no desire upon the part of those who called themselves the citizens' alliance, composed of the bankers and the gamblers and the merchants as I have stated, there was no desire on their part to create a disorder, and no disorder on their part was there? A Not to any extent.
- Q Well, to what -- what do you call to any extent, Mr. Rutan?
- A Well, I did not see that deportation at all.
- Q Did you go out of town so you would not see it? A I did not.
- Q Were you out of town when it occurred? A No sir, I was in town.
- Q You kept out of the way, did you? A I happened to be in bed at that time.
- Q And some of those fellows who were taken out were in bed at the same time, weren't they? A I don't know.
- Q Did you make an investigation of that deportation? A I did to some extent.
- Q You know it was done by your deputies, from your investigation?
- A Some of them no doubt held commissions.
- Q And not a complaint sworn to against any of them? A I think not.
- Q And not a deputy's commission revoked on that account?
- A I don't remember it.
- Q Now, as a matter of fact, when the strike occurred down there, the mine owners' association and those who thought they were dependent on them on the one side, started in to run out

those connected with the miners' union and declared that they could not stay there any longer? A I never heard that at all.

Q Now, this man Moyer who was down there, he did not go in there willing but you went and got him? A Yes sir.

Q And you, among others, secured the enforcement of martial law upon the very day that you learned he was down at Ouray so as to have martial law declared? A I think his arrest was in March.

Q Yes, and that was the time that full martial law was declared?

A No, I think martial law was declared in January.

Q Hasn't martial law been declared off after the 3rd of January?

A It was declared off in March.

Q It was declared off -- A In March.

Q Did you ever hear of general order No. 15, dated "State of Colorado, Adjutant General's Office, Denver, Colorado, March 23, 1904.

General Orders. No. 15.

The following proclamation is issued from these headquarters for the information and guidance of all concerned, and it will be obeyed and respected accordingly;

Whereas, there exists in San Miguel County, Colorado, a certain class of individuals who are acting in conjunction with a large number of persons outside of said county, who are fully armed and acting together; and,

Whereas, open and public threats have been made to resist the laws of this state and offer violence to citizens and

property located in said San Miguel County; and,

Whereas, at divers and sundry other times various crimes have been committed in San Miguel County, by, or with the aid and under the direction of said vicious and lawless persons; and,

Whereas, threats, intimidations and violence are threatened, and believed will be, resorted to by said lawless class of individuals; and

Whereas, it is stated to me by the sheriff of said San Miguel County, that these forces within and without said county are about to join forces within said San Miguel county, for the purpose of destroying property and inflicting personal injuries upon the citizens of said county, and

Whereas, by reason of such lawlessness and disturbances, and threatened acts of violence, the civil authorities are unable to cope with the situation,

Now, Therefore, I, James H. Peabody, Governor and Commander in Chief of the MILITARY FORCES, by virtue of the power and authority in me vested, do hereby PROCLAIM AND DECLARE the said county of San Miguel, in the State of Colorado, to be in a state of INSURRECTION AND REBELLION.

JAMES H. PEABODY,
Governor and Commander in Chief.

Official:

Sherman H. Bell,
Brigadier General, Adjutant General,
State of Colorado.

By command of James H. Peabody, Governor and Commander in
Chief.

SEYMOUR M. HILL,

Brigadier General, Adjutant General,
State of Colorado.

The Quartermaster and Commissary General's Department will
furnish necessary transportation and subsistence for the purpose
above indicated.

The travel enjoined is necessary for the public service.

By command of James H. Peabody, Governor and Commander in
Chief.

(Signed) SEYMOUR M. HILL

Brigadier General, Adjutant General,
State of Colorado.

2:30 P. M., Union Depot,

Denver, Colo., March 24, 1904.

Order: Pursuant to instructions contained in Executive
order and General orders No. 16, Adjutant General's office, dated
March 23, 1904, the undersigned hereby assumes command.

(Signed) SEYMOUR M. HILL,

Brigadier General, Adjutant General,
State of Colorado."

Q. Now, does that refresh your recollection any as to when martial
law was declared in that district? Does that refresh your
recollection? A. No, not to any extent.

March of 1904, Judge Theron Stevens issued an injunction permitting the men that you call the citizens of Telluride,-- that is, permitting the men who had been deported to return to their homes in Telluride, unarmed? A Yes sir.

Q And you heard about a telegram sent by Mr. Meyer, sent on the 23rd, to the Governor of the State, asking if they would be protected? A Yes, I know of it.

Q You know about that, didn't you? A Yes sir.

Q And you know that as soon as Governor Peabody got that telegram he telephoned you in respect to it, didn't he, or you telephoned to him,-- he called you up on the telephone, didn't he? A I think no- I have forgotten about that.

Q That is so? A It may be so.

Q And he told you about getting this telegram from Mr. Meyer, didn't he? A Well, I said I have no recollection of it, that was some time ago.

Q You have some recollection of it now, haven't you? Do you remember it now? A No sir, I don't.

Q Well, do you remember this one:

"Sherman K. Bell, Brigadier General and Adjutant General State of Colorado, commanding troops in military district, San Miguel County.

Your petitioner respectfully represents and petitions you as follows, to-wit: On the 25th day of March, A. D. 1904, a warrant for the arrest of one Charles Meyer was duly issued by the Honorable P. A. Lilly, a justice of the peace of and within

the county of San Miguel and State of Colorado, upon complaint duly made before the said justice court according to law by H. A. Wood, Esq., a citizen of said county; that pursuant to said warrant the said Charles Moyer was arrested in the County of Ouray and State of Colorado, and that J. C. Rutan, the sheriff of San Miguel county is now within said Ouray county, attempting to bring the said Charles Moyer from said Ouray county to San Miguel county in accordance with law; that the said J. C. Rutan is being resisted by a large mob of persons in said Ouray County, who are attempting to prevent him, the said J. C. Rutan, from bringing said Charles Moyer to the county of San Miguel County, in accordance with the mandate of said warrant, and in accordance with law.

Wherefore your petitioner prays that you do furnish such assistance to the said J. C. Rutan, through the military forces on duty in San Miguel County, as may be necessary for the bringing of the said Charles Moyer to the said County of San Miguel.

Dated March 26th, A. D. 1904.

J. C. RUTAN,

Sheriff.

By Willard Rannell,

Deputy in charge of office."

Q Do you remember about that? A I was in Ouray when that was sent.

Q You remember about the issuing of this by Willard Rannell?

A I heard about it after I got home.

- Q You had no trouble about going and getting Moyer? A No sir.
- Q He simply declined to go to Ridgway to suit your convenience, and he told you that if you had a warrant for him you could come up there and read it. A Yes sir.
- Q But he did not resist you at all, did he? A No sir, he did not.
- Q Now, when the troops were ordered in there, you were sheriff of that county were serving these papers upon these men whom you call the citizens of Telluride? A There were some served, yes sir.
- Q They had all been delivered into your hands for service, and some of them were served? A Yes sir.
- Q And then and there you commenced to have a conference with the Governor of the State to see if you could not prevent these men from coming back peaceably to their own homes,-- isn't that right? How is that, Mr. Eaton? A That had slipped my memory.
- Q Kind of slipped your memory, has it? A Yes sir, I have forgotten about it.
- Q Have forgotten all about it? A I hadn't thought of it.
- Q Now that I repeat it to you it sounds kind of familiar, don't it? A There may have been something.
- Q You people were determined down there that these people who were running their own store and who were out on strike should not live in San Miguel county, weren't you? A No sir.
- Q But you had deported them nevertheless? A Some of them were deported.

- Q And you had not made any resistance to it as sheriff nor taken any part in their behalf toward enforcing their rights at all? A I had not made any resistance.
- Q And you got some little buttons with "They can't come back," and had them there in Telluride and wore them on your coats?
- A I didn't wear them.
- Q You deputies wore them, didn't they? A I don't remember that they did.
- Q You don't remember that they did? A Some of them may have.
- Q You saw enough of them to know that they were there?
- A I saw some of them.
- Q And you knew these men had been deported? A Yes sir.
- Q And yet you made no complaint with respect to that notwithstanding the fact that you were the chief executive officer of the county? How is that, Mr. Eaton?
- MR. HARRON: Can't you answer the question.
- A I did not make an effort to punish them.
- Q The only place where there was any particular difficulty was on the Tomboy mine, wasn't it? There was more difficulty there than anywhere else. A The main difficulty was on the Smuggler Union mine; that was where the big riot was.
- Q That riot which you speak of was three years before that, wasn't it? A Two years before that.
- Q A little more than two years, wasn't it, about two years and a half? A A little over two years.

- Q Do you know a man down there named Blidell? A Yes sir.
- Q You know him when he was there? A Yes sir.
- Q You know he was a Pinkerton? A I heard of it after he was deported.
- Q Didn't you have information that he was a Pinkerton before he was deported? A No sir.
- Q He was one of the main men in the union that you people found fault with, wasn't he? A I don't know that we had any more fault to find with him than with the rest of them.
- Q Don't know about that? Very well, you had a deputy down there by the name of Meldrum, didn't you? A Yes sir.
- Q Where did you get him from? A I did not get him at all.
- Q You appointed him deputy as soon as he got there, shortly after he got there? A Yes sir.
- Q You know he was brought there by the mine owners association of Telluride? A I don't know who brought him there.
- Q You know he was put on the payroll of the mine owners association? A I don't know that.
- Q Well, he was serving as your deputy and while he was so serving as a deputy sheriff under you he was not paid by the county, was he? A Not to my knowledge.
- Q He was either paid by one of the big mines or the mine owners association? A He got pay from somewhere.
- Q Where did he come from? A I have heard that he came from Wyoming.
- Q Who sent for him? A I could not tell you.

Q You have no knowledge on that subject? A No sir, I have not.

Q Did you hear who he was? A Did I hear who he was.

Q Yes. A No sir.

Q Did you ever hear he was a partner of Tom Horn's in Wyoming?

MR. HAWLEY: We object to all this as hearsay and rumor.

THE COURT: Have you any other ground for objection?

MR. HAWLEY: Yes, we object to it as incompetent, immaterial and irrelevant and not proper cross examination.

THE COURT: The objection will be sustained.

MR. RICHARDSON: Note our exception.

Q Do you know Willard Sannell? A I do.

Q He came in about the same time that Bob Melirus came in, didn't he? A About the same time.

Q Came from the same place? A I think so.

Q And was employed in the same way? A I think so.

MR. HAWLEY: We object on the same grounds.

THE COURT: He has answered the question.

Q He was a partner of Tom Horn's too, wasn't he? A I don't think so.

Q Was he gotten there to your knowledge because of his reputation as a gun man? A Sannell?

Q Yes. A I did not consider he was a gun man.

Q I asked you if he came there as a gun man? A No sir.

Q Did you know that Melirus was gotten because of his reputation

as a gun man?

MR. HAWLEY: We object to this as incompetent, immaterial and irrelevant, and not proper cross examination.

THE COURT: The objection will be sustained.

MR. RICHARDSON: Note our exception. I am asking as to his knowledge.

THE COURT: Well, the objection is sustained.

MR. RICHARDSON: We desire to save an exception to the ruling.

Q Was Sannella on your payroll? A Yes sir.

Q But not at that time, was he?

MR. HAWLEY: We object to all this as incompetent, immaterial and irrelevant and not proper cross examination.

MR. RICHARDSON: I have a right to know who his deputies were.

THE COURT: I think if that objection was made by counsel for the defense when you put this witness on the stand I should have sustained it. Answer the question.

A He was on my payroll for something over two years, I think.

Q Wasn't he there a couple years before he went on your payroll?

A I think for about a year.

Q Some of these injunctions that you had to serve at that time that you petitioned for martial law were injunctions against your own deputies, were they?

MR. HAWLEY: We object to that as incompetent, immaterial and irrelevant, and not cross examination.

THE COURT: Let him answer.

- Q Weren't they? A Against my own deputies?
- Q Yes sir, didn't you have injunction writs to serve on your own deputies? A No sir, I don't remember it.
- Q Do you remember who you did serve? A No sir, I could not tell at this time.
- Q Wasn't Willard Rannels, your deputy, the first man you served with a writ of injunction? A I don't remember.
- Q Don't remember? A No sir.
- Q And you don't remember of serving him at all? A No sir, I don't.
- Q You have spoken about Vincent St. John being up at the Tomboy mine? A Yes.
- Q Didn't you and Vincent St. John go to the Tomboy mine together? A We did not, sir.
- Q Never went up there together? A No sir, never on earth.
- Q Were you in the pay of the Mine Owners Association? A I was not.
- Q Did you get anything from them for your services? A No sir.
- Q You counseled daily with John Herren of the Tomboy mine? A No sir.
- Q You did not? A No sir.
- Q He was really the man who was handling the county affairs, wasn't he? A I did not consider it so.
- Q The Tomboy mine was the largest taxpayer in the county, wasn't it?

MR. BORAH: I suggest that that was largely hearsay. We object to it as incompetent, immaterial and irrelevant, and calling for secondary evidence.

THE COURT: The objection is sustained.

MR. RICHARDSON: Note our exception.

Q Whatever you did down there, or your deputies, they did for nothing? A As far as I know, outside of --

I suppose, outside of Holbrook, they received pay from some source.

Q Walter Kinley got his pay the same way? A I don't know.

Q He was employed by the mine owners' association to your knowledge wasn't he? A I don't know that he was.

Q Got his pay from John Harren? A I don't know it.

Q And got his orders from John Harren, too, didn't he? A I don't know that he did.

Q Who solicited you to appoint as deputy sheriffs of that county, Walter Kinley, Bob Holbrook, and Willard Duncilly? A I don't remember now at this time who did.

Q Not one of the three of these men were residents of the county at the time were they? A Yes sir.

Q How long had they been residents?

MR. HAWLEY: We object to that as incompetent, immaterial and irrelevant.

THE COURT: The objection is sustained.

MR. RICHARDSON: Note an exception.

Q Didn't they become residents of San Miguel County the very time they received a commission from you?

MR. HAWLEY: We object on the same ground as to the last question.

THE COURT: The objection is sustained.

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

MR. HAWLEY: That is all.

Thereupon the court admonished the jury in accordance with the statute, the bailiffs were sworn, the jury retired in charge of the said bailiffs, the defendant was remanded to custody, and an adjournment was taken until 9:30 o'clock A. M., Wednesday, July 17th, 1907.

ADJOURNED.

Dallas, Texas, Wednesday, July 17th, 1907.

9:30 o'clock A. M.

Parties not returned to adjournment.

The minutes of the session of July 16th, 1907, read and the same were signed by the court.

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

MR. RICHARDSON: We desire to notify the State, if your Honor please, that we wish the witnesses Scott, Deary and Brian to remain.

MR. HASKIN: I don't know whether Deary is here.

MR. STUBB: Yes, he is here.

MR. JENNISON: I saw Mr. Deary this morning, Mr. Haskin.

MR. TAYLOR: That will be all right.

THE COURT: Are these witnesses in the court room who have just been named by Mr. Richardson?

(There being no response the court said):

You notify them or see they are notified, Mr. Haskin.

MR. HASKIN: I will do so.

THE COURT: What are the names?

MR. RICHARDSON: Scott, Deary and Brian.

THE COURT: Mr. Haskin, are you any better advised this morning than you were last evening about how long a time will be required to complete the exhibit?

MR. HASKIN: It seems to me that we ought to conclude

the related way, but I cannot tell on account of being unable to know anything about the cross examination. I will say we will conclude it as quickly as possible. I will further say, if your Honor please, that I will continue the related testimony if I can, but I have been quite weak for the last two days. I hope I can continue, but if I have to quit, I may desire a very short adjournment of an hour in order to arrange things for another counsel to continue this. I think I can stand it, probably, for today. I have not been well for the last two days.

MR. RICHMOND: Would it be inappropriate to inquire whether your Honor will take some time to consider the instructions that will be submitted?

THE COURT: The court of course will want to hear from counsel upon any questions that may be at all doubtful.

MR. RICHMOND: I inquired for another purpose --

THE COURT: There will be questions the court will submit to counsel as to the construction of certain evidence which has been introduced both by the State and by the Defense. There are questions of evidence to be settled and the court will advise counsel in relation to it before you commence your argument.

MR. RICHMOND: Does the court propose to instruct the jury in advance or simply settle the instructions?

THE COURT: As a rule, the court proposes as far as it can to settle the principal points of the instructions so that counsel may know what the court will instruct preceding your argument, but it will be impossible of course for the court

to consider all of the instructions before the argument.

MR. HANLEY: I would ask counsel on the other side if they can indicate how long it will take on our rebuttal? I am not asking for curiosity.

MR. HANLEY: Very short, Mr. Haskin.

MR. HANLEY: Take you a day, do you think, on our rebuttal?

MR. HASKIN: Oh, you know of one witness I have been asking you about, if he goes on we have two or three witnesses on that. If another one of yours goes on we will have a couple on that. Outside of that we haven't much of anything. I don't believe we will take a half a day, and maybe nothing.

MR. HANLEY: I don't know how long it is going to take to finish these instructions, in the reason I am asking.

MR. HASKIN: I shall expect the State to furnish no requests for instructions on their view of the law of this case.

MR. HANLEY: The reason why I inquired was in reference to the work or preparation of the argument. Of course you will understand if you are going to take some time to consider the instructions it would give me a little bit more time.

MR. HANLEY: That interests me more than anyone because I shall make the opening argument on our side.

MR. HASKIN: The court has already indicated that it did not intend to limit you on the argument, but the probability in the court will increase the hours.

MR. HANLEY: The only thing, your Honor is this, the

attorney that commences on the part of the prosecution immediately after the conclusion of the case has a right then to arrange the order of argument or anything beforehand, and the reason I was inquiring at the present time in regard to the probable length of these matters was to see whether I would have an opportunity to do that or not.

THE COURT: You will probably have time, Mr. Hawley.

MR. HAWLEY: I don't know how long it would take, and my course here might depend on that.

MR. HICKMAN: I think we ought to be heard on the question of an increase of hours in the argument. That is the chiefest part of the work for the counsel and I think it is for the jury. I wouldn't want to talk over five hours a day if I could help it.

MR. DUNN: Perhaps that is a way the court has of limiting the argument.

MR. HAWLEY: I presume that would immediately shorten the argument.

THE COURT: Call your witness, Mr. Hawley.

O. M. BACCHET, a witness on behalf of the People in
rebuttal, being first duly sworn, on oath testified as
follows:

DIRECT EXAMINATION

BY MR. BACCHET:

Q. What is your name, sir? A. O. M. Bacchett.

Q. Where do you reside, Mr. Bacchett? A. Telluride, Colorado.

Q. How long have you resided in that vicinity? A. About fifteen
years.

Q. And in what employment? A. Superintendent of the tramways
for the Sangre-Union company.

Q. How long have you been such superintendent? A. The same
length of time.

BY COUNSEL: Superintendent of what?

BY WITNESS: Of tramways.

