

## Big Bill Haywood Trial (1907)

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“The violent industrial struggle in the mining regions of the West during the quarter century after 1890 show a picture of class war as conceived by Marx. Yet this development, apparently confirming Marx’s analysis of the basic antagonisms in capitalism, came, surprisingly enough, not in the citadel of American industrial and financial capitalism but on the Western frontier. In reality it was a class war without a class war ideology. . . . The extremes of violence in these labor struggles proceeded from no theory of revolution but from the general characteristics of the frontier.”<sup>1</sup>

### Coeur d’Alenes, Idaho

The Haywood trial and the events leading to it reach back to the late 1800s. The trial took place in the Coeur d’Alenes mining area of northern Idaho. Coeur d’Alenes is located in the panhandle region, a mountainous area of Shoshone County in northern Idaho. In the early 1880s, a prospector named Andrew J. Prichard discovered gold along the streams of the North Fork of the Coeur d’Alene River. Prichard’s discovery coincided with the 1883 completion of the Northern Pacific Railroad’s transcontinental line that came within thirty miles of the Coeur d’Alenes area. Northern Pacific took advantage of gold fever and advertised around the country with handbills enticing those wanting to get rich to buy a ticket to northern Idaho. Between 6,000 to 8,000 men rushed to the area during the winter of 1883-1884. But as thousands of miners discovered, there were no large quantities of gold to be found. What the area did have was lead and silver deposits, but extracting these metals had to be done with underground mining which required “capital, technology, and expertise” far beyond the capacity of individual miners who had come to pan for gold.<sup>2</sup> Thus corporate money came into the area to set up large underground mining companies.

Many prospective gold miners left in frustration, but some who traveled to the area stayed and became employees of these large mining companies. The mining work was desperately hard and dangerous. Instead of finding economic liberty in the West, the underground mining system that grew in the area created “a wage-earning proletariat at

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<sup>1</sup> SELIG PERLMAN & PHILIP TAFT, HISTORY OF LABOR IN UNITED STATES, 1896-1932, VOL. IV 169 (1935) [hereinafter HISTORY OF LABOR IN UNITED STATES].

<sup>2</sup> J. ANTHONY LUKAS, BIG TROUBLE 100 (1997).

the mercy of absentee mine owners and their managers, helpless in gut-wrenching cycles of boom and bust, never sinking roots in permanent community, destined to drift from one ramshackle mining camp to another in a futile quest for their lost dream of western autonomy.”<sup>3</sup>

## **Unionizing**

On November 17, 1887 the first miners’ union in the Coeur D’Alenes district was organized in Wardner, Idaho. It was organized in secret and did not openly challenge mine owners because the powerful Bunker Hill and Sullivan mine was anti-union and fired known union miners and organizers. As a result, little is known about this early union.<sup>4</sup> However, union miners did strike against Bunker Hill in the winter of 1887-1888 and were partially successful in defeating a wage reduction; miners kept their \$3.50 per day but “muckers” (unskilled shovelers and car men) would only earn \$3.00 per day. The distinction between skilled miners and muckers continued to persist in the area.

In 1890, a series of mining accidents killed and injured several miners. The loss of life and injuries sustained by miners combined with low wages increased support for unionizing the workforce. Unions were formed at the Gem and Burke mines in October, and within a few months most of the underground miners in the Coeur d’Alenes area were organized into unions. On New Year’s Day in 1891, four local unions sent delegates to Wallace, Idaho to create a central organization named the Central Executive Committee of the Miners’ Union of the Coeur d’Alenes. The delegates to the committee came from the four local unions. One of the delegates was George A. Pettibone who would figure prominently in the upcoming strife.

A series of strikes occurred in the area at different mines through 1890 and 1891. Aware of the threat posed by a unionized workforce, mineowners met on February 16, 1891 and formed the Mine Owners Association (MOA), also called the Mine Owners Protective Association.<sup>5</sup> When union miners went on strike because of low pay and other issues, the MOA leadership tried to break the union.

## **1892 Coeur D’Alenes Troubles**

In 1892 crucial events took place in the Coeur d’Alenes mining area - and in a labor war in Colorado - that would eventually bring Clarence Darrow to Idaho to defend Bill Haywood and others for the assassination of the former governor of Idaho, Frank Steunenberg.

The mining industry expanded and by 1891 there were 40 mines and 13 concentrating mills in the district. It was estimated that \$10,000,000 worth of ore was mined in 1890.<sup>6</sup>

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<sup>3</sup> *Id.* at 100-01.

<sup>4</sup> ROBERT WAYNE SMITH, THE COEUR D’ALENE MINING WAR OF 1892: A CASE STUDY OF AN INDUSTRIAL DISPUTE 17 (1961) [hereinafter MINING WAR OF 1892].

<sup>5</sup> Another source states that the MOA was formed in October 1891.

<sup>6</sup> MINING WAR OF 1892, *supra* note 4, at 8.

By far the largest concentrating mill was the Bunker Hill and Sullivan Mining Mill in Wardner, Idaho which was capable of processing 450 tons in a day. The impact of this massive mining operation on the area and the labor struggle that would follow is significant:

The largest producer of ore concentrates in the district and one of the most significant mining properties in the United States, the Bunker Hill and Sullivan Mining ranks as central to the labor history of the American West. Company records, opened recently, reveal new elements of management's efforts to defeat union activities. The Bunker Hill strategy and its ultimate success set the tone for labor relations throughout the entire district and had a substantial impact on the western mining industry.<sup>7</sup>

A significant development during this time was the introduction of compressed air drills as part of Bunker Hill and Sullivan Mining's efforts at automating parts of its operation. These drills allowed two miners to do the same amount of work that previously required five men working by hand. This significantly cut the size of work crews, and by the spring of 1891 many miners were reduced to working as unskilled and lower-paid muckers. Not only was their pay reduced by 50 cents a day to \$3.00, they were demoralized. By 1892, the miners' unions demanded \$3.50 per day for all underground miners. This sum was for a ten hour workday, seven days per week.

During this time, the miners also demanded control over a hospital fund which was supported by a \$1 deduction from each miner's monthly wage. The miners were disgruntled over inadequate health care, a significant issue given the dangers they faced.

Bunker Hill management was worried about the economics of their business. The ore in the region was low grade, so massive quantities had to be processed. In addition, the remote location of the mine required that the ore be transported at great expense to smelters. Added to this was the cost of labor which was estimated to be as high as 40 to 50 percent of gross income.

Railroad rate increases in 1892 led the MOA to shut down all production on