Q. Do you know the strike that was on in the Telluride country
in 1901? A. Yes sir.

Q. What time did that strike commence? A. May the first, 1901.

Q. Who was it -- in what particular employment were the men on a
strike at that time? A. What is the question, please.

Q. Who was it that was on a strike at that time?

A. It was the local union of the Western Federation of Miners.

Q. What was the effect so far as work on the mines was concerned?

A. It stopped the work entirely for a day or two.

Q. Was there any trouble in that vicinity in which you were
interested or engaged shortly afterward? A. Why, yes sir.

Q. Where was this trouble? A. The principal trouble was at the
Sangre-Union mine.

- Q. What did it consist of? A. We called it a riot.
- Q. About what time was it? A. Commenced early the morning of July 3rd.
- Q. 1901? A. 1901.
- Q. How did it commence? Give the particulars as far as your own knowledge extends in regard to it? A. The shooting commenced and it was continued during a considerable portion of the day.
- Q. Where was the shooting from and who by? A. It was from different groups of men hidden in three or four different spots immediately surrounding the Million Tunnel.
- Q. Is the Million Tunnel one of the tunnels of the Suggler-Union mine? A. The main outlet of the Suggler-Union mine.
- Q. What time did this shooting commence on the 3rd?
- A. Somewhere in the neighborhood of half past four or five o'clock in the morning.
- Q. Was you there at the Mine when it first commenced? A. No sir.
- Q. What time did you go up? A. I started up at eight o'clock.
- Q. What did you find the condition of affairs to be when you got up there? A. When we arrived at the mine --

MR. RICHMOND: We move to strike out his testimony so far as it relates to any matter prior to eight o'clock.

MR. HANSEN: That can be done unless we identify it afterwards.

MR. COURT: Motion denied.

MR. RICHMOND: Note an exception.

MR. COURT: The court announces that he is testifying to what he knows. He may know without being there.

MR. BUCKLEY: What is the question?

(Question read).

Q. I would like to know, your Honor, if I can make a statement of this matter starting from the time I got there?

THE COURT: You may answer the question, Mr. Witness.

Q. Put it in a narrative form, Mr. Bockett, but tell what you yourself know, what you saw and heard. A. A party including myself arrived at the mine about eight o'clock. We were under fire from different groups of men from the time we got to the Million tunnel until we got under shelter.

Q. Where were these different groups of men situated?

A. One was situated on what was known as the High Line trail directly above the Million tunnel; the other on the Tomboy train about a quarter of a mile to the east of the Million tunnel.

Q. Could you tell who it was, could you distinguish the parties?

A. No sir.

Q. Go ahead with the narrative. A. We went into the office building, found it deserted, rather unsafe to stay there because of the bullets whistling through. I suggested to the party that we get out of there. We made a run for the Tramsy building and as we were going from the office building to the Tramsy building we were again subjected to a fusillade --

Q. From where? A. -- no one being hurt.

Q. From those same men? A. Yes sir. From the Tramsy building, which we found deserted, we went by a covered track way to the cook house, where we found Mr. Becker lying, who had been shot in the arm.

- Q. Who was Mr. Becker? A. He was the superintendent of the mine.
- Q. What was the condition of that portion of the mine as far as bullet holes and so on were concerned? A. That part was comparatively safe from being hit by the bullets, being well situated under the hill.
- Q. Where was the headquarters of the union at the Western Federation at this time or had it been immediately prior to this time in that section? A. Their headquarters or meeting place was in the town of Telluride.
- Q. Well, as far as this particular section near the mine was concerned for meeting? A. They congregated at and frequented a place called "Broken Nose Smith's place" a union store.
- Q. And where was that situated with reference to the Enggler-Dubin Union mine? A. About one hundred yards or one hundred and fifty yards east of the postoffice building, which was right at the Enggler-Dubin boarding house on the main trail.
- Q. Who was the head officer of the union at that time in that section? A. Mr. St. John.
- Q. Vincent St. John? A. Yes sir.
- Q. ~~During~~ ^{During} this day while this affair was going on or afterwards, did you have any communication with Vincent St. John, if so, what was it? A. I did.

MR. RICHMOND: We object to that, if your Honor please, as immaterial, not rebuttal evidence nor tending to rebut anything that has been introduced in this case, as not binding upon the defendant.

THE COURT: I don't know, Mr. Hawley, just what you expect to show by that conversation. Do you expect to show by this conversation that St. John was a prominent member of the union --

MR. HAWLEY: The question is simply this, if your Honor please, as I take it: Evidence has been permitted to go in over our protest in regard to the condition of affairs at Telluride and in that district. This is to explain some of those matters and in regard to the causes which led to those matters which have been testified to by their witnesses, the depositions and other things, simply asking for the causes which led up to them. Now this is one of those causes. And if anything suggested it or if there is anything to show who was engaged in this, we think it is competent and pertinent and therefore we will follow this up by showing that St. John, an active union man, and other union men --

THE COURT: I will state to you, Mr. Hawley, that as the court views this evidence, the testimony that you are seeking to relate is not all material in the present situation of this case.

MR. HAWLEY: If that is the case, your Honor, then we will confine our rebuttal to some specific notes instead of going into it generally.

THE COURT: That is one of the matters the court is going to hear you upon before settling the instructions. The court will limit you, Mr. Hawley, in any event, in this connection to showing the relationship of St. John to this difficulty.

MR. HANSEN: Yes sir, that is what we are trying to limit ourselves to. Read the question.

(Question read).

A. I did communicate with him, called him on the telephone.

MR. HANSEN: Note our objection.

MR. HANSEN: Telephoned him where?

A. Found him at the union store.

Q. At Boulder? A. Yes sir, I asked him if he would come over to the postoffice. He said that the committee wouldn't let him. I asked him if he would come half way? He said --

THE COURT: Mr. Hedley, this testimony is going in under objection.

MR. HANSEN: I understand it.

THE COURT: I do not think the court will permit you to go into the details. If he had a personal interview with him subsequently as president of the union, you may state that fact. But there is no necessity of going into all the details. The court will sustain the objection that far.

MR. HANSEN: It shows the condition of affairs at that time. I don't care about this matter except as preliminary. In order to show a meeting afterwards we have got to show what led up to it. I will ask the witness not to state the conversation any more than he can help but simply state what resulted.

A. I met him to arrange the matter if possible of having the firing come, and we did make that arrangement.

Q. Where did you meet him? A. I met him about half way between the postoffice building and the union store in front of what was then known as Lager's livery stable on the trail.

Q. Who was with you and who was with him, if anyone? A. With me was a man by the name of "Fat" Bentley, called Red Bentley, and Ben Curran. I don't know who was with St. John. There were two men with him, two or three, I have forgotten just which.

Q. After you met St. John what conversation did you have with him in regard to this difficulty? A. I asked him what this meant, and he said it meant that these fellows had got to get off the hills.

Q. Who was he referring to, if you know? A. The men who were working around and in the Engler-Union mine at that time.

Q. Go ahead. A. I told him he had no authority to take the men off of the hill, but that I wanted to make some arrangement by which the possible killing of innocent persons would be avoided. We talked some further and we finally -- I finally agreed, no one being there in authority over me at the mine, that until Mr. Edgar Collins returned --

MR. DAWSON: We object to that, your Honor.

THE COURT: Objection sustained.

MR. DAWSON: I ask to have that last answer stricken out.

THE COURT: It may be stricken out.

Q. Tell what you said and what he said in regard to it -- not the conclusion but what was said as near as you can.

MR. DAWSON: I object to that.

MR. HAZLEY: We think it is competent, your Honor.

MR. DAWSON: A conversation with St. John?

MR. HAZLEY: St. John was at the head of the miners' union, your Honor.

QUESTION: If this fighting was stopped as a result of this interview with St. John, you say that that.

MR. HANLEY: I am trying to show that fact, and I want to show why I want to show the preliminaries, when the firing was stopped, this conversation was had, to throw some light upon these matters that have been the subject of this testimony in regard to Falluride. It shows in regard to these matters which have been sought to be charged upon other parties, and it throws light upon them. I propose to follow this up, if your Honor please, by showing that not only was this firing stopped but there was an agreement entered into between the parties. I will produce the agreement of the party that was the immediate superior of this party. Evidence has been introduced here under the premise, as I understood it, that it would be permitted so as to show that these troubles were the result of a conspiracy upon the part of the mine owners, upon the part of the District, and upon the part of someone else. Now, if I understood the rulings of your Honor right, the views of your Honor right, you are in serious doubt whether or not that evidence could be considered by the jury. But as long as there is a doubt in regard to the matter and as long as that kind of evidence has been admitted, then we think, your Honor, that we should be permitted to come in and prove specific acts wrong in regard to these outrages and especially matters of this kind where the leader of the union actively participated and were parties to it, because we are in that condition that all of this evidence that was responsible for us to move to strike out because it was so intimately connected

and blended with evidence that was proper that it would make it impossible to make the motion, and there isn't a doubt as to what the instruction of the court will be, as I understand it. We do not care to go into this question fully, but still think as far as specific matters are concerned it is proper and necessary at the present time in view of all the circumstances.

THE COURT: I do not think, Mr. Huxley, I will permit you to go into these details.

MR. HUXLEY: Then I don't want to do it, that is, on the assumption that your Honor will take certain views of this matter in the instructions.

MR. RICHARDSON: Will your Honor permit me to call your attention to one matter with respect to this evidence. We have objected to all of it. Now I want to call your Honor's attention to the fact that the state introduced evidence with respect to the condition of affairs in Colorado which resulted in the arrest of Mr. Elyer upon March 23, 1904, and that was a result of the trouble which took place there commencing on September 1st of 1903, when the mill men went on a strike. Now our evidence was limited purely, if your Honor please, to that strike. There wasn't a suggestion or connection with any other strike.

THE COURT: Also the conditions which led to the declaration of martial law.

MR. RICHARDSON: Yes sir, commencing with September 1st, 1903. The evidence was limited exclusively to that. Now this man is testifying to a condition which existed in 1903,

which was absolutely settled and determined and everybody was in a peaceable condition down there and there was no trouble of any kind or character until September 1, 1900, a period of two years and three months anterior to the time that there is any testimony in this case, if your Honor please.

MR. HANCOCK: All of these troubles in these matters have been connected together, and have during the progress of this case all the time and on all occasions.

MR. HANCOCK: Why not go into the Idaho City strike in nineteen hundred and —

THE COURT: The court has stated you may go into those matters back to 1901 for the simple purpose of showing the conditions which led up to the declaration of martial law at a later period as testified to here by various witnesses.

MR. HANCOCK: I think there was an earlier strike than that in California.

- Q. Did you come to an agreement or understanding of any kind at that time? A. Yes sir.
- Q. By whom was this agreement finally made and consummated? A. Between Vincent St. John and Roger Collins.
- Q. Who was Roger Collins? A. He was assistant manager of the Douglas Union mine.
- Q. State whether or not that agreement was reduced to writing and signed. A. It was.
- Q. By whose parties? A. Yes sir.
- Q. Was you present at the time that it was done? A. Yes sir.

Q. Did you see it signed? A. I can't say that I actually saw the man inscribing the names, but I saw the man in the act of doing it.

MR. HANSEN: Mark that as an exhibit.

(The paper headed the stenographer was marked by his State's Exhibit 2-3 for identification).

Q. State what paper that is. A. That is the agreement written by Edgar Collins.

MR. DANFORD: Don't it show?

Q. Signed by whom? A. Signed by Edgar Collins and St. John.

Q. That is the agreement you have been testifying in regard to? A. Yes sir.

MR. HANSEN: We offer it in evidence.

MR. PROSECUTOR: If your Honor please, we object to State's Exhibit 2-3, for the reason it is not material evidence, not connected with the defendant in any way, shape or form, immaterial, irrelevant, incompetent and improper.

THE COURT: Do you know when this was executed in reference to the time of the shooting testified to by this witness? A. It was immediately after.

THE COURT: I am asking if the evidence shows.

MR. HANSEN: Yes sir, but I will report it though.

Q. How long was this signed after you went up and saw St. John?

A. Probably within an hour and a half from the time that I first saw him.

Q. Where was Collins at the time of this interview between St. John and yourself? A. He had gone back down the hill to the office.

Q. In the office, where was this paper signed?

- Q. The paper was signed in the store in which was situated the post office building there at Haggler, Colorado.
- Q. And after your interview with St. John what was done, where did you and St. John go if anywhere? A. We went up to the store.
- Q. Up to the postoffice store? A. Yes sir.
- Q. And did you find Collins there? A. Mr. Collins had returned and I turned the matter over to him.
- Q. And how long was it then until this treaty followed, this agreement was made? A. Within a few minutes.

THE COURT: The court will overrule the objection and admit this offer.

MR. HARRISON: No further exception.

THE COURT: For the purpose of showing the animosity in which St. John was acting.

MR. HARRISON: In offer in as follows, gentlemen:

"It is hereby agreed between the Miners' Union by V. St. John, Presd., and the Haggler-Union Mining Company, by Edgar A. Collins, that all work shall cease in said mine for the space of three days, ending Friday evening. Also that the said Miners' Union shall refrain from violence, either to person or property, for the same period. The said Haggler-Union mine is to have the right to keep four men on watchmen at the Billion tunnel, one at Penn tunnel, and one at Sheridan camp. Agreed to this 3rd day of July, 1901.

Haggler-Union Mining Company,
By Edgar A. Collins, Assistant Manager.

V. St. John."

- Q. What was done after this agreement was signed, if anything?
- A. The men who had been working at the mine were lined up and marched out of the county.
- Q. Marched where? A. Out of the county.
- Q. Who by? A. By a force of armed men who had done the firing on the mine that morning.
- Q. And how were they marched out of the county? A. Marched into a line and made to walk out.
- Q. And was St. John himself present when these men were forced out of the county? A. He was present, yes sir.
- Q. How far is the county line from these works, the Smuggler-Union works? A. I would say that it was about two and a half miles or three probably.
- Q. These men that were marched out were men that had been working in the mine? A. Working in and around the mine, yes sir.
- Q. Non-union men? A. Yes sir.
- Q. What trouble succeeded afterwards -- state whether or not any trouble succeeded after these men were deported?
- A. There was no trouble immediately succeeding that.
- Q. Well, did the men resume work? A. In a very few days we were working again.
- Q. When was the next trouble, Mr. Inckett? A. The next trouble that we had was the killing of the manager.
- Q. Who was that? A. Mr. Arthur Collins.
- Q. Do you remember the date of the death of Arthur Collins?
- A. The 19th of November, 1903.
- Q. Do you know anything about the circumstances of that of your own knowledge? A. Why, I saw Mr. Collins --

MR. RICHARDSON: One moment. He asked if you know about it, yes or no.

A. Yes, I know; I know some of the circumstances.

Q. You may state those circumstances as far as you know them.

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant, not rebuttal testimony, not connected with this defendant in any way, shape or form.

MR. HADLEY: A part of this case system, your Honor, to which we are referring.

THE COURT: He may answer. I do not intend, Mr. Hadley, that you shall go into minutiae of the details.

MR. RICHARDSON: Note our objection.

A. I saw Mr. Collins after he had been shot, and saw the window through which he had been shot, and know all of the circumstances of the doctor being there and taking care of him, know when he died.

Q. Did you know anything about the disappearance of a man by the name of Barney? A. Yes sir.

MR. RICHARDSON: We object to that as not rebuttal evidence, as incompetent, immaterial and irrelevant, not connected with this defendant.

THE COURT: He may answer.

MR. RICHARDSON: Note an objection.

A. I do know.

Q. Who was Barney, by the way? A. Barney was a man who worked in the Bangler-Union mine.

Q. When did he disappear, if at all? A. He disappeared in 1902; it was March of 1902.

Q. Do you know anything about the disappearance or death of a man by the name of Smith? A. Yes a Mr.

MR. RICHMOND: We object to that as incompetent, immaterial and irrelevant, as not relevant evidence.

THE COURT: He may answer.

MR. RICHMOND: Note our objection.

Q. When was that? A. It was in the latter part of the summer, 1933.

THE COURT: This is simply permitted to be introduced to show the conditions which led up to the declaration of martial law.

Q. Do you know of any other deaths or disappearances at this time, between this time and the time the troops were brought in there?

MR. RICHMOND: We object to that as immaterial, irrelevant and incompetent, not relevant testimony.

THE COURT: He may answer.

MR. RICHMOND: An objection.

A. Not that I know of personally. I heard of different ones.

Q. What was the general condition there of that section of the country as far as beatings and threatenings and all that were concerned outside of these disappearances or deaths?

MR. RICHMOND: We object to that, if your Honor please as incompetent, irrelevant and immaterial, altogether too general, is not connected with this defendant in any way, not relevant evidence, and as calling for hearsay.

THE COURT: So far as this witness knows.

MR. RICHMOND: Note an objection.

A. The condition was one of unrest, uncertainty; men were afraid to go to work, you could hardly hire a man to go to work on account of his fear of being beaten up if he did go to work.

Q. When was it that troops were first brought in there?

A. The 24th of November, 1902.

Q. 1902?

MR. RICHARDSON: He is mistaken about that date, Mr. Hawley.

MR. HAWLEY: That is what I was trying to explain, the date.

A. The 24th of November, 19 --

Q. When was it with reference to Arthur Collins' murder?

A. When was it?

Q. Yes. A. Oh, it was the fall after.

Q. The fall of the next year? A. Yes sir; that would be 1903.

Q. Arthur Collins was killed in the latter part of 1902, wasn't he? A. Yes; this was the year after, 1903.

Q. Do you know the circumstances surrounding the bringing in of the troops? A. Yes sir.

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent, not rebuttal testimony.

Q. State whether or not there had been any other --

MR. RICHARDSON: Wait until the court rules.

THE COURT: He may answer.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: I beg pardon. I didn't notice you were objecting, Mr. Richardson.

MR. RICHARDSON: All right.

- Q. Had there been -- immediately prior to the bringing in of the troops had these troubles become intensified in any way?
- A. There were continually threats and men were being stopped from going to work, terrorized in other ways to prevent them from working.
- Q. Can you give us any information as to the causes, the immediate causes that led up to the troops being brought in? Were you a party to the bringing of them in or asking for them?
- A. No, I had nothing to do with the asking for them.
- Q. Immediately prior to their being brought in how was it about the mines being worked? A. Couldn't get any men to work so that they could work at all, just a few on the force, but no men that they could carry on operations with to amount to anything.
- Q. State whether or not that is a mining country exclusively or practically so? A. Why, practically that is all there is there.
- Q. A mining country. After the troops were brought in in 1903 state law matters were so far as being peaceable and quiet.
- A. After the troops arrived everyone felt greatly relieved; a great many who had refused --
- MR. RICHARDSON: We object to any testimony in regard to how everyone felt.
- MR. RAZLER: We don't ask for it.
- Q. State whether or not the mines resumed work and resumed their operations? A. They did.
- Q. How long did the troops remain there? A. Oh, must have been there two months or more, two and a half months.
- Q. Do you know whether martial law was declared while they were

There. A. It was.

Q. Do you know of people being sent west any under martial law?

A. Yes sir.

Q. Who was it that had the control at that time in the district while martial law prevailed?

MR. RICHMOND: We object to his testimony in regard to who had control under martial law. It would be nothing but his opinion upon the subject.

Q. Who was exercising active control and dominion there?

A. General Bell.

MR. RICHMOND: We object to it for the same reason, and we move to strike out his answer because it was given before the court had a chance to rule.

THE COURT: The court will permit the witness to answer.

MR. RICHMOND: Note our exception.

Q. Who was it, you say? A. General Bell.

MR. RICHMOND: Take the witness.

CROSS EXAMINATION

BY MR. RICHMOND:

Q. Mr. Bennett, the war of 1902 which you have described lasted exactly three days, didn't it? A. I think it was three days from the time it started until it ended.

Q. The trouble commenced on July 3rd and ended on July 6th?

A. Yes, yes, that was the time set for the operation of hostility to cease.

Q. Well, they did cease absolutely, didn't they?

A. So far as that armed force was concerned.

- Q. And there was no trouble between the mine owners and the mine operators from that time on until September 1st of 1903, isn't that correct? A. No, I don't think it is.
- Q. What was the trouble between July 30th of 1903 and September 1st of 1903? A. A kind of an armed neutrality to prevent men going to work, to prevent the operation of the mines.
- Q. Was there anything done? A. I can't say that it was done officially, but everything was done to prevent men's going to work that was possible to do.
- Q. Everything done what? A. I can't say that there was any official work done on the part of the Miners' Union, but everything was done that was possible to prevent the working of the mines in good shape.
- Q. Wasn't it a fact that the mine owners themselves were collecting the hospital assessments for the local union of the Western Federation of Miners and everything was harmonious between the union and the Mine Owners' Association? A. Not after that.
- Q. When? A. No sir. There was a hospital fee collected from each man.
- Q. Who collected it? A. It was held out at the office of the mining company.
- Q. You don't know who did the shooting there in the first place on that morning of July 31st? A. I didn't see the shooting done.
- Q. You don't know which side commenced it? A. Well, I could only give hearsay evidence on that fact.
- Q. You got up there at eight o'clock that morning, didn't you? A. Yes sir, or about that time.

- Q. Vincent St. John didn't come there until after you were there, did he? A. He was there, as soon as I could find out where he was he was there.
- Q. Do you know when he came there? A. No sir.
- Q. Did he come there with J. C. Hutson, the sheriff of the county that morning? A. I didn't see Mr. Hutson at all.
- Q. Didn't see him there? A. No sir.
- Q. And you don't know how nor when Mr. St. John came there on that morning? A. No sir.
- Q. No knowledge of that? A. None whatever.
- Q. Was or was not this agreement entered into on the 6th day of July of 1901 -- A. It was not.

Q. Wait a minute. I haven't got through with the question. This memorandum of agreement, on this 6th day of July, A. D. 1901, entered into between the Saenger Union Mining Company and Local Union No. 63, Western Federation of Miners, of the county of San Miguel and state of Colorado, witnesses:

That the differences & estrife existing between the parties hereto have been amicably adjusted on the following basis, to-wit:

First: The Union expresses its entire disapproval of the recent outrages.

Second: The company agrees not to discriminate against the union nor the members thereof, and the union and the members thereof undertakes not to interfere with nor select non union men.

Third: The company agrees to let the secretary or president of the local union have full access to its surface

workings at all reasonable hours, provided that the work of the men is not interfered with.

Fourth: The union agrees to use all its influence to stop the illicit selling of liquor in Marshall Basin or around the mine.

Fifth: The company is to have the right to let contracts to any men who wish to take them, all such contracts to be on printed forms which are hereafter to be drafted by J. E. Murphy, representing the union, and Jacob Pilliam, representing the company. Such contracts are to be for the period of one month, at the end of which time the work done under the terms thereof shall be measured up, and if it shall appear that the contractor has not earned three (3) dollars or more per shift, the company undertakes or agrees either to pay off the contractor at the contract rate, or to raise the contract price pro rata; that is to say, the price for the work will be raised so as to make it equivalent to three dollars per shift for future work of the same contractor.

Sixth: If the president or secretary of the union shall at this time represent to the management of the mine that any contractor is inefficient or dangerous to the safety of other workmen, or unable to carry out the requirements of the contract or agreement, the management agrees to measure up at once the amount of work already done by such contractor, and in the event of such amount of work being less than at the rate of three dollars per shift the company will pay him as is provided in paragraph 5 of this memorandum of agreement.

In Witness Whereof, the Sangre-Union Mining Company has

around its name to be filed by its general manager under the seal thereof, and the local union No. 43 has authorized its president and secretary to execute this agreement on its behalf and to affix the seal of the union.

Done in the city of Telluride, San Miguel County, State of Colorado, this 6th day of July, A. D. 1901. *

A. I understood there was such an agreement. I never saw it, I never knew it.

Q. Before having it read you were ready to say that there was no agreement entered into at all? A. I thought you were referring to the agreement we have been discussing here.

Q. And on that agreement the Western Federation of Miners worked with the Sangre-Union people from that time on until a general strike came on in 1903, isn't that right?

A. Certainly, you sir.

Q. Certainly? Well, very well. Now the mill men at that time were not members of the Western Federation of Miners at all nor affiliated with them, were they? A. I think not.

Q. And they did not become so until a considerable time afterwards, did they? A. I don't know whether they ever did or not.

Q. And when the strike of 1903 was called as a matter of fact it was called and maintained by somebody other than the local of the Western Federation of Miners, namely, the mill men?

A. I only know that the mill men struck.

Q. And because of the fact that the mill men struck conditions then became of such a character as that military law was

subsequently declared? A. No, I think not.

Q. So that the strike of 1903 did not grow out of the Western Federation, a union of the Western Federation of Miners or its local at all, did it? A. I think it did.

Q. You think it did. This strike of the mill men that you have referred to was making for a reduction of the working hours from nine to twelve hour shifts to eight hour shifts per day, that was the cause of the strike, was it not? A. I believe that was their demand, for another hour, you sir.

Q. The mill men at that time were required to work by the company twelve hours a day notwithstanding the fact that there had been a constitutional amendment passed reducing the work for mill men to eight hours a day? A. I believe that twelve hours a day constituted a day's work for most of the men in the mill.

Q. And they were making that those hours should be reduced to nine for a part of them and to eight hours for the balance of them, that is what caused the strike, wasn't it? A. I think that was the reason they went out.

Q. And this agreement was signed on November 20th, 1902, between the Miners' Union and the Territorial Mining Association that you know about, wasn't that? A. I don't know what agreement you refer to.

Q. There was an agreement, was there not, changing the scale of prices and perhaps affecting the hours agreement between the members of the Western Federation of Miners, as represented there in its local union, and the Territorial Mine Owners' Association. A. I think there was such an agreement about that time.

- Q. Now at that time the Western Federation of Miners were not on strike at all, nor any of the members of its union, were they?
- A. I can't say that the Western Federation was.
- Q. And at that time those mill men who were on a strike were not members of the Western Federation at all, that is right, too, isn't it?
- A. I don't know that they were ever members of the Western Federation.
- Q. When were the militia called off from the Telluride Mining district in 1904? A. I am not absolutely certain as to the date; it was in the early spring, though, January or February about time.
- Q. When they returned there, did they not, on March 23rd or 1904?
- A. Yes sir.
- Q. And between January and March of 1904 the Citizens' Alliance and Mine Owners' Association of the Telluride district had deported a large number of the Western Federation of Miners, had they not?
- A. There was a deportation of undesirable citizens there.
- Q. Between the time that the troops went out in January and the time when they came back in March, isn't that right?
- A. Just when it was I don't remember.
- Q. And you helped engage in that deportation, did you not?
- A. I did.
- Q. And Stanley Wells was in charge of the deportation, was he not?
- A. I don't think you are right.
- Q. And William Russell, deputy sheriff, had something to do with it, did he not?
- A. I think he was with us, yes sir.
- Q. And Walter Kenney, a deputy sheriff, had something to do

- with it, did he not? A. I don't remember whether Kelley was there that night or not.
- Q. And Bob Malcolm, deputy sheriff, had something to do with it, did he not? A. I didn't see Bob that night.
- Q. A committee met and decided who should be deported, didn't they, of these undesirable citizens? A. As to that I don't know anything about it.
- Q. Don't know anything about that meeting? A. There was a meeting of the Citizens' Alliance that night.
- Q. What part did you take in the deportation yourself, Mr. Sackett? A. I escorted the gentlemen to Highway.
- Q. And you got them together to prepare them for the court? A. Yes sir.
- Q. Who did you get together? A. I don't know any of their names.
- Q. You went out and rounded up any man who was a member of the Miners' Union, didn't you? A. When we knew that they were agitators and men that were preventing other men from going to work we took them out.
- Q. And you called an agitator a member of the Miners' Union, didn't you? A. No sir.
- Q. That was the way you determined whether he should be deported or not? A. No sir.
- Q. And those who were sympathizers with them, is that right? A. We wanted men who were to be deported, men who would not allow possible citizens to go to work.
- Q. And among others you deported one of the leading merchants there, Mr. Nolan, didn't you? A. He was a merchant there at that time.

- Q. Did you go and get him? A. No sir.
- Q. Were you with the man who did get him? A. No sir.
- Q. Were you near when they did get him? A. I know that they got him.
- Q. You saw him that night, did you not? A. I did.
- Q. Saw him taken from his own house, didn't you? A. I did not.
- Q. Saw him marched down through an alley barefoot on the frozen ground, didn't you? A. I didn't see him marched down through any alley on the frozen ground.
- Q. You saw him marched to a vacant lot on the frozen ground?
- A. I saw Mr. Ploster standing with some of the men on the ground.
- Q. In a vacant lot? A. In a vacant lot.
- Q. Where you were herding these "honorabile citizens"?
- A. Yes sir.
- Q. And he was barefoot, wasn't he? A. I think his wife had brought him his shoes at that time.
- Q. You saw his wife bring him his shoes and his coat, didn't you, and his hat? A. I didn't see her when she handed them to him, but I understood that she had brought them.
- Q. It was a night in February when this deportation occurred, wasn't it? A. I don't remember.
- Q. In the winter time, wasn't it, February or March? A. Yes, it was along about that time.
- Q. And mighty cold weather? A. Oh, not so very cold.
- Q. Telluride is at an altitude of something like 10,000 feet, isn't it? A. About 7,000.
- Q. 7,000 feet? A. The ground was bare at that time.
- Q. And frozen, wasn't it? A. Yes sir.

- Q. And you kept those men out on the vacant lot for a considerable period of time, didn't you? A. Possibly half or three-quarters of an hour.
- Q. And you beat quite a number of them up? A. I never saw any of them beaten up.
- Q. Wasn't Mr. Floten beaten over the head? A. I didn't see it done.
- Q. Did you see the blood all over his face? Did his wife help him wash it off? A. I saw a drop or two of blood on his shirt front.
- Q. Didn't make much difference as long as it was an uncolorable citizen's blood, did it?

MR. HENRY: We object to that as improper cross examination.

THE COURT: Objection sustained.

- Q. You didn't have any warrant of law to deport those men? A. No.
- Q. Had any authority of law? A. The law of self defense.
- Q. How many people were there in the mob that deported them? A. I don't know how many.
- Q. Those men hadn't attacked you with anything, with any force, had they? A. No sir.
- Q. It wasn't necessary for the protection of your person that you were mounting resistance in rounding them up and beating them, was it? A. Not at that particular moment.
- Q. When you say the law of self defense you mean the law which enabled you by force to hold Sellaride as against other people who had the same rights in Sellaride that you had under

- the law? A. We didn't wish to drive anyone out who wanted to live and let others live there.
- Q. Who decided the question of who wanted to live and let others live there? A. Each man decided it for himself.
- Q. You didn't apply to any court to have a decision on it nor resort to any form of law, did you? A. Not at that particular time.
- Q. And the Citizens' Alliance was composed in the main of men who owned stores there with whom Mr. Vinton's store was in competition, isn't that right? A. I don't suppose that two stores could be in the same place without being in competition?
- Q. I say the Citizens' Alliance was composed of the people who owned those stores? A. Not entirely.
- Q. And of the bankers of Telluride? A. Some of them.
- Q. And of the Mine Owners and of the representatives of the Mine Owners who lived in Telluride? A. Most of them.
- Q. As a matter of fact there ain't any of the mines owned in Telluride to mount something, are there, just like managers they don't they? A. I don't know where the owners reside.
- Q. The Harbor is owned principally in England, isn't it?
- A. I think it is.
- Q. The Seagull-Union is owned principally in Boston, isn't it?
- A. I think most of the stockholders come from that part of the country.
- Q. And the Liberty Bell is owned in Boston and in New York chiefly isn't it? A. I don't know.
- Q. Don't know about that.
- Q. Now to return to this Citizens' Alliance, it was formed, was it not, of the members of the Mine Owners' Association, of the

bankers, of the newspaper men, of a part of the lawyers who were working for the mining companies, ^{all or part} of the merchants upon whom the miners had declared a boycott, or all of the gamblers and many of the people who lived in the red light district? A. I can't entirely agree with you.

Q. Well, let us see how near we can come to it. We will make some concessions maybe. So ahead.

A. What do you want me to say?

Q. I want to see how far you agree with me as to who composed the Citizens' Alliance? A. The Citizens' Alliance was composed of all persons who desired to have the mine in operation, who desired to live there under conditions of peace without being in continual fear of having their lives taken, in fact all who wanted to work and let others work.

Q. As a matter of fact there had been in the course of some five years but three men who had lost their lives in the San Juan country, isn't that right? A. I don't hardly think it is.

Q. And you was not certain to two of them, and are not certain yet, isn't that right? A. I don't know anything about how certain the causes were.

Q. ^{Name any} No other men who had been killed to your knowledge within the Telluride district within five years prior to September 1st of 1907? A. Sam Thurston is one that was killed.

Q. That is one. A. I think there was a man by the name of Barthold or Bartholdi.

Q. He was a union man, too, was he, Bartholdi was, a man belonging to the union? A. A man belonging to the union.

Q. That is two, one non union man and one union man? A. I think

that that is all that I could say that I know who were killed.

Q. Within five years prior to that time? A. Yes sir, they were the only ones that were killed in that manner and through that cause.

Q. They were the only ones? A. That I know of.

Q. Let us get all of the crimes that were committed there.

Were there any other men that were killed during five years preceding September 1st of 1903? A. What do you mean, accidental deaths or violent killings?

Q. I don't call a man who is killed accidentally a man who is killed by violence of any other person. I mean by violence.

A. I don't personally know of any other man that was killed by violence.

Q. There were twenty-two union miners killed at one time in the Superior-Union mine because of a fire which occurred?

MR. HANSEN: We object to that as incompetent, irrelevant and immaterial, not proper cross examination.

THE COURT: The objection will be sustained.

MR. HANSEN: Note our objection.

Q. What was the number of population in San Miguel county?

A. Between three and four thousand.

Q. So that with between three and four thousand people in a period of ten years preceding September 1st of 1903 you had two men killed on account of labor troubles, and that is all that you know of? A. There were the only two men killed on account of labor troubles that I could say were killed.

Q. One union and one non-union man? A. I don't know whether the one that was called the union man was a union man or not.

- Q. And do you know that the one that was called a non union man was a non union man? A. I know that he was a non union man.
- Q. Are you acquainted with the conditions which exist in Colorado as to the commission of crimes in communities of four thousand population? A. I have never made a study of statistics.
- Q. Don't know whether they would average probably two crimes in the course of five years? A. I think that a great many more crimes than that have been committed in Colorado in that size community.
- Q. And, proportionate to its population, the city of Denver has more crimes of that character than any other population in the state, isn't that right?

MR. HENRY: We object to that as calling for hearsay, not being proper cross examination.

THE WITNESS: I will have to take your word for it.

THE COURT: Be my answer.

THE WITNESS: I will have to take your word for that. I don't know.

- Q. You really don't know anything about it? A. No sir.
- Q. You have no knowledge, of that general or special, upon the proposition that the proportion of such crimes is greater per capita to the population in the city of Denver than it is anywhere else in the state of Colorado? A. No sir, I never inquired into the subject at all.
- Q. Don't you know that in 1900 the Miners' Union declared a boycott on gambling in Telluride? A. I don't.
- Q. You know that Telluride is a wide open town as far as gambling

- In connection, don't you? A. It was at that time.
- Q. The main street of the town has more gambling houses on it than any other business there on that street? A. I can't agree with you.
- Q. Did at that time, didn't it? A. No sir.
- Q. Didn't it have as many as all others combined?
- A. No sir.
- Q. Saloons and gambling houses combined? A. No sir.
- Q. Did you deport any of the gamblers? A. Yes sir.
- Q. You did. How many of them did you deport? A. One that I know of.
- Q. How many of the gamblers were in with you people in deporting the miners' union people? A. I saw one or two.
- Q. Did you deport this one because he was a gambler?
- A. No, because he was an agitator and a man who associated in interfering with other people's going to work.
- Q. Because he was a sympathizer with the miners' union, wasn't it?
- A. No sir.
- Q. With that kind of the controversy? A. It was because he was one of the men who were creating trouble.
- Q. Did you deport anybody from the red light district?
- A. Not that I know of.
- Q. Did the people in the red light district assist you in the deportations? A. I didn't go there to get assistance.
- Q. You didn't, but you think some of them did assist you as a matter of fact, don't you? A. Not that I know of.
- Q. The men whom you deported, at least ninety-nine per cent of them, were the men who had worked in the mines there for

years, were they not? A. I can't say as to that.

Q. Many of them owned their own homes and had been citizens and voters of Telluride for a good many years? A. There were one or two of that kind who were allowed to come back.

Q. And many of whom ruined families there in Telluride and were obliged by their departure to leave both their wives and their families? A. For the time being; there were some possibly included in that bunch that should have not been sent out and who were afterwards allowed to come back.

Q. How was Floten, A.H. Floten, allowed to come back? A. No sir.

Q. He was a fairly man, wasn't he? A. Yes sir.

Q. Owned a lot of property in Telluride, didn't he?

A. That was what I understood.

Q. He owns buildings there to this day which he rents in the town of Telluride, doesn't he, to your knowledge? A. I think so.

Q. And yet he is not allowed to set foot on the soil of Telluride even to this day, is he? A. Why, I don't know that he is prevented from coming back.

Q. Don't you know that he has been notified since military rule was declared off there by Hildrey Wells, that it was not safe for him to set foot on Telluride soil, and if he did he would be killed? A. I never saw any such notification.

Q. Did you ever hear of any such notification? A. No sir.

Q. You know of his attempt to come back there, don't you, after military law was declared off, back to his home and back to his business? A. I don't know that he has ever attempted to come back.

Q. You have heard of that, haven't you? It is a matter of

general, common knowledge? A. That is it?

Q. That Flaton can't come back to Telluride even now, if he does he will be beaten up or killed? A. I don't think that is true.

Q. You never heard of it? I say you have never heard of it?

A. Never heard that he can't come back at the present time?

Q. Yes. A. I think I can say you, I never heard of it.

Q. How long has it been since you were of the opinion that Mr. Flaton can come back to Telluride to live? A. I don't know that I have ever had occasion to think of other it was time for him to come back or not.

Q. You reported his brother two or three times, too, didn't you?

A. No sir.

Q. That nothing to do with that. Well, now, after all of this trouble that you have had down there at Telluride you now have a perfectly peaceful condition down there and have had for some time? A. That is a fact, yes sir.

Q. And everything is going along smooth and all right?

A. Very nicely.

Q. And you have got a Miners' Union of the Western Federation of Miners in the right today with over 500 members after all of your trouble and anxiety about it, have you not?

A. I have heard that as a report.

Q. You don't know that? A. I don't know it to be a fact.

Q. That Miners' Union owns a building in the city of Telluride that is worth at least thirty-five or forty thousand dollars?

A. They did own it at one time. I don't know whether they own it now or not.

Q. You people haven't confiscated that building, have you?

- A. No attempt was made to confiscate it.
- Q. You did take possession of it for a long time, didn't you?
- A. I think not.
- Q. Took the books and the rituals of the Western Federation of Miners and all of the other portable property and carried it away, didn't you? A. Not that I know of.
- Q. None of you people did that? A. I don't know anything about it.
- Q. Don't know that it was done? A. No sir.
- MR. HANLEY: That is all.

RE-DIRECT EXAMINATION

BY MR. HANLEY:

- Q. Speaking about the conditions at the present time -- in Telluride, are the mines running -- is there any discrimination between union miners and non union miners? A. There is if the union miners are known to be men who would make trouble.
- Q. And the non union miners are permitted to work there, are they -- it is an open mine? A. Yes sir.
- Q. Do you know anything at all about one Elston they are talking about, as to his conduct during these troubles? A. I know that he on several occasions made speeches tending to excite the men who were of that class that wanted to make trouble.
- Q. When was this, what was the date? A. I couldn't say as to the date.
- Q. About what time? A. During the time of the troubles there in Telluride.
- Q. You don't know as to anything connected with him since then,

you have no knowledge as to whether or not he would be permitted to come back or anything of that sort since those troubles were ended? A. If there had ever been any attempt made to keep him out of Telluride, I don't know of it.

Q. Was it this Citizens' Alliance that you have mentioned composed of? A. Composed of the leading citizens of Telluride, merchants, lawyers, doctors, mine managers, miners, laborers, and all other men who thought that their safety and best citizenship demanded that they stay with that side of the question.

Q. What proportion of the business men in Telluride were members of the Citizens' Alliance? A. Probably three-fourths of them. I don't know just exactly.

Q. You were a member of the Alliance? A. I was a member of the Alliance.

Q. Do you know of any mine men that were working in the mines being members of the Alliance, working miners, outside of your city? A. I don't know that I can name any man whose business was that of a miner, but I know that there were two or three or more -- in fact I couldn't call the names of the very men, many of the members of the Citizens' Alliance; with whom I was personally acquainted.

Q. Most of them you didn't know? A. Most of them I didn't know.

Q. Do you know anything about the Mine Owners' Association? Is there a Mine Owners' Association in that vicinity?

A. I don't know anything about the Mine Owners' Association.

Q. Don't know anything about that? A. No sir.

MR. HACKETT: That is all.

HONORABLE EXAMINATION

BY MR. HICKMAN:

- Q. How many laboring men, proportionately, were there in this Citizens' Alliance, men who labored for a living?
- A. I think that fifty per cent. of them were.
- Q. Fifty per cent. of them? A. I think so.
- Q. And fifty per cent. of them were men who never did a day's work? A. No, no, I wouldn't say that.
- Q. What do you mean by laboring men? A. Men who work for wages.
- Q. Your idea is that there is not fifty per cent. of them?
- A. I think so, you sir.
- Q. And this fifty per cent. are men fitting the Citizens' Alliance were people who were directly employed by those who did not labor, weren't they? A. Why, a man can't work for wages without he has an employer.
- Q. Take a merchant, for instance, if he had eight or ten clerks in his store he sends the eight or ten clerks join the Citizens' Alliance, didn't he? A. I don't think so.
- Q. Well, now, of the miners — the principal and the only practically producing industry in that camp is that of the mines, isn't it? A. Yes sir.
- Q. While there may be a little stuff produced on farms around there practically there is nothing there but mining?
- A. Practically that is what keeps the place up.
- Q. If there was no mining there would be no town there at all?
- A. I will agree with you.
- Q. How out of this Citizens' Alliance you think you had three miners in the Citizens' Alliance and you was one of the three?

A. I will say I don't know how many there were. I know there were two or three there, miners.

Q. And you were one of them? A. No sir, I am not a miner.

Q. No, that is what I thought. But I misunderstood you then. I understood you to say that you were a miner and that there were two or three mines. A. I said I didn't know the names or couldn't recall them of my miners who were in there, but I know that there are two or three and possibly more.

Q. In the Citizens' Alliance? A. Yes sir.

Q. Out of all of the people that there were in that Citizens' Alliance you had two or three men who actually worked at the producing industry in that district? A. I didn't limit it to two or three.

Q. Very well. You are entirely competent, I suppose, to determine whether a man has a right to make a speech in Colorado or not?

MR. HANLEY: I object to that as not being proper cross examination.

THE COURT: Objection sustained.

MR. RICHARDSON: Note our exception.

MR. HANLEY: Mr. Hindey asked him what Kloten was deported for, he said for making a speech.

MR. RICHARDSON: That is what I am examining him on.

Q. You deported Kloten for the sole reason that he made a speech?

A. No sir.

Q. That is what you answered Mr. Hindey, that he made speeches there.

MR. HANLEY: That wasn't the sole reason.

MR. RICHARDSON: That wasn't the sole reason.

- Q. That was the sole reason you gave Mr. Hedley?
- A. Mr. Hedley never asked me why we deported Mr. Flaten.
- Q. Didn't you tell Mr. Hedley the reason you deported Flaten was because he made speeches from there which tended to incite that element of the community which did not want to work to some deeds of violence? A. I did not.
- Q. What did you say about that? A. I said that I knew of his making those speeches.
- Q. And that those speeches tended to do what? A. Incite those who were inclined to make trouble.
- Q. Now you, speaking for yourself, heard that he had made some speeches, and from what you heard you came to the conclusion that they tended to incite those who were inclined to make trouble and therefore you made up your mind as an individual to join with others in deporting him? A. I didn't make up my mind on that ground at all.
- Q. What was your reason for it then? What was your reason for deporting Mr. Flaten? A. Because he was harboring and helping and assisting in every way this class of citizens who were defying the peace and destroying the peace of the community by interfering with men who wanted to labor.
- Q. You were notified by the district court there publicly that the only thing that interfered with the administration of justice were you people yourselves, wasn't it? A. No sir.
- Q. You didn't make any application to the court to right those wrongs with respect to Flaten? A. We had tried that for years but found it futile.
- Q. And so you determined yourselves what should constitute free

- speech in that district? A. As a last resort we did, Yes sir.
- Q. You don't believe in free speech for anybody but yourself?
- A. I do believe in free speech for everybody providing that free speech is what it should be.
- Q. You, and you are the man who is determining what free speech should be? A. I am one that can determine it.
- Q. You are one of them but you don't allow the courts to determine what shall constitute free speech? A. We pretend to be law abiding citizens, and we are.
- Q. It was nothing but a pretense, was it, at that time?
- A. At that time there was not much law in Telluride.
- Q. Did you call it law abiding for you to meet and determine that another man should not make speeches in Telluride because in your opinion they tended to excite somebody who was inclined to violence and therefore he should be deported?
- A. You are asserting that we met and decided on what speeches should be made. We never did.
- Q. Did you meet and decide on the punishment which should be meted out to those who had made speeches? A. No sir.
- Q. Did you hear Mr. Hinton make any speech? A. Yes sir.
- Q. When? A. During the time.
- Q. Where? A. In Telluride.
- Q. That was it that he said which tended to excite those who were inclined to make such a disturbance? A. I can't quote what he said, but the tenor of his speech was such that --
- Q. No, we don't want the tenor of his speech. We want to know what he said so we can construe it ourselves, and not the construction you put on it. A. I don't know. I can't tell it.

Q. If you don't know, don't attempt to tell. You can't tell us a single thing that Mr. Pictou said at that time, you can only give us your impression of it? A. The impression I got from the speech is all I can give you.

Q. So you ask no judge and court and jury and sheriff and executioner to visit the penalty on him for those speeches which he made? A. He sir.

MR. HAZEN: We object to that.

THE COURT: He has answered.

Q. Let me ask you if this was not the trouble with Mr. Pictou: The Miners' Union had declared that they and their members would buy all of their goods at Mr. Pictou's store, that Mr. Pictou should be their banker; that they patronized him both as a banker and merchant to the exclusion of the other bankers and the other merchants of Telluride, and wasn't that the main and substance of his offense? A. Not that I know of.

Q. State what he did do. A. Harboring this element which had a tendency to commit offenses.

Q. Didn't you say to make trouble? What do you mean by "harboring" just tell us about it? A. Why, helping them in every way that he could.

Q. Tell us more of the ways that he helped them. A. By allowing them to have anything that they could get, that they wanted at his store.

Q. He treated them, did he, at the store? Sold them goods?

A. Why, he didn't prevent their going to any other place and buying goods.

Q. Well, the offense which he committed was letting them have

- goods out of his store? A. No.
- Q. Why did you state that fact? A. You asked me to state what he did.
- Q. That was one of the things which he did that was an offense in your eyes? A. That was one of the things, yes.
- Q. What was another one? A. I don't know.
- Q. Don't know that there was anything else? A. Only that he was very active with that class.
- Q. What did he do? You state he was very active. How that involves a description of what he did.
- A. I have already stated what he did.
- Q. What was it? A. As I have to repeat the testimony?
- Q. Yes, that is what we are asking for, is that is what you want to do. You say he was an active man. What did his activities consist of? A. His activities consisted of advice to them.
- Q. Who did he give advice to, and what, and what was the subject?
- A. All I know at all it is the general way in which he stood with that class of people, and --
- Q. Then you don't know that he ever gave any advice to anybody at all?

MR. DISTRICT ATTORNEY: Let him finish the statement. Finish your answer.

THE COURT: Did you finish your answer, witness?

THE WITNESS: I hadn't finished, no sir.

THE COURT: Do you wish to add anything to it?

THE WITNESS: I don't think it is necessary, your Honor.

MR. DISTRICT ATTORNEY: Read the last question.

(Question read).

- A. I never saw him do it.
- Q. How heard him? A. Yes, I heard him.
- Q. When? A. During his speeches.
- Q. What did he say? A. I don't know that I can repeat word for word what he said.
- Q. How about other activity was it, what was the main activity?
- A. It was having a place where these people could get all of the conditions necessary, too.
- Q. What do you mean by that? A. Everything that they wanted.
- Q. That is to say, people whom you regarded as estimable citizens, could go into Mr. Pictou's store and buy goods, by paying for them, or, if their credit was good, by getting them on credit? A. Not when I reported.
- Q. Well, you and others like you? A. Yes sir.
- Q. That was the activity complained of. How was there any other activity that you complained of in Pictou? A. I think not.
- Q. You know that Mr. Pictou preaches the doctrine of non-resistance, don't you? A. I believe so, yes sir.
- Q. If a man writes him on one check to turn the other check so have that written? A. I never saw him do it.
- Q. But you know that he does preach the doctrine of non-resistance and peace at all times, don't you? A. I --

MR. DAVIES: I object. When I object, don't you answer. I object to this as not being proper cross examination if your Honor please.

THE COURT: You may answer the question.

- A. I don't know it because I haven't been acquainted with Mr. Pictou for some three or four years.

Q. When you were conversed with him that was the doctrine that he preached, peace, quietude and kindness to everybody, wasn't it?

MR. HANLEY: No object to that as calling for a conclusion.

MR. COURT: He may answer the question.

A. When I know him he was known as a socialist in town. I don't pretend to know what their doctrine entirely includes. If that is what they include, why, then that is what he preached.

Q. You know sufficiently about it to know that in summing up his activities all that you can say about it is that he trusted people for goods not sold that goods for cash? A. I don't know whether it was necessary to trust them or not.

MR. HANLEY: That is all.

QUESTIONS BY MR. HANLEY:

Q. You may give the substance of Wilson's speeches as you heard them. You say you can't give them word for word.

A. Why, as I understood it --

Q. That is the speeches that you heard him make.

MR. HANLEY: Not your conclusion from it, but the substance of what he said.

A. It was speeches on socialistic lines.

MR. COURT: No, what he said.

MR. HANLEY: No, your Honor, that is a conclusion. We ask what he said.

Q. You may state the substance of what he said.

MR. HANLEY: The question calls for the substance

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of what he said.

THE COURT: If the witness can state the substance of what he said he may answer.

A. I don't know that I can give any intelligent answer to the question.

THE COURT: Very well then, we won't try. That is all.

Thereupon the court gave the jury the customary instructions, the witnesses were sworn, the jury retired with the foreman, the defendant was released, and the court took a recess until 1:00 P. M. in afternoon.

R E C O R D .

Sales, Idaho, Wednesday, July 17th, 1907.

11:30 o'clock P. M.

Court convened pursuant to adjournment.

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

THOMAS H. STEWART, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HOGAN:

- Q What is your name? A Thomas H. Stewart.
- Q Where do you reside? A I reside at Independence, Teller County, Colorado.
- Q What is your age? A 63 years — November 4th.
- Q When did you first go to Gripple Creek to reside, Mr. Stewart?
- A 1894.
- Q Have you been residing there practically ever since? A Yes sir.
- Q What did you work at while you were in Gripple Creek generally?
- A Mining and carpenter work, and paper hanging some times.

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- Q Were you living in the Cripple Creek district in September, 1903? A Yes sir.
- Q Did you know Steve Adams? A Yes sir.
- Q Did you know Sherman Parker? A Yes sir.
- Q Did you know Ed. Hinder? A Yes sir.
- Q Did you know Charlie Campbell, some times called Slim Campbell? A Yes sir.
- Q Were you at work on the last day of August, 1903? A The 1st of September.
- Q It was the 1st of September you went to work? A Yes sir.
- Q What had you been doing the day before, if anything?
- A Nothing at all.
- Q What did you do the day before toward finding employment or work? A I went to the Cycle and asked for a job.
- Q What do you mean by the Cycle? A The Cycle mine.
- Q When was it you went to the Cycle mine and asked for a job?
- A About noon, August 31st.
- Q 1903? A 1903.
- Q State whether or not you went to work at the Cycle mine the next day? A Yes sir, I went to work the next morning.
- Q How long did you work at the Cycle mine that day? A One day, eight hours.
- Q Did you see any men on the way to the mine as you were going to work upon the 1st? A Yes sir.
- Q Where did you see them? A On the railroad track.

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Q Where is the railroad track with reference to the road to the mine from your house? A I came through Independence and crossed the track.

Q Where did you cross the track -- at about what point?

A At the Circle mine, there is a wagon road crossing there.

Q Did you know any of those men when you saw that morning at the railroad track? A Yes sir, El. Minister, Charlie Campbell, --

Q Did they say anything to you? A You, El. Minister said --

MR. RICHARDSON: One moment. That is a preliminary question that can be answered by you or no.

THE WITNESS: Yes sir, he did.

Q Now, you may state what he said to you?

MR. RICHARDSON: No object to that as incompetent, immaterial and irrelevant, and not tending to connect this defendant with anything that there occurred.

MR. JUDGE: It is to show the remarks of these parties as to what would happen to him if he went to work.

THE WITNESS: He may answer.

MR. RICHARDSON: Note our exception.

Q What did he say to you? A He said if I went to work I would have to stand the consequences.

Q What time did you quit work upon that day? A At half past four.

Q Where did you go? A I went home.

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Q Did you see Mr. Winster that night? A Yes sir.

Q About what time?

MR. RICHMOND: We object to this for the reasons stated in the last objection.

THE COURT: The objection will be overruled.

MR. RICHMOND: Note our exception.

Q About what time in the evening or night? A After eight o'clock.

Q And where — what place did you see him? A At my house.

Q Who was with Mr. Winster that evening when you saw him?

A Well —

Q When you saw him at your house? A Charlie Campbell, Steve Adams, Sherman Parker and others, about a dozen in all.

Q How long have you known Sherman Parker? A Oh, four or five years.

Q How long have you known Steve Adams? A About the same time.

Q Had you ever worked for Steve Adams? A Yes sir, I fixed up a house for him.

Q Had you ever worked for Sherman Parker? A Yes sir.

Q What did you do for him? A I fixed his house.

Q Now, you may state, Mr. Stewart, what happened that evening at eight o'clock when you say you saw these parties.

MR. RICHMOND: We object to that for the reasons stated in the last objection.

THE COURT: The objection is overruled.

MR. MINSTER: Note our exception.

Q That was said and what was done, and what was done to you?
A William Campbell knocked at the door and asked if he could see me, and my wife said he could, to come in. He came in and immediately drew a gun upon me and told me to come along with him. I objected of course and didn't move, and -a. Minster, Herman Parker and Steve Adams bursted up the front door and they all dragged me out.

Q Where did they take you? A Along the Midland tracks to the railroad bridge, the crossing where the cars cross over the Midland tracks.

Q What did they do to you while they were taking you over there, if anything? A Well, they kept me all the time with their guns.

Q What did they do to you after they got over to the point where they left you? A They threw me down and trampled on me and smashed my head to a jelly and shoved me through the back; they took my purse, my jack knife and my watch off me.

Q Who shot you, if you know? A Campbell.

Q Where did you go after this difficulty with these parties?

A I went to the car depot at the T. & N. crossing over there and boarded a car and went to Victor.

Q Where did you go over there? A To McConnie's hospital.

Q Did you -- how long were you in the hospital? A About three weeks I stayed in the hospital, but I had to attend there about three months.

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Q During the time you were at the mine, Mr. Stewart, the day you were working at the Golden Cycle mine, did you hear or see any parties, or crowds of men in the vicinity of the mine?

A They went around the mine all day hollering.

Q How long was it after this trouble of yours until the troops came in, if you know? A A few days,— I don't know exactly. I was in bed and could not move.

MR. STUART: You may cross examine.

CROSS EXAMINATION

BY MR. RICHMOND:

Q Did you swear out any warrant against these men? A Not at that time.

Q Did you at any time? A Yes sir.

Q When was that, Mr. Stewart? A About sixteen months ago.

Q About sixteen months ago? A Yes sir.

Q That would be along in 1906 some time? A Yes sir, I would have sworn out a warrant at any time.

Q No, no, I did not ask you that. A Only the authorities could not get evidence to lock me up and they did not want to put the county to the expense.

Q Well, wait a minute. You did not swear out any warrant against them until a year and a half or two years after this event occurred? That is right, isn't it? A That is right.

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Q And notwithstanding the fact that you knew every one of those men? A Yes sir.

Q And knew them at the time this event occurred? A Yes sir, I knew them.

Q Now, I am going to ask you a question that I don't ask it for the purpose of humiliating you or anything of that kind; were you drinking any that day? A I never drink in my life.

Q You were not drinking any that day -- that is the time I want to know about? A No sir, not that day or any other day.

Q Nor have any whisky about your house or your place? A No sir.

Q And after your work on that day did you go right home or did you go down town? A I went right home.

Q How far is the town from your place? A Independence is at the back of my place, right there.

Q You knew some of those men at least who in the morning had threatened you with personal injury? A Yes sir.

Q You made no complaint with respect to it to anybody nor took any steps to guard yourself? A I told it at the mine when I went there.

Q Did you take any steps to guard yourself in any way? A No, I did not think I needed it.

Q Nor did not put any weapons on yourself to guard yourself, did you? A No sir.

- Q You went on about ^{your} work during the day till half past four in the afternoon, did you? A Sir.
- Q You went on about your work during the day until half past four in the afternoon? A Yes sir.
- Q And were not molesting during the day other than you heard people around there talking? A That was all.
- Q You went on and did your work? A Yes sir.
- Q And at half past four you went home and stayed there until about eight o'clock in the evening? A Yes sir.
- Q And then this crowd of men, 15 or 16, came thereabout?
- A About a dozen.
- Q And you know five or six of them? A Yes sir.
- Q And you made no effort to have them arrested or swear out any warrant against them for a period of pretty near two years after the event occurred? A Yes, I consulted with the sheriff and the district attorney several times, but they could not back any evidence to back me up and could not bring the case along.
- Q And those men all stayed right there in the district for some time after that? A Some did and some did not. Mr. Minister was arrested the next day and put in the jail at Cripple Creek, and the deputy sheriff let him go before they had time to get a warrant there.
- Q You know about that of your own knowledge, or did some one tell you? A I guess somebody has to tell us --

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Q That is what I want to get at, you are testifying to what they told you about it? A Yes sir.

Q You personally did not know anything about that, did you?

A I was in bed.

Q And you stayed in bed there a couple of weeks, didn't you?

A For about three weeks.

Q And during that length of time you did not know much about what was going on? A Very little.

Q And with all these men around there you made no effort to have them arrested until fifteen months ago? A I consulted the district attorney and the sheriff several times, but they would not move in the case.

Q That would be in the spring of 1906 before you made any effort --

MR. BORAH: Now, wait a minute. We object to that.

Q Before you were out any warrant it was the spring of 1906?

A Yes sir.

Q The statute of limitations had run on it at that time, hadn't it?

MR. BORAH: We object to that. That is a question of law that this witness is not called upon to testify to.

THE COURT: The objection is sustained.

Q You still stayed in Cripple Creek all the time? A In independence.

Q Continued to live there right along? A I am living there yet.

- Q And all the trouble you had was that trouble on September 2nd, 1903? A You would have thought it enough if you had had the trouble.
- Q I asked you if it was all you had? A That was plenty.
- Q But you were not run out of there — you never was run out of Cripple Creek? A They tried to run me out.
- Q You never deported anybody yourself, did you? A No sir.
- Q How assisted anybody else to deport anybody? A No sir, but I was anxious —
- Q Never mind, I have not asked you about that. You are anxious to get even with somebody, are you not? A Not at all. I am anxious for justice to be done. I have got a grudge against no one. I was the best of friends with the miners' union and every person in the district before this happened and I have got a grudge against no one.
- Q And you are the best of friends now with everybody, are you?
- A Yes sir, I am.
- Q How did you come up here, Mr. Stewart? A I came up at the request of the presentation, I guess.
- Q Mr. Hayward was not personally present assisting those men in taking you up? A Mr. Hayward knew nothing about that. He hadn't time to know anything about that. He might have authorized them to do that.
- Q Of course he might have authorized them, or you might have authorized them to do it if you wanted to, but you did not know

THE COURT: You better describe the articles.

MR. RICHARDSON: And it will simplify matters if the newspaper papers are kept in order -- in their chronological order.

MR. BOHLEN: The first if the Denver Republican under date of January 3, on page 2, second column; it is marked in blue pencil under the heading "Much evidence in back murder". And the Denver Republican under date of January 2nd, on page 1, the next to the last column, under the heading "Believe Haglan was dynamiter."

MR. RICHARDSON: May it be suggested that the stenographer shall put them in their chronological order, for they are all marked and they can take the form for each one of them.

MR. BOHLEN: They can put them in their chronological order. Denver Republican under date of January 1st, 1906, the 4th column, or the middle column, under the heading, "Alleged Slayer of Steinberg."

THE COURT: That will be the entire article?

MR. BOHLEN: Yes sir. January 5th, 1906, Denver Republican, the third column on the front page, under the heading, "Say Orford has record in Colorado," the entire column. And going to page 4, it is also marked, in connection with the article.

THE COURT: That is simply a continuation of that article?

MR. BOHAT: You sir, a continuation of the article from the first page. Denver Republican, January 6, 1904, on page 4, middle column, about the middle of the page, under the heading, "Sheriff Bell is after Orchard." Under the date of January 8, 1904, the Denver Republican, the last column on page 1, and it is continued on page 2, under the heading, "Bill Unravel Outrages of Lynxite." Denver Republican, dated January 9th, the third column from the last column under the title, "Bell Shows the Suspect." Denver Republican January 10th, 1904, the bottom of the first page, there are two columns, "Orchard Case Likely to Come up Tomorrow." The Rocky Mountain News under date of January 11, on page 3, the third column from the last under the title "Suspected Bush Baker Wakens." Under date of January 8, of the Rocky Mountain News, on page 3, middle column, under the heading "Lingo Suspect may be Orchard."

MR. DARRON: Are you moving everything now?

MR. RICHARDSON: You are putting in everything that is in blue pencil?

MR. BOHAT: Yes sir. There is one paper there that has two markings, and if it is not in your offer it goes in, and if there are any omissions it is unintentional and it may be considered in. Under date of January 1st, page 3, 1st column, "Thattered by Two Bombs," that is the title or heading that is in the Denver Times instead of the News.

MR. RICHARDSON: I suppose they may put in all the News has and put them chronologically?

MR. BROWN: Yes sir. Denver Times, page 8, under date January 2nd, heading, "Denver Man may be slayer of Governor." Denver Times under date of January 4, page 4, under the title, "Harry Orchard alleged slayer of Steiensenberg." January 5, Denver Times, on page 12, under title, "Orchard is Wanted Here." Denver Times, page 2, dated January 6th, under heading, "Certain of man, so make reputation for Orchard." Denver Post, under date of December 31st, last column on page 1, under heading, "Blow to Adams by Bomb." January 1st, Denver Post, second column on page 1, "7 More Suspects Arrested." Denver Post, January 2nd, page 7, under the heading, "Bomb Suspect registered as Denver Man." Denver Post under date of January 4, in the third column from the last, under heading, "Assassin Identified at the Depot." Denver Post under date January 7, under the heading "Governor McDonald issues Legislation Papers." That is under the date of January 7.

MR. RICHARDSON: That comprises all the papers we let you have except these two.

MR. BROWN: All up to the 10th except these two.

THE COURT: Is there any necessity for marking these?

MR. RICHARDSON: I would rather they would be copied into the record by the stenographer and not number the record

by a lot of matter that is not supposed to be pertinent to this case.

THE COURT: I think probably they better be marked and filed and become a part of the official record for it may not be necessary for the official stenographer to copy it into the record at this time, and yet I don't know but what the identification by dates is a sufficient marking; it probably is.

MR. RICHARDSON: I think it is.

MR. BARNUM: I think, your Honor, it would be well to say to the jury that these articles are not offered -- that it is no proof of facts or anything stated in the article, but only statements published at the time.

THE COURT: They are simply offered in connection with the testimony of Mr. Meyer and Mr. Maywood, and not as proof of facts or statements contained therein.

MR. BARNUM: It is not substantive proof of any facts except as it throws light on their testimony.

MR. RICHARDSON: And is explanatory of their action or non-action that Mr. Meyer and Mr. Maywood took.

MR. BARNUM: The State rests in rebuttal, if your Honor please.

MR. RICHARDSON: Now, if your Honor please, I suppose your Honor will have to take a little time to consider the instructions again, and in view of the fact that the State rests

at this time it will very greatly lessen our rebuttal testimony, if we have any at all, and we would like to consider that matter if your Honor please, until to-morrow morning. I am not certain that we will put on any further evidence at all, but if we do it will be very short.

THE COURT: Are your instructions already?

MR. RICHARDSON: With the possible exception of two or three that we want to draw that we could not very well draw until we see what the entire evidence was.

THE COURT: Can you be ready to-morrow morning?

MR. RICHARDSON: I can, sir, and can give you the others this afternoon, if you desire them-- I will send them up to you.

THE COURT: When will you have yours ready, Mr. Moran?

MR. MORAN: I think by to-morrow morning.

THE COURT: The court will discharge the jury this afternoon and I want you gentlemen to remain. The court will have some suggestions to make in reference to certain features of the case. I think, gentlemen, when you come to the argument of this case the court will arrange to hold three sessions of two hours each. That will add an hour to the sessions we have been holding, and that will probably be more convenient to counsel.

MR. RICHARDSON: I am willing to join in a protest with the other side against that. Has the Court ever talked six hours

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a day?

MR. DAWSON: For a week?

MR. RICHMOND: And in this kind of weather?

THE COURT: You might take three hours one afternoon and three hours the next day.

Throughout the bailiffs were sworn, the jury were given the statutory admonition and retired in charge of the bailiffs.

THE COURT: Gentlemen, the court has already indicated to you that he doubts very much the materiality of some of the testimony that was introduced by the defense relating to the deportations that largely took place in Telluride and vicinity, in relation to the conflicts there between the miners and the citizens, and also as to the same testimony as relates to the transactions in Cripple Creek, but before passing upon that question and formulating the instructions the court will hear you upon the materiality of that testimony. There is nothing so far as the testimony of the State is concerned — there was some question in the mind of the court about sufficient connection having been made to authorize the court to submit to the jury the statements made, I think, by the witness Graham with reference to the movements of Steve Adams, or statements made by Pettibone in relation to the movements of Steve Adams in northern Idaho in connection with the difficulties that grew out of the timber locations?

MR. BOSCH: Does that include the conversation he had

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with Mr. Hargood in reference to "Steve Alving?"

THE COURT: I don't recollect now. My recollection is that it only related to the statement made by Pettibone. The only question was whether proper connection had been made to entitle it to be submitted to the jury. I presume you will be ready on these matters to-morrow morning, gentlemen.

The articles in the various papers entered are in words and figures as follows, to-wit:

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BOISE MOUNTAIN NEWS, January 4, 1906.

EXHIBITION BOYS HADEN REARMS.

Former Governor Steunenberg's supposed slayer admits his name is Harry Orchard. Says he was in the Coeur d'Alene.

Boise, Idaho, January 3. The fourth day of the work of the officers engaged in running down the persons or person responsible for the murder of ex-Governor Steunenberg has developed the real name of the man calling himself Thomas Hagen. He has admitted he is Harry Orchard. He has also admitted that he was in the Coeur d'Alene until the time of the trouble there in 1899. He was living at Burke and was a member of the Burke Miners' Union.

Among Orchard's effects a leather postal card was found addressed to Charles Hager, President of the Western Federation of Miners in Denver. It was one of the kind, the mailing of which is prohibited, and Orchard, discovering that it could not be transmitted had evidently put it back in his pocket. It bore a New Year's Greeting.

Orchard was arraigned before the probate judge at Caldwell today. He was charged with the murder of Steunenberg. Hagen had formerly demanded his release and this action was necessary to hold him. When Orchard was brought into court he asked if his arrest had been telegraphed to the newspapers, saying: 'If the Spokane newspapers published a report of my arrest a lawyer will come to defend me; otherwise I need two days to get one from that city. The hearing was set for Saturday.

Besides Orchard, five other suspects are held in jail. Two of these men are known to have been in consultation with Orchard at Hays, nine miles from Caldwell, the day before Stannenberg was assassinated. They are known as Frank Campbell and Warren, alias Herren. These men are miners, who have been working in a rock cut out on the grade of the Idaho Northern railroad and who left that work two weeks ago. The three others declined to give their names, and refused to talk. An effort is being made to identify them. Officers enroute were at Cour d'Alene during the disturbances there are on their way to Caldwell to look at the prisoner.

The big reward of \$25,000, offered for the arrest of the assassin is causing some friction between the local officers and the private detectives who were asked to work on the case.

A private detective has taken possession of the effects of the suspect Orchard.*

"IDEMP SUSPECT MAY BE CHIEF."

Sheriff Bell investigating theory that man who in perpetrated Independence horror is under arrest at Caldwell.

Wire for accurate description of the minor accused of complicity in the Stearnsberg assassination.

Special to the News.

Grizzle Creek, Jan. 4. That Sheriff Edward Bell is of the opinion that Thomas Hogan, under arrest at Caldwell, Idaho, as a suspect in the murder of ex-Governor Stearnsberg had a hand in the blowing up of the Independence depot in this district June 6, 1904, is shown by the telegram Bell sent to the sheriff at Caldwell this evening. The wire follows:

"Sheriff, Caldwell, Idaho, Jan. 4. Please send photographs of all men implicated in killing of ex-Governor Stearnsberg, as we are interested in their identification on account of similar explosions here June 6th, 1904, when thirteen men were killed. Names mentioned indicate their connection here." Signed Edward Bell, Sheriff.

Sheriff Bell says that the man in Caldwell may not be the Hogan, alias Harry Graham, wanted here, but he is inclined to think that Hogan and Graham are one and the same person.

Harry Graham, alias John Doupey, left here immediately after the blowing up of the Independence depot. Sheriff Bell

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said this evening that about forty days after the explosion he learned that J. J. Neville and Orchard were the fellows that pulled off the Independence explosion. He said that Neville went away in a wagon from Independence at four P. M. on June 8, the day before the disaster, drove to the lone school house and camped.

The information in the hands of the authorities, as Ball states, is that Orchard waited for the shift to come off from the Pindley mine, and after applying the torch to the explosives, went to Neville's camp. The latter had bought a team of mules and an express wagon from Joe Adams, paying \$100. for them. On their way to Colorado Springs, Neville and Orchard, it is said, were seen by three different persons. Orchard and Neville are supposed to have remained in Denver for four or five days and sold their outfit in Greeley for \$50. Sheriff Ball states that their information is that Orchard got \$5,000. for pulling off the explosion. Neville and Orchard parted in Spring and a short time afterward Neville was arrested at Cody, but no case was made against him when he was brought back here. Nothing has ever been heard of Orchard until the arrest in Caldwell created the impression the suspect may be Orchard. Warrants are out for Orchard here in connection with the Independence explosion."

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INDEPENDENT TIMES, January 1, 1900.

"CONTAINED BY TWO HOMES."

The Governor Stannenberg tragic death by infernal machine pulled by wire.

SPECIAL TO THE TIMES.

Boise, Idaho, Jan. 1. Former Governor Frank Stannenberg, blown to death by dynamite bombs Saturday night, is believed to have been the victim of men who, during the Coeur d'Alene trouble in 1899, declared that would 'get him.'

The officers are making every possible effort to catch the criminal, every road, every bridge, every railway station and every stage line being guarded to prevent the escape of the courier or murderer. Five men are being held by the officers at Caldwell, and it is thought that the man who set off the bomb is included in these. Three especially of the suspects have so far been unable to give a good account of themselves.

A meeting of Governor Gooding, district judge Frank J. Smith, W. H. Borah, the leading attorney of the State and who was chief prosecutor of the dynamiters at the trial six years ago; Sheriff Nichols of Canyon county and Sheriff Hensley of Ada County has been held, and each man pledged his entire private fortune, if need be, to secure the conviction of the guilty men. Blaine county, in the extreme northern portion of the State, where the Coeur d'Alene riot occurred, today said it would aid

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\$10,000 to the reward fund, making a total to date of \$18,000. This will doubtless be swelled to \$25,000.

It seems certain that the explosion was not caused by giant powder. Those having knowledge of such substances and who have examined the scene state the explosive was undoubtedly nitro glycerine. It was in a metallic case, the metal being a combination of tin and zinc. A portion of the mechanism has been found, including the trigger used in firing the charge. The nipple used was such as is found on an old fashioned muskie loader shotgun. Pieces of metal were found sticking in all the trees. The dynamite had been exploded by pulling a wire. Pieces of wire and waxed fish line were found in the trees on the lawn. Further it is believed that two bombs were used to make certain of carrying out the purpose of the assassination. They seem to have been together, both being pulled at once."

DENVER TIMES, January 2, 1936.

"DENVER MAN MAY BE SLAYER OF GOVERNOR."

By Associated Press.

Calderwell, Ida., Jan. 2. The officers believe they have one of the men responsible for the assassination of ex-Governor Stewart. He is one of those who have been under suspicion. This man registered at the Heritage hotel three weeks ago as H. J. Hughes, giving Denver as his address. A year ago he stopped at the Pacific hotel, registering as Thomas Hogan. A search of his room at the Heritage resulted in the finding of an overcoat and some other rough clothes, also some fish lines similar to the pieces found at the scene of the explosion, supposed to be part of the firing with which the trigger of the infernal machine was pulled. Further, in his grip was also of white powder believed to be a high explosive. There was also something like brown wrapping paper, but it would not burn. The contents of the grip are in the hands of chemists.

It is stated that Angus Guthrie, former sheriff of Cheyenne County, who is on the ground, has recognized this man as one who was in the famous bull pen after the Cour d'Alene riot in 1900. This story has not yet been confirmed, nor whether that Guthrie is his right name.

The officers determined to take Hogan to Boise last evening as the jail here is a very poor affair and affords no opportunity to keep suspects apart. After a conference, however, it was

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determined to keep him here, since it was feared the removal of him would be construed as evidence of fear of mob violence.

Hoglan has been rather a mysterious character. He often went out, giving some explanation of his absence. At one time he went out to look at land, as he said, but it was known he had not left town. The officers believe he was carefully laying the plans for the crime and expected to escape suspicion by remaining at his quarters in the hotel until a convenient opportunity should be presented to make his departure."

DENVER TRIBUNE, January 4, 1904.

HARRY CROWNED ALLEGED SLAYER OF STEINBERG.

By Associated Press.

Boise, Idaho, Jan. 4. Thomas Hagen, the suspect under arrest at Caldwell in connection with the assassination of former Governor Steinberg was arraigned before the probate judge at Caldwell yesterday charged with the murder of Steinberg. Hagen had formerly demanded his release and this action was necessary to hold him. The hearing was set for Saturday.

The fourth day of the work of the officers engaged in running down the person or persons responsible for the murder has developed the real name of the man calling himself Thomas Hagen. He has admitted he is Harry Crowned. He has also admitted he was in the Coeur d'Alene until the time of the trouble there in 1899. He was living at Burke and was a member of the Burke Miners' Union.

Among Hagen's effects a leather postal card was found addressed to Charles Mayer, President of the Western Federation of Miners in Denver. It was one of the kind the mailing of which is prohibited, and Hagen, discovering that it could not be transmitted, had evidently put it back in his pocket. It bore a New Year's Greeting."

MINERAL TIMES, January 5, 1906.

"ORCHARD IS WANTED HERE.

Idaho murder suspect faces serious charge.

Cripple Creek authorities claim that they have been hunting for him since the Independence disaster.

The arrest of Harry Orchard in Idaho on the charge of murdering ex-Governor Steuneger has aroused considerable interest in this State, as it is thought that the suspect may have formerly lived in the Cripple Creek district, and certain officials there and in Denver claim that he is also responsible for the Independence disaster of June, 1904, when thirteen men lost their lives.

As yet nothing definite has developed, but detectives and officers both here and in Idaho are working on the case and Sheriff Edward Bell of Cripple Creek has telegraphed that Orchard must be held for investigation on the charge against him here. Former Adjutant Sherman Bell and S. D. Cramp, representing the mine owners, all assert that the man arrested in Idaho is the Harry Orchard who lived at Cripple Creek, and that he has been wanted for a year and a half in connection with charges concerning the Independence explosion.

The records of the Western Federation of Miners, show that a man named Harry Orchard was a member of the union in the district, and came to Denver during the strike and received relief

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here, and later went away.

The officials of the Federation say they are at a loss to know why no hunt has been made for Orchard before, and why Orchard is the third or fourth consecutive man whom the mine owners claim to have done the deed.

Orchard's Colorado record has been investigated, and it shows that he was a member of union No. 19, in the Cripple Creek District; that he came from the Comur d'Alamos, and that he left Denver in the summer of 1904. He has a wife and four children at Cripple Creek.

If the charges in Idaho do not materialize it is probable he will be brought here to answer the charges made by Sheriff Bell.

In this same connection it is claimed that friends of the Western Federation are investigating the Independence disaster, and they promise a counter-accusation before very long.

Sheriff Bell says he is in possession of the evidence that will show that Orchard and J. E. Neville left Victor on the morning of the Independence explosion, driving overland in a wagon and going to Wyoming; that they sold the outfit at Greeley for \$40 and departed. Neville went to Cheyenne and Orchard to Denver. Neville was arrested later in Wyoming, but the charge against him was nolleed, as no evidence could be secured on which to hold him. Bell says that Neville told him that Orchard got two rolls of \$500 each. Orchard went on

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westward, according to Bell.

'To renew our offer of the reward of \$5,000 for the apprehension of the man who committed the Independence outrage last year,' said Secretary W. S. Heywood of the Western Federation of Miners.

'In fact, the offer of the reward was reaffirmed by our last convention. We do not believe that Orchard or any other member of the federation did that deed.

'It seems strange indeed that Sheriff Bell, the mine owners and the adjutant general should all be so sure that Orchard is the man they want and is guilty of the Independence explosion when a little over a year ago they were all so sure that Remino, down in Kansas, was the man. They insisted, then, that the right man had been found, and now they are sure that Orchard is the right man.'

Orchard was at the mine convention in Denver and was made a member of the Wages and hours committee. His address on the stationery of that committee was given as Independence, Colo.

'The Mine Owners' association is assisting Sheriff Bell of Cripple Creek to try to fasten the charge of blowing up the Independence depot on Harry Orchard,' said Sherman Bell, adjutant general of the state militia during the Cripple Creek troubles, this morning. 'Governor McDonald will be applied to for requisition papers shortly so that if he is not convicted in Idaho he may be brought back to Colorado to stand trial.'

Bulkeley Wells, adjutant general of the national guard,

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who was in Telluride during the strike, does not know much about Graham. He says that a man answering his description was wanted on suspicion that he was the slayer of Senator Collins of the Sangre-Union mine.

Governor McInnis said this morning that he had not been advised that requisition papers would be asked for Graham."

DENVER TIMES, January 6, 1904.

"CERTAIN OF HIM, SO AGENTS INVESTIGATION FOR ORCHARD.

(Photograph)

Harry Orchard

The Colorado Miner charged with murdering former Governor Stearns of Idaho.

Harry Orchard, alias Hagan, alias Hagan, accused of the murder of Frank Stearns, former Governor of Idaho, may shortly face a Colorado judge to plead to a charge of having blown up the depot at Independence during the Cripple Creek strike.

Sheriff Edward Hall of Teller county applied this afternoon to Governor McDonald for a requisition for Orchard. He notified the executive early this morning that he would ask for the papers. It is probable that the Governor will grant the request should Attorney General Miller find the sheriff's evidence conclusive.

Sheriff Hall arrived in Denver this noon on his way to Boise, Idaho, to try to identify Orchard.

Sheriff Hall declares he feels no doubt that the suspect in the Stearns murder is the same man who is wanted in Colorado. He says he has evidence enough to bind Orchard over to the district court and that his evidence will include others.

Sheriff Hall came in over the Denver & Rio Grande. He was met by Samuel B. Crump, attorney for the mine owners, and the two held a conference and examined the papers in the case. At 2

client that appeared before Governor McDonald and asked for a requisition on the governor of Idaho for the return of Craker after the Idaho authorities are through with him. This requisition, it is expected, will be granted and Bell and Crump expect to leave over the Union Pacific for Idaho tonight.

'I will have no trouble whatever in identifying Craker, if he is the man who was at Cripple Creek,' said sheriff Bell today.

'We have been after Craker ever over a year. He came to Denver after leaving with Neville and went under the name of John Dampson while here. We got Neville, but he knew he was safe if he did not talk, so we could not hold him. He made some admissions, however.'

'If the man in Idaho is Harry Craker, who was in Cripple Creek, we shall bring him back when our opportunity comes and try him here for the Independence explosion. I think we have evidence enough to convict him,' said Attorney Crump.

'We have tried to get Craker ever since the explosion,' said Attorney Crump, 'but he has escaped us. We sent a requisition to the governor of Wyoming last year, but Craker got away.'

THE SHERMAN POST, December 31, 1908.

"Blown to Atom by a Bomb

Ex-Governor Stansbury of Idaho victim of assassin.

Revenge for activity in big strike suspected

Men who were sent to the penitentiary in 1899 released only recently -- the killing was at Caldwell.

(Over The Post Coast to Coast Laced Wires.)

Boise, Ida., Dec. 30. -- Former Gov. Frank Stansbury was assassinated by a dynamite bomb at 7:30 o'clock this evening as he was passing through the gate leading to his home at Caldwell.

There were no witnesses to the tragedy.

Gov. Stansbury had been down town and was returning home. As he opened the gate a terrific explosion occurred, literally blowing him to atom.

The force was sufficient to break windows in the houses on the opposite side of the street and damage the Stansbury house, but none of the inmates was injured.

There is no clue to the assassin. The murder is believed to be a work of revenge by miners convicted or complicity in Coeur d'Alene riots of 1899. Stansbury was Governor at the time of the riot, and sent state troops to quell the riot and arrest

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the leaders. They were tried, convicted and sentenced to six years' imprisonment. They were recently released.

At the time of the trials many threats were made against the governor.

A special train carrying detectives and bloodhounds left Boise at 8 o'clock for Caldwell.

Large rewards have been offered for the apprehension of the assassins.

Stannenberg was the largest lumber and property holder and the wealthiest man of Idaho.

If the assassination is the result of the Coeur d'Alene convictions, it is feared others interested may meet the same fate, and much excitement prevails.

Stannenberg was a populist. He was governor of the state from January 1, 1897, to Dec. 31, 1900.

Stannenberg was probably more cordially hated by the miners than any man in the country. While in the governor's chair during the Coeur d'Alene strike in 1898 he made matters unbearable for all union men, particularly for the Western Federation of Miners, according to labor men.

After the blowing up of the Gardner mine, on which occasion a train was stolen by the miners, Governor Stannenberg called for U. S. troops and General Harrison responded with a company of negroes.

A stockade was built, and all miners who displeased the governor were promptly placed in the enclosure, according to the

account given by union men who were familiar with the incident.

In order to perform the commonest actions the miners were required to obtain permits from Stansberg and his name became a byword with the miners as representing all that was tyrannical.

Stansberg was denounced in every state and national miners' convention and every miners' magazine contained tirades against him for years after his term of office expired.

Several alleged attempts were made on his life during the years after the Cour d'Alene strike, which were invariably attributed by the authorities to the men he had oppressed while in office.

A PICTURESQUE FIGURE.

Ex-Governor Stansberg was one of the most picturesque figures of Idaho. A native of Iowa, he was nevertheless typical of the Far West, a rough, hearty man of the plains and the hills. He never was east of the Mississippi river until after he became executive of the state.

He stood 7 feet in his stockings, was straight as an Indian, and as broad as ~~Hammerhead~~ a heavy-weight pugilist. When he visited New York city after his election, he caused a slight sensation by bravely parading Broadway without a necktie, wearing the wide-brimmed hat and long ulster of a cattleman, contemptuous of the amenities. But he overflowed with refreshing ideas and was enthusiastic over the future of his own state and of all the West. He was an outspoken advocate

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of women's suffrage, which had been accepted by Idaho.

Former Governor Stannberg was 44 years old and leaves a
widow and three children."

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THE DENVER POST, January 1, 1906.

7 IDAHO SUSPECTS ARRESTED

Detectives trying to ferret out Stenmenberg Mystery.

TWO BOMBS USED TO KILL THE FORMER GOVERNOR

Gov. hooding confident assassination was work of revenge for action taken at time of Casar d'Aleno Strike.

Boise, Ida., Jan. 11. -- Seven men have been arrested on suspicion of having placed the bomb which caused the death of former Gov. Frank Stenmenberg in Caldwell Saturday night. Two of these were arrested at Weiser. One has a large scar on his face, similar to the one on the face of a man suspected of having fired the dynamite. The two men say they are miners, and one of them, who gave his name as Caldwell, was unable to give a clear account of his movements in the last few days.

This man says he has been working at Emmet. He was very indignant over his detention, and made threats of resisting arrest and threatened the officers. A detective was sent to Caldwell and instructions were telephoned back to hold the prisoners for further investigation.

The police believe they have evidence also against a man who is being detained at Caldwell. Of other men arrested in the town where the crime was committed, one, a miner named Hogan,

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has been in town about three weeks, and has told conflicting stories regarding his business. Another is a stranger who appeared at one of the hotels half an hour after the explosion, took a bed and refused to register. When pressed to give his name, he said they might call him Smith. The third is a Russian who has been at Caldwell at times for three years. He calls himself Smith.

TWO BOMBS USED.

It is believed now that two bombs were used to make certain of carrying out the purpose of the assassin. The bombs seem to have been together, both being pulled at once. It has been almost definitely determined that the mine was fired by a wire. The explosive was placed against the post, against which the gate closed, and on the inside of the fence. That post was to the victim's left as he entered, but the force of the explosion caught him on the right, showing he turned partially in closing the gate.

Had the mine been set to go off from the movement of the gate the explosion would have occurred as he went in, and it is therefore certain the mine was fired by a wire and that the assassin, knowing his habit of making the stop to close the gate, waited until he returned.

Madison county has offered a reward of \$10,000 for the apprehension of the murderers and has sent its sheriff to assist in the search. It is probable the funeral will be held in the

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capital, the body will be held in the capitol building.

NO GIANT POWDER USED.

It seems settled that the explosion was not caused by giant powder. Those having a knowledge of such substances and who have examined the scene state the explosive was undoubtedly nitroglycerine. It was in a metallic case, the metal being a combination of tin and zinc. A portion of the mechanism has been found, including the trigger used in firing the charge. The nipple used was such as is found on an old-fashioned muzzle loader shotgun. Pieces of metal were found sticking in all the trees.

Governor Gooding after having spent a day at the scene, states there is only one conclusion -- that Governor Stansberry was killed for the stand he took at the time of the Cour d'Alone riots. It transpires that the dead leader received a letter of warning while in Washington about one and one-half years ago. It stated that his time was short. Some such letters were also received several years ago.

FEDERATION WILL INVESTIGATE

An inquiry into the assassination of former Gov. Stansberry of Idaho will be conducted by the Western Federation of Miners. We will do this not only to prepare ourselves against any charges that may be brought against the federation, but in order to ascertain if possible whether or not a member of our organization committed the crime. The affair is to be done hot.

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No one is more sorry for its perpetration than are the officers of the Federation.' — Charles H. Meyer, President of the Western Federation of Miners.

A dispatch from Idaho states that 'Gov. Gooding, after having spent the day at the scene, stated that there is only one conclusion — that Gov. Stansberg was killed for the stand he took at the time of the Coeur d'Alene riots.

'This means,' said Charles H. Meyer, president of the Western Federation of Miners, this morning, 'that the Federation has become involved in the affair and we intend to investigate. Stansberg had enemies — many of them. One of them committed the act. Why say it was a member of our organization at this time? When the depot at Independence was blown up a reward of \$5,000 was offered for the perpetrators. No one else offered a cent, not even the State. This shows our position in cases of this kind. It is not fair for any one to take the position that this man was killed by anyone connected with the Coeur d'Alene strike. The man had other enemies. During that great strike, there were deportations; business men were thrown into a bullpen; business men lost all the property they had; they were subjected to great indignities, all because they simply sympathized with the miner who was fighting for a principle. These men were not members of the Federation.'

Mr. Meyer continued that this class of men was naturally more of a bitter enemy to the governor than that which simply lost a job.

"I don't say the federation was an enemy of Stannenberg," resumed the president.

"Personally I had nothing against him, but I was only a member of the federation during the trouble. I have done a great many things that have made me enemies; this man probably did the same.

"We have never countenanced such crimes as this; our record of attempting to detect such men bears out my statement. And I can say this: If it was a federation man who killed the former governor he would not remain a member of the organization. It is peculiar that almost every crime of mysterious nature is charged against the Western Federation of Miners. It is because we are kept in the limelight of publicity. In the East there are riots, murders, property destroyed and conflicts of all kinds and we hear but little about them. You can rest assured that this body will conduct a thorough inquiry in order to protect its interests. We want to be prepared for any direct accusation. Stannenberg was not an official of the state or connected with any mining interests, as I understand it, at the time he was killed. The enemies he made were while he was governor long ago. If somebody, or Sherman Bell, then whom no one is more aggressive in persecuting union men, should have been killed, there might be some ground to connect the federation of miners; but under the circumstances it is a very rank injustice to even hint that our organization had anything to do with Stannenberg's assassination. After years of peace and

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prosperity in Idaho, is it fair to lay waste at our doors,
simply because this man, long ago, opposed the Western "eleva-
tion of Miners? Surely."

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THE DENVER POST, January 2, 1936.

THIRD SUSPECT REGISTERED AS DENVER MAN

U. J. Haglan arrested in Caldwell, Ida., for the Hammenberg murder.

CRIMINALS IN HIS HOME

Former Sheriff believes minor belonged to Cour d'Alone strikers' gang — His movements justified suspicion.

(By Associated Press.)

Caldwell, Ida., Jan. 2. — In the arrest of U. J. Haglan, or Thomas Haglan, who registered at the Carthage Hotel three weeks ago as a resident of Denver, the authorities believe they have one of the assassins of former Gov. Frank Steiwer. Haglan apparently is a minor. In his room were found nine lines similar to those found at the scene of the explosion, and supposed to be part of the string with which the trigger of the internal machine was pulled. White powder was found in Haglan's grip.

Chemists will make an analysis of the powder. Paper, resembling brown wrapping paper, also was found in Haglan's room at the hotel. This paper, however, could not be traced.

It is reported that Angus Buchanan, former sheriff of Blaine county, who is on the ground, has recognized the man as one who was in the Zwick bullpen after the Cour d'Alone

riots in 1890. This story has not yet been confirmed, nor another that Nathaniel has his right name.

The officers planned to take Hagan to Boise, as the jail here is a poor affair and affords no opportunity to keep suspects apart. After a conference, however, it was determined to keep him here, since it was feared the removal of him would be construed as evidence of fear of mob violence.

According to the theory of the police, Hagan prepared for the deed for more than a year, during which time he made the Durango hotel his headquarters, arranging his arrivals and departures in such a manner as to permit of the easy establishment of an alibi.

The funeral of former Gov. Steunenberg was at 11 o'clock this morning. The services were conducted by the Rev. W. J. Burns, president of the College of Idaho, and W. A. Burns made an address.

THE DENVER POST, January 4, 1906.

"ASSASSIN DENIED THE DEED"

Harry Orchard charged with explosion at Independence.

Murder of Stansberg

Has formally accused by Idaho authorities the one wanted for year by Colorado officials.

Harry Orchard, the minor accused of the commination of former Gov. Frank Stansberg of Idaho, is wanted in Colorado for murder, the charge being that he pulled the wire that blew up the Independence depot a year and a half ago, and sent fourteen men into eternity.

As soon as the right name of the man who might first said he was Thomas Hogan, then Hogan, was revealed at Caldwell, Idaho, yesterday afternoon, Gen. Sherman Bell recognized him as Harry Orchard for whom a warrant charging murder at Independence, Colo., has been outstanding since June, 1904.

Telegrams were immediately sent to Cripple Creek and to Idaho with this additional information. G. D. Crump, who has offices with George P. Steele in the Equitable building, and who was counsel of the Mine Owners' association, has gone to Cripple Creek, where he will assist in the legal preparations to hold Orchard. Col. Burridge, secretary of the organization, is also

laying plans to bring Orchard within reach.

Orchard has been traced all over Colorado, New Mexico, Old Mexico, British Columbia, Idaho, Wyoming and other sections, but he always managed to slip out of the noose, never mind how currently it was laid. Thousands of dollars has been privately outstanding as a reward by the mine owners for the capture of the man who is now accused of the murder of Idaho's former executive. The Federation of Miners also offered a reward of \$5,000 for the arrest and conviction of the perpetrators of the Independence massacre.

ORCHARD ALSO BLOW UP, IT IS SAID, BIG MILL IN COEUR D'ALENE.

More than this, Sheriff Bell of Cripple Creek this morning said he had almost absolute proof Orchard blew up the big mill in the Coeur d'Alene district during the strike of 1899, the confession having been made in Denver to two women of ill repute. These women are now supposed to be in Denver and private detectives this afternoon are endeavoring to get them before there is any possibility of leaving the city. Sheriff Bell this afternoon also sent a long telegram to the sheriff at Caldwell, demanding that Orchard be held by all means, as he is wanted here for the murder of fourteen men. An officer will undoubtedly be sent from Cripple Creek or Denver to be constantly at Orchard's side until the Steinmeyer matter is disposed of one way or the other.

Announcement that the man formally accused of Steinmeyer's

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assassination is in the individual wanted here for the Independence explosion will cause a sensation among mining men of the entire west. It was at first supposed the explosion was accidental until the details of a very carefully prepared plot became public property. A veritable mine in the depot was connected by wire and Graham is said to be the man who pushed the button.

The explosion killed fourteen men outright, crippled three for life and severely injured dozens of others.

The deed was perpetrated at 8:15 o'clock Monday morning, June 6th, 1904. The excitement ran at fever heat in the mining section for weeks, and a large number of warrants were sworn out, charging conspiracy. Among those named were Frank Deville and Harry Graham.

Deville was a saloonkeeper at Independence. His place of business was directly across the railroad track from the depot. It was here, it is said, the conspirators congregated with their lockouts and spies. Deville was caught, but as there could be no direct evidence adduced connecting him with the actual crime, he was released, the district attorney entering a nolle prosequi.

Graham was then sought by sheriff Hall. The accused man, it is declared, took another name immediately after leaving the mining camp and upon half a dozen occasions changed it to avoid detection. Information was received by the authorities that Graham, in addition to having been one of the main conspirators, was the very man who blew up the depot by using a concealed wire.

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CRONARD'S FRIENDS, TURNING ON HIM, ACCUSE HIM OF THE CRIME.

This information came directly from Cronard's friends, who turned upon him, so it is stated. They even furnished Sheriff Hall with data showing where he had been working, what part he played in the murders and what route he took when he left the camp. Cronard proved elusive. Somewhere between Greeley and Cheyenne, while riding upon the train with Neville, Cronard read of his name being included with those accused of murder and he made tracks the faster. Neville was caught at Cody, Wyoming, from which point Cronard had disappeared the day before, leaving the information that he intended returning to Denver. He went to Park City, Utah, however, and then the trail was lost for weeks.

He was traced through Mexico, Wyoming, British Columbia and several other sections, but always managed to give his pursuers the slip, some times eluding them by only a few hours.

The chase was rendered the more exciting from the fact that the Mine Owners' association, thoroughly convinced by this time that Cronard was the man of all men implicated offered rewards aggregating several thousands of dollars for his capture. Private detectives from various points in the United States were placed at work and the still hunt was conducted for months, the outside world having not the faintest suspicion that one Harry Cronard was the object of a systematic and insistent pursuit now being conducted in the west.

All this time O'Connell's record was the subject of exhaustive inquiry, with the result, it is said, that he was connected very prominently with the blowing up of a large mill during the Cour d'Alone strike.

Only a few days ago, Frank Stannenberg, former governor of Idaho was nearly blown to atoms by dynamite operated by wires.

Several suspects were arrested, it being well known that Stannenberg's attitude during the great strikes in the Cour d'Alone was not favorable to the miners. That the deed had been perpetrated by some one who had felt hard head, gained almost immediate belief and suspicion was directed towards down-

INDEX OFFICERS DISCOVERED THAT 'HOGAN' WAS IRVING O'CONNOR.

Among those arrested a couple of days ago was a man giving the name of H. J. Hogland. The name was not registered at the Saratoga hotel a year before as Thomas Hogan.

No evidence anybody by that name. The Mine Camera's association of Colorado searched its records but found no such name among the men reported.

Yesterday, however, the Idaho officers ascertained that the real name of Hogland, as he sometimes calls himself, is Harry O'Connell. Even but these officers had no knowledge of O'Connell's alleged crime in Colorado and will not be informed until Sheriff Bell's telegram reaches them this afternoon. He has admitted he was in the Cour d'Alone up to the time of the strike. He said he was living at Duran and was a member of the Duran Miners' union. Among his effects was found a leather postal

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card addressed to Charles H. Meyer of Denver, President of the Western Association of Miners. The card is one of the sort prohibited from the mails and Orchard had therefore placed it in his pocket. It bore a New Year's greeting to President Meyer.

When Orchard was arraigned yesterday before the probate judge, he was formally charged with the murder of Stuenkelberg. He had formally demanded his release and his examination was therefore necessary. He asked if the news of his arrest had been wired to the newspapers of Spokane, saying if the Spokane arrest published his arrest a lawyer would come to his defense at once. Otherwise, he would need two days to secure counsel from that city.

The hearing has been set for Saturday.

With Orchard are five other suspects under arrest. Two of these are known to have been in consultation with him at Hampe, nine miles from Caldwell, the day before Stuenkelberg was assassinated. They are known as Frank Campbell and Warren, alias Harron. They are miners and had been at work in a rock cut on the grade of the Idaho Northern railroad but quit work two weeks ago. The other three men declined to give their names or to give out any information whatever.

The reward of \$25,000 for the capture of the assassin is causing some little friction between the Idaho officers and private detectives. One of the latter has taken charge of Orchard's effects and Sheriff Nichols retains this.

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E. C. Robinson, who assisted in the defense of the Cour d'Alene dynamiters, lives in Spokane. The supposition is that Grubert had reference to him in speaking of legal advice coming from Spokane.

GEN. SHERMAN HALL SAYS GRUBERT ENJOINED WITH PLENTY OF MONEY.

'As soon as I read today of Harry Grubert being the man's right name I knew he is the man for whom Colorado officers have been hunting for a year and a half,' this morning said Gen. Sherman Hall. 'Big rewards were offered for him because we had positive information from his own friends that he blew up the depot and had damaged with plenty of money. Your own files will show his name as being included in the warrant charging murder. That warrant is still outstanding and will be served upon him. I have communicated with certain parties -- one I do not care to mention at this time -- about Grubert, and the case will certainly now have the time of his life. There is not the slightest question in my mind about the identity being clearly established.'

Sheriff Hall was called up by telephone shortly before noon and admitted that he had already taken action to have Grubert held.

'He pulled the wire at the depot. Of that I am certain,' said the sheriff. 'We have been looking for him for a year and a half, and I shall this afternoon send a long telegram to the Idaho officials saying that Grubert must be held at all hazards to answer for the murder of fourteen Colorado men. Grubert has a

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wife somewhere in the state, and I shall endeavor to locate her. He has no other relatives of which I am aware. Our information against him is absolutely conclusive. Our information is also to the effect that he blew up the mill in the Coeur d'Alene. We even traced his boat that far and have established where he was and what he did. You probably cannot wonder why we have been so anxious and are now demanding that he be held."

It is claimed that while in Denver with a friend about a year ago, Orchard was in consultation with two men. All had been drinking, and during the exchange of confidences, it is declared, Orchard and his male companion admitted blowing up the Idaho mill and remarked that "it was a good job."

It will be remembered that the Denver authorities were on the qui vive some weeks after the Independence explosion, owing to information to the effect that the dynamite were secluded in this city.

Crowd was the man wanted at that time."

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THE DENVER POST, January 7, 1906.

GOVERNOR HODGKINS ISSUES REQUISITION FOR
 COLORADO OFFICERS WANT FOR HARRY CROSBY
 CHARGED WITH DELIBERATE INTERFERENCE DEPOT.

If by any chance he should not be held in Idaho for the assassination of former Governor Stenoch, Harry Crosby will be brought to Colorado and tried for murder in Teller county. He is directly charged with the igniting of the Independence depot and the murder of J. A. Hartcock and twelve other men in June, 1904.

In the hearing before Governor Hodgkins yesterday afternoon on the application for a requisition, the question whether the governor of Colorado ought to make a request for the prisoner—since he is being held for the murder of his former governor in the state of Idaho, was discussed, and it was concluded that if the man was wanted in Idaho, and the authorities there believed they had sufficient evidence to convict, of course no extradition would be issued. But it was not thought the case was sufficiently strong to hold Crosby, then immediate action should be taken here so that Crosby could not escape.

The Mine Owners' association has spent more than a thousand dollars in attempting to locate Crosby. Shortly after the explosion Governor Peabody issued a requisition for Crosby's partner, J. J. Kerville, and he was brought from Wyoming. The evidence

was insufficient to hold him on preliminary hearing and he was released. It is claimed by those sitting for the "Line Owners' Association" that Neville and Cronart drove away together in a buggy from the vicinity of the dynamited station on the morning of the explosion. It was represented at the hearing yesterday that prior to the blowing up of the station Cronart had made a trip to the large eastern cities collecting money for the Western Federation of Miners to aid the strike fund in the Cripple Creek district.

In the affidavit sworn to by deputy district attorney C. A. Gillette of Teller county, and yesterday presented to the governor, it is asserted the whereabouts of Cronart were not known until the past week.

AFFIDAVIT ON WHICH CAPIAS FOR CRONART'S ARREST WAS ISSUED.

On the allegations of this affidavit a capias for the arrest of Cronart was issued, directing the sheriff to produce his body before the district court of Teller county on the 6th of February next.

Among other recitals in the affidavit of sheriff Hall, sworn to yesterday, is the following:

"That the said Harry Cronart, on the 6th day of June, A. D. 1904, did, in the town of Independence, and in the county of Teller and State of Colorado, lay an infernal machine under the dept of the Florence & Cripple Creek railroad company and did explode the same by a wire laid to and connecting with said machine, and did at that time explode said infernal machine,

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and by that said explosion did kill and murder the said J. A. Harbock, together with twelve other men; that the said Harry Graham escaped and fled to parts unknown to the officers of this county, and that his whereabouts have only been discovered within the past week.

Chariff Henry Bell, attorney S. B. Crump and a special detective employed in the case, appeared at the hearing before the governor.

The requisition was allowed and the three parties must start last evening for Boise City, where they will at once lay the matter before the governor of Idaho, and attempt to secure extradition papers for the return of Graham.

MINISTER BELL SAYS THERE IS NO DOUBT OF PRISONER'S IDENTITY.

All doubt regarding the Harry Graham wanted for blowing up the depot at Independence, where fourteen men were killed, and the Harry Graham under arrest at Caldwell, Idaho, for complicity in the assassination of former Governor Steuneger, being one and the same man is now removed.

Private advice was received yesterday morning from Caldwell to sheriff Bell establishing positively the identification of the man wanted.

In addition to this, Mrs. Harry Graham, who, with her children, occupies the small home near the Independence depot, yesterday had a long talk with the sheriff in which she confessed having received letters during the past days from her husband in Caldwell. She says her husband is the man wanted for the

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Independence affair, and that he is the man also accused of the Stansbery assassination.

James J. Sullivan, an attorney of Denver, with offices in the Bryant & Cramer block has appeared at Caldwell as attorney for Orchard. Attorney Hanson of Spokane also arrived on the same mission. Hanson is the lawyer to whom Orchard referred when he was first placed under arrest. Sullivan's connection with the case is proving a surprise, although he has handled labor cases before, in connection with his partner, Henry Cohen. Sullivan is the attorney for Pauline the Italian banker, who disappeared after the failure of the North Denver bank.

A dispatch from Boise yesterday states that a strange man occupied a room with Orchard the first week in November, and that he is supposed to be Charles H. Meyer, President of the Western Federation of Miners, who was at Silver City, New Mexico, October 18th.

The telegram further says that testimony is at hand to convict Orchard of the Stansbery assassination.

FORMER CHARGE OF MURDER IS LAID IN DISTRICT COURT.

From the day The Post printed the exclusive story that Orchard is wanted for the Independence explosion as well as for the Idaho affair, the authorities of Teller county have been exceedingly active. As a result, Deputy District Attorney, C. A. Elliott filed an information in the district court, formally charging him with the murder of Harbock. Telegrams were also dispatched to Caldwell by Sheriff Hall and General Sherman Hall urging that Orchard be held at all hazards until the evidence

of Colorado could reach there.

The sheriff said Mrs. Orchard admitted having received letters from her husband dated Caldwell and Boise during the past two weeks and that he "expected serious trouble".

"You can tell the people far as through the post", said Sheriff Bell, "that we expect to have this man in Colorado unless the Idaho officers convict him for the Stammenberg murder; and that we shall secure from him enough information to place a dozen more men behind the bars, probably for life. We have such a strong case against this fellow that I have no doubt in the world he will loosen up and confess, giving us the names of his accomplices of which he had several. I know we shall convince him of the wisdom of such a course."

It is said that a companion of Orchard who was mixed up in the Independence affair is now under arrest at Cripple Creek, but his name and all the circumstances are being kept a profound secret.

The feeling against the man who blew up the depot is as strong throughout the county that should the accused man be brought back Judge Lynch may be called into service. Sheriff Bell admits this, but says he has amply fortified himself and is prepared to handle the situation, no matter how serious it may become.

RECORDS CONTAINING TOTAL TWENTY THOUSAND REELS.

A complete record of Orchard and his movements is said to have been prepared from the time he left Idaho in 1899, after having been implicated, it is claimed, in the blowing up of the

big will in the case of a mine.

A reward of \$20,000 offered by the Mine Owners' Association for the arrest of the Independence murderers is said to be still in force, while officials of the Western Federation of Miners say their offer of \$5,000 for the capture of the guilty man is still effective. This will make a comfortable legacy for the parties responsible for Orchard's arrest in case the man is convicted.

Gen. Sherman Hall said yesterday that he has evidence in his possession to the effect that Orchard was involved in the wrecking of the Colorado Springs electric light plant, which furnished power for the Portland mine, and the Standard Reduction works at Colorado City.

"Mr. Meyer was not in Idaho during November," said F. D. Raymond, secretary of the Western Federation of Miners. "He was in Silver City in October, but at headquarters during all of November. Our reward of \$5,000 still stands good. The offer was reaffirmed at the last convention. If Orchard is proved to be the man who did the work the federation will repudiate him in no uncertain terms. We won't stand for that sort of thing. I know nothing about Attorney Sullivan being employed to defend Orchard."

THE DENVER POST, Monday, January 2, 1906.

"ALLIED SLAYER OF BRENNAN."

Assassin of former Governor of Idaho may be in custody.

Police at Caldwell arrest suspect, but name is withheld.

County in which Oscar d'Almeida riots occurred offers big reward.

Boise, Idaho, Dec. 31.—A man has been arrested at Caldwell whom the officers think may be the assassin of former Gov. Frank Steuneger. His name has not been reported. Five men in all have been detained on trivial charges in order that their whereabouts may be looked up.

When daylight dawned on the scene of the tragedy it was found that the dynamite had been exploded by pulling a wire. Pieces of wire and waxed fishing line were found in the room on the lawn. Further, it is believed that two hooks were used, to make certain of carrying out the purpose of the assassin. They seem to have been together, both being pulled at once. It was quite definitely determined during the night that the mine was fired by a wire.

The explosive was placed against the post against which the gate closed and on the inside of the fence. That post was to the victim's left as he entered, but the force of the explosion caught him on the right, showing that he had turned partially

in closing the gate. Had the mine been set to go off from the movement of the gate the explosion would have occurred as he went in, and it is therefore certain the mine was fired by a wire and that the assassin, having Stuenkelberg's habit of making a stop to close the gate, waited until he turned.

Stuehmann county has offered a reward of \$20,000 for the apprehension of the murderer and has sent its sheriff to assist in the search. It was in that county, in the northern end of the state, that the Denver & Alamosa riots occurred in 1890.

It is probable the funeral will be held in the capital, the body lying in state in the Capitol Building.

CAPITOL OFFICERS ARE SWARMING WITH SUSPECTS/

The officers at Colorado have three men whom they are searching vigorously, believing one or more of them have some knowledge of the crime. One is named Hogan and is said to have been a miner. He has been around here for three weeks and has told strange stories about his business. Another is a stranger who appeared at one of the hotels half an hour after the explosion, took a bed and refused to register. When pressed to give his name he said they might call him Smith. The third is a fugitive who has been at Colorado for three years. He calls himself Smith. This man has been a free drinker, but yesterday no one could induce him to take a drink.

It seems certain that the explosion was not caused by plant powder. Those having a knowledge of such matters and who have examined the mine state the explosive was undoubtedly nitroglycerine. It was in a metallic case, the metal being a combination of tin and zinc. A portion of the mechanism has been found,

Including the trigger used in firing the charge. The nipple used was such as is found on an old fashioned muske loader shot gun. Pieces of metal were found attached in all the traces.

Gov. Gooding, after having spent the day at the scene, states there is only one conclusion -- that Governor Stansbury was killed for the stand he took at the time of the Bear & Alone riots. It transpires that the dead leader received a letter of warning while in Washington about one and one-half years ago. It is stated his time was short. Some such letters were also received several years ago."

THE DENVER REPUBLICAN, January 2, 1906.

HULLMAN HUNTER WAS IDENTIFIED.

Police Officers confident they have one of the slayers.

Man giving Denver as his address has queer stuff in his room.

Former sheriff said to identify him as member of Coeur
Idaho d'Alene gang.

Calcutt, Id., Jan. 1.—The officers believe they have
one of the possible for the assassination of ex-gov.
Steiner of those who have been under suspicion.
at the Saratoga hotel three weeks ago as
his address.

at the Pacific hotel, registering

Saratoga resulted in the finding
clothes, also some findings
one of the explosion,
which the trigger of the

to powder believed to
or like brown wrapping
the grip are in
Wetherland, former
has recognized

This man is one who was in the famous hall room after the Coeur d'Alene riots in 1862. This story has not yet been confirmed, nor whether that Hall should have his right name.

OFFICERS WENT TO TAKE HIM TO INDIAN JAIL AT SOON.

The officers determined to take Hugen to Boise this evening, as the jail here is a poor affair and affords no opportunity to keep suspects apart. After a conference, however, it was determined to keep him here, since it was feared the removal of him would be construed as evidence of fear of such violent men.

Hugen has been a rather violent man character. He often went out, giving some explanation of his absence. At one time he went out to look at land, as he said, but it was known he had not left town.

The officers believe he was carefully laying the plans for the crime and attempted to escape suspicion by remaining in his quarters in the hotel until a convenient opportunity should be presented to take his departure.

The funeral of Gov. Stearns will occur tomorrow morning at eleven o'clock, the services being conducted by Rev. W. J. Hume, President of the College of Idaho, a Presbyterian school. Hon. W. B. Borah will deliver an address on the occasion.

BOULDER, COLORADO, January 3, 1934.

WITH EVIDENCE IN THIS CASE.

Boise Police Official says the missile for Gov. Stansbury's assassination was sent in suspect Hagan's Room.

Boise, Ida., Jan. 2 — A Stansbury's special from Caldwell, dated 9 P. M., says:

Capt. Swayne has just made the following statement:

'You may notice that we have conclusive evidence that the bomb used in the assassination of Gov. Stansbury was manufactured in room No. 19 of the Hartigan hotel (the room occupied by Hagan), and that the details of the plan were probably formulated there.'

'It was further stated by the captain that in his opinion the evidence accumulated against Hagan was overwhelming. He did not feel justified in making much of it public, but he was willing to state that one feature was the finding of Hagan's shoes that he wore the night of the murder. He would not say where these shoes were found, but stated they were wet when discovered.'

The shoes had nails in the soles and these nails were found to fit perfectly into tracks which have all along been believed to have been made by the assassin while escaping from the room.

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Capt. Swayne said he did not expect to have any additional news tonight, but he would be bright and early in the morning with some important work to be attended to. He intimated that the evidence at hand justified several additional arrests. In

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a few hours, shells would be positively fixed upon somebody. Hogan, he believes, is guilty of manufacturing the bomb, at least. Vessels in his room, it develops, show a sediment of plaster of paris, this being one of the evidences of the kind of work he was doing there.

As Caldwell today Hogan was brought into court and formally committed to the custody of the sheriff. He said he thought he could get counsel in two days and be prepared for his preliminary hearing. There are two other suspects in jail there and two more will arrive from Council tomorrow. Those at Council are F. Campbell and Harold Warren. The latter two were in Hugo last Friday when Hogan was there and they all registered at a local hotel. Hogan carried some business cards with him 'Thomas Hogan' Silverton, Colo., Agt. Mutual Life Insurance Company.'

The funeral of ex-Gov. Staunberg was held today in Caldwell, his home town. Among those present were the Governor and two ex-governors and all the other state officers. The feature of the services was a brief oration by former Congressman W. A. Burdell

THE DENVER POST, January 8, 1905.

THE CRIMINAL HAS HINDERS IN COLORADO.

Stannenberg suspect is connected with outrage at Independence.

Noted in both crimes the same.

Teller county officials say former Colorado lyncher killed Idaho man.

Officers of Teller county, and the local men who have been at work on the assassination of former Gov. Stannenberg, have come to the conclusion, after telegraphic correspondence with the officers in Idaho, that the men guilty of the crime in Idaho are the persons who took part in the dynamite outrages at Cripple Creek, and the murders in the San Juan district. The Colorado authorities are working with the Idaho police to unearth the latent conspiracy because they know that if the criminals are brought to earth in the one case, they will have to answer to other charges.

The Cripple Creek officers are certain that the man who gave the name Harry Graham, arrested for the murder of Stannenberg, is one of the men who escaped from Cripple Creek after the explosion of the depot at Independence, resulting in the death of fourteen people. He was known under several aliases. He was and perhaps is, a member of the Western Federation of

Miners.

It has been proven through a close examination of the scene and the remains of the explosion used to murder the Idaho man, that identically the same methods were employed there as at Triple Creek. The work in both cases was done by professionals. No chances were taken. Experts in explosives were responsible in both instances. The wiring and detonations and every particle of evidence that remained, went to prove that the people who committed the later outrage either committed the Indianapolis horror or the instructors were the same.

NO CHARGE IS BRINGING AGAINST THE ORGANIZATION:

No charge has been preferred against the organization as a whole. The executive committee cannot be held responsible. But there is no question but the assassination of Stansbury was brought about by men who had a grievance against him for his stern insistence upon the enforcement of the law when he was governor of the state. Neither is there any denial of the fact that the Clear Forks district is the refuge for the Colorado outlaw. Vincent St. John, president of the Miners' Union, who fled from Telluride after the murder of mine superintendent Collins in at Durango, Colo., under the name of John Vincent. He is one of the leading spirits in the organization. The men who escaped from Triple Creek and others who were driven from that district are to be found in the mining camps of Idaho.

For several months the Miners' Union in the Clear Forks area have been unusually active. They have been getting ready to make demands on the coal magnates. The men union men have been going out and miners' union men going in under disguise.

7. The unions have been filling some of the gaps with their own men. It was thought that the time was nearly ripe for an uprising on behalf of the unions.

The Western Federation of Miners did not encourage the strike. It has had enough. Recently President Meyer has been making a tour of the unions. He was advising radical action in getting men into the unions.

Commenting on the tour of the president, the Miners' Magazine, the official organ of the Federation, had this to say last week:

"We cannot too highly commend the work of President Charles Meyer for the amount of organizing work that has been done. His visit to the different parts of the jurisdiction has been the means of imbuing a more aggressive and revolutionary spirit into the membership of the Western Federation of Miners and will be of lasting benefit to all wage workers."

But the treasury of the Western Federation of Miners is not overflowing. And although Meyer did his very best, the membership of the affiliated unions has not been increasing. In Colorado there has been a marked falling off.

Nevertheless, with the kindred spirits that wrought a reign of terror in Cripple Creek and Telluride, in the Comar d'Alamos were the headquarters of this kind of people.

CRIPPLE CREEK OFFICERS WILL VIEW IMAHO SUSPECTS

At least half a dozen men are held in jail in Imaho, suspected of complicity in the assassination of Gov. Stearns. The Cripple Creek authorities will send officers to the scene, to learn regarding the suspects, and their connection with the

Cripple Creek outrage.

Mayor Adj. Gen. Sherman Hall is of the belief that Orchard is one of the men who was connected with the Independence outrage.

Hall inquiry at Governor Stannenberg's home and throughout the state, has made clear that he had no personal contacts made in recent years, and that there was no act of his life outside his official life, that could have been in any way responsible for his murder. The assassination was the work of the 'Inner Circle' or 'Hole Club' or 'Black hand' or whatever name it may take in Idaho, done to deter others from doing their duty and upholding the law."

ORCHARD CHARGED WITH INDEPENDENCE OUTRAGE.

Sheriff Hall says he has proof of Orchard's guilt for same.

Cripple Creek, Colo., Jan 4 -- (Special)-- Sheriff Edward Hall declared today that Harry Orchard, charged with the assassination of former Gov. Stannenberg of Idaho, blew up the Independence station on the morning of June 6th, 1904, when the lives of thirteen non-union miners were snuffed out and a score of other persons injured.

Sheriff Hall was alleged to have been in possession of information that Orchard was the guilty man, since ten days after the explosion. He made repeated efforts to apprehend him, but without success. He tried to get him when he went to Thermopole, Wyo., in August, 1904, but Orchard escaped going into the interior. It has since been learned that Orchard paid an as-

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maintainance \$200 to escort him during the month.

If Orchard is not convicted of the murder of Stansbury, he will be brought to this county to answer to a charge of killing thirteen men at the Independence station.

Sheriff Ball said today that J. K. Neville and Orchard, associates, left Independence at 4 P. M., June 3, 1904, driving to Lava, where they camped for the night. After pulling the wire that dealt death to the miners on the station platform, Orchard went over Hill Hill to the Black gulch, and then down Beaver creek, where he joined Neville. They drove from Colorado Springs to Greeley, where, becoming frightened by newspaper reports telling of warrants having been issued for their arrest, they sold their team and buggy for \$150 and separated.

Neville went to Cheyenne and Orchard went to Denver. Orchard received \$200 of his blood money, according to Sheriff Ball, before leaving Grigg's Creek, \$750 in Denver and \$1,000 at Cheyenne. Neville admitted to Sheriff Ball that Orchard received two rolls of money, containing \$500 each, at Cheyenne, and that he, Neville, took care of one roll for Orchard on their subsequent journey to Cody, Wyo. At Monticello, Wyo., Orchard lost \$500 at roulette. It was there that the Wyoming authorities first got track of him. It is believed that Orchard lost the rest of his money at Cody, where he played Turnout roulette. Trace of him was lost at Park City, Utah.

At this point in the search a woman entered the case. She wanted to join Orchard and while he was not unwilling to meet her, he was afraid to do so and because of his fear the officers were called again. The woman was being watched. It is believed

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that she had been in the neighborhood of Goldfield and Tough
until recently and that the Idaho authorities he will be able to
follow his career from the time he left Circle Creek. Graham
figured in the Cour d'Alone strike of 1897 and spent a period
in the "hell pen". Graham came here in 1899, after the close
of the strike in Idaho, and became a member of Tree Cutters
Union No. 19, W.F.M., at Alton. He left the camp, returning
in 1900. From this time on he lived in a cabin near the Pinery
mine, working in the mine occasionally, and also living by his
wife. He peddled and was suspected of handling stolen goods.
He was of strong physique, about 40 years of age, wore good
clothes, was easy of address and when traveling pretended to
be a commercial traveler.

Harris is said to have died in Tough six weeks ago.

UNSUBSCRIBED LETTERS ARE SENT TO PUNISH.

Former governor gets one from Idaho and one from California.
Canon City, Colo., Jan. 4 — Special — Former Gov.

Pebody was seen today in reference to a report that he had
received 1 share of a threatening nature. He stated that he had
recently received two such 1 shares, one from Wallace, Id., and
one from a small place in California. The letter from Wallace
was signed "Committee of Workmen", and said that he would be
killed on a certain date. The other letter has a coffin drawn
on one side and the writer stated that the recipient would be
sent to hell. The former governor said that he had received
a very large number of letters of a similar nature that he did not pay any

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attention to the witness.

CHARGE ATTACHED TO ISSUED COURT ORDER.

Boise, Jan. 4 — The feature of the day in the Stansberg examination was the news that the law firm of Robertson, Rowland and Miller of Spokane would defend Harry Orchard, alias Thomas Hayes, accused of the murder. Last night they sent him word that one of the firm would be on hand Friday. That firm has long represented what is designated as the dynamic element of the Hour of Action.

Capt. Dwyne, in charge of the case, is convinced there was a conspiracy and is working on that theory."

THE DENVER POST-TRIBUNE, January 8, 1904.

SHERIFF HALL TO VISIT LITCH.

Will go to Litch and endeavor to persuade officers to permit his return to Colorado to answer earlier charge.

Grippe Creek, Colo., Jan. 8 -- (Special) -- Sheriff Hall will leave tomorrow for Trinidad, Litch where he will make an effort to secure Harry Ordway, who is under arrest there charged with the assassination of former Gov. Stannenberg.

Deputy district attorney C. A. Gillette, on an affidavit sworn to by Sheriff Hall, will file a direct information in the district court against Ordway, charging him with having murdered S. W. Hartcock, one of the thirteen men who were blown up and killed in the Independence depot explosion on the morning of June 6, 1904.

Denver Republican, January 3, 1906.

THE UNUSUAL COURSE OF INVESTIGATION.

Grand's arrest in Idaho will clear Colorado's history.

Big rewards for arrest in case.

Has belted Cripple Creek reign of terror likely to be uncurbed at last.

That the truth regarding the reign of terror at Cripple Creek and the crimes and conspiracies connected with the recent strike, will come to light with the arrests made in Idaho for the murder of former Gov. Stannard, there is little question.

The chains are being forged that connect the Cripple Creek outrages with the Idaho assassination. Men who escaped Cripple Creek have turned up in Clear d'Alamo. For the arrest of the ringleaders responsible for the death of Idaho's son, who was marked for destruction because he dared to obey the law and his oath of office, rewards aggregating \$125,000 are to be paid. The money itself would be an incentive. But honor will out.

ONE MAN DID NOT COMMIT ALL THE CRIMES.

One man did not commit all the crimes. The history of crimes, the records of criminal jurisprudence, prove, that when more than one person is engaged in the crime, the truth cannot be

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minutes.

At the time Grapple Creek was meeting, when it was a question of a wholesale lynching, such as the West has never had the misfortune to witness, or a wholesale slaying, a committee of citizens was formed to visit the district of notorious criminals and their sworn confederates. That committee heard and recorded evidence. At least one of the men connected with the inner circle of dynamiters 'appeared'. He told of the blowing up of the Independence depot, involving thirteen lives. A large mine was raised by the 'circle'. The man who was to pull the wire that connected the dynamite with the explosion was to get a big one. The first man chosen failed at the last moment.

The man in line was Harry Orchard, according to the witness who revealed the secrets of the order to save himself from what he believed to be a trap post engagement. Orchard was greatly and refused the first offer. He was a professional, a desperado. He needed his price. The money was forthcoming from Denver. Twenty-four hours later the state was horrified. And this was not the only crime charged against Orchard. The testimony secured at the hearing before the Grapple Creek vigilance committee was that Orchard was the dynamite that plotted the disaster to the Vindicator property, which was brought about by an intricate use of revolver and dynamite.

THEY WANTED TO SEE IT IS BEEN KNOWN.

But Orchard was not alone. A dozen people knew what was being plotted. The powers that supplied the money knew that mischief was afoot, that a reign of terror was being carried through to force the mine managers and their employees to give

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in to the union. All these things will be brought to light. The only uncertainty is whether the person arrested in Idaho who gave the name Orchard as well as others, is the real Orchard known to Cripple Creek as such. This will be known in a very few hours, as the Cripple Creek officers should reach Idaho this evening with extradition papers for Orchard, in case he should not be connected with the Rosenbergs' organization.

Attorney W. L. Gray, now of Denver, was in Cripple Creek during the outbreak, and was the attorney for the Mine Owners' Association and also served as special prosecutor. He knows much of the history and the workings of the Cripple Creek Junction. He has been aiding in the prolonged search for the criminals, brought about through the assassination in Idaho.

In discussing the matter yesterday attorney Gray said he had no doubt of Orchard's complicity in the crime.

He got a warrant out for Orchard immediately after the explosion and looked all over Wyoming and Colorado for him. He learned that he was in Denver and got as much money as \$2,000 or more, which he lost in gambling. Before the crime was committed Orchard had been here in Denver organizing certain prominent men in the Western Federation of Miners, and he was under pay of the Federation during the entire strike.

After the explosion officers of Cripple Creek were unsuccessful in tracking Orchard and his partner, Deville, a certain distance. It was learned that they had purchased a team at Hill Hill and stationed it at Love or Glyde. After the explosion the team was driven from Cripple Creek to Greeley and sold there. The start from Cripple Creek was made at four o'clock in the

morning.*

* I do not believe that Neville was implicated in the crime, but I think he knew all about it and possibly got some of the money. Both he and Orchard lived a very fast life and Neville afterwards died at Goldfield. He was mainly an agent to get Orchard out of the country.

What such is known about Orchard's career since leaving Colorado, except that he changed his name to Downey and that is the name he probably went by in Wyoming.

*I don't know the nature of the evidence against Orchard for the murder of former Gov. Stearns or how incriminating it is. I expect to go over to Caldwell, Id., within a day or two to look into the matter. He will be brought back here, unless he is tried and sentenced to be lodged in Idaho.

Of course there is no telling whether Orchard will ever confess, but if he did it would probably clear things considerably. He does his work for money, according to my view of it. Orchard was at the Vindicator mine at the time the miners were killed there, he was at Colorado City at the time the power house was blown up and has been connected with the Cowie d'Almeida outrages. He was receiving a per diem from the Western Federation of Miners and was supposed to be soliciting funds for the Federation in the West at one time.*

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THE DENVER POST-TRIBUNE, January 10, 1900.

ORCHARD CASE LIKELY TO COME UP SOONER.

Denver Attorney returns to Caldwell — Zebo Union refuses to defend any murderer.

Boise, Idaho, Jan. 9 (Special) — It is expected the preliminary examination of Harry Orchard will be held Thursday. Fred Miller, the Spokane attorney, indicated today that he would not seek to make a contest at the hearing, contenting himself with hearing what the State shall offer.

The detectives are busy. Capt. Boyne has intimated that he has much valuable testimony which will not come out until the trial in the district court, as it will not be necessary to show the entire load of the State on the preliminary.

James G. Sullivan, the Denver attorney, has returned to Caldwell, from Boise City. He at all insists that he is not interested in this case. Asked why he stopped again, he said he had promised Orchard or Hagan to stop on his way back. If he were in the case, he said, he would make the fact public, as it would soon have to come out. Sullivan and Miller, Spokane attorneys, took dinner together and after dinner both went to Miller's room. When Sullivan was asked if Orchard had money with which to employ attorneys, he said: "I should think so.

When I knew Hagan in Denver last summer he was making \$200 a week in the insurance business." He did not know Orchard was married. In Denver he was living in bachelor's quarters. The first time he saw him he was in one place, the next in another.

Sullivan says his business in Silver City had nothing to do with the Orchard case and he will leave for Denver tomorrow.

W. D. Hayward, secretary of the Western Federation, formerly lived in Silver City. John P. Nugent is a local attorney there. He is an able young man, but in the political struggles that arose over the policy adopted by Gov. Steiensen in the Coeur d'Alene, he joined the opposition to the Governor and was one of the leaders of that side.

Hayward evidently thought Nugent would be glad to accept a nomination to defend Orchard and that the union there would be glad to employ him. But it is apparent he was mistaken, since the union has declined to employ Mr. Nugent or anybody else, to defend anyone accused of the murder.*

 BIRTHDAY in paper of the same date.

THE ARREST OF ORCHARD.

If the officers of Tallar county are correct in their suspicions, the arrest of Harry Orchard for the assassination of former Governor Steiensen of Idaho, promises to clear up for all time the question of responsibility for the outrage at the Independence agent conducted during the labor troubles in Cripple Creek.

Because no arrests followed the perpetration of the crime, interested politicians and newspapers have from the first been studiously trying to make it appear that the crime was committed by agents of the Mine Owners' Association for the purpose of causing a split in the Western Federation of Miners. Silly as the theory

has appeared to most people, a far more wanted to believe that they had been taken advantage of in that that no arrest was ever made for the direct crime to continue to misrepresent the motive for it.

Among those familiar with the history of Cripple Creek during the period of stress, it has been known that the police officers were all the time waiting for the arrest of one Harry Orchard before they could start prosecutions for the crime with any prospect for securing convictions. They have been holding their hands off following the outrage & contending among themselves as to who was definitely fixed the responsibility for it and all the time have hunted the West over for Orchard. Whether or not he is guilty, he is the man on whom arrest they have been waiting, and now that he is taken on suspicion of perpetrating a similar crime on similar lines and for similar motives, there is a prospect that the whole unfortunate affair will be laid bare.

The officers claim that they would have gone to trial a short time after the explosion if they could have located the man Orchard. The blood hound who took his nose from the chair ring around which the wire that set off the infernal machine was wrapped, traced the man who pulled the wire to a point near Lov 4, on the Colorado Springs road. Never was dog seen to work better on a scent. The officers have known all along that Orchard took a wagon at this point, where the dog lost the trail, and with Hattie, drove out of the district on the morning of the outrage. Hattie was located, arrested and sentenced to accompanying Orchard out of the country out to Cody, Wyo., where all trace of him was completely lost to the officers until

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his arrest on the charge of communicating information. It therefore looks like he would prove an important defendant in the Cripple Creek case and that if he is brought to Colorado for trial the whole plot of the Visitation and the subsequent murders in Cripple Creek may be revealed.

THE DENVER POST, January 9, 1936,

HELL HOUND AND COUNTRY.

Sheriff recognizes Harry Orchard as man wanted in Cringle Creek — he was tracked from Salt Lake to Idaho.

Boise, Idaho, Jan. 8 — Sheriff Hall of Miller county, Colorado, stated this evening that he recognized Harry Orchard, the man suspected of the murder of ex-Gov. Stannenberg, as the same man who is wanted in Colorado for the blowing up of the Independence depot at Cringle Creek.

The officer with his lieutenant recognized the prisoner absolutely. Sheriff Hall said further that, though he had come here with a requisition for Orchard, he had found after looking over the case of the State against him for the Stannenberg murder that it was not likely Colorado would get hold of him at this time. He feels certain he will be held and is prepared to go back home, but will remain until after the preliminary examination. Orchard would not admit that he recognized the sheriff or the other officer with him.

Salt Lake, Utah, Jan. 8 (Special) — Harry Orchard's trunk, which was found to contain powder, guns and other material that might have been used in making a bomb, was shipped from Salt Lake to Hays, Idaho, Dec. 14, by Orchard. Orchard was accompanied to the railroad station by Arthur Dodson and wife of Salt Lake, who saw him check the trunk. Orchard is well known in Salt Lake, where he worked as a teamster. One of his friends here was

Dodson, who had worked with Orchard at Crystal Creek. Dodson met Orchard here a few days before Thanksgiving and the men were much together, until Orchard left for the north.

Dec. 14 Dodson was with Orchard when the latter purchased a skidoo for Idanha. Orchard paid \$5 extra for privilege of a skidoo at Idanha. The skidoo was good for fifteen days and Orchard checked his trunk to Idanha.

While in Salt Lake, Orchard lived at the Gillies hotel. Dodson says Orchard spent considerable time in his room, but did not appear to have any particular business in Salt Lake. Orchard's evenings were spent chiefly in playing 'eight' in the billiard room of the hotel. Although Orchard visited Dodson's home while here, he never invited Dodson to his room at the hotel, but always made appointments for the bar or billiard room.

The two men went fishing and hunting while Orchard was in Salt Lake, but Dodson does not know where the fish skins were purchased.

Detectives have been quite busy looking up Orchard's car records in Salt Lake and they hope to get hold of evidence to show that Orchard manufactured the fish and shipped it in his trunk to Idanha. An effort will be made to ascertain whether the fish skins found in Stansbury's yard was of the same character as that purchased by Orchard here.

Dodson asserts that Orchard was innocent of complicity in the blowing up of the Independence depot, and believes his friend is innocent of the Idanha assassination. He says Orchard and Johnny Neville left Crystal Creek the day before the Independence explosion and went on a fishing trip through the hills. Dodson

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says Orchard spent three or four weeks in Colorado before his
last trip to Salt Lake. Prior to that time he had been in
California, Boston says."

In response the defendant was requested and court took an
adjournment until Thursday, July 10, 1907, at 9:30 o'clock A.M.

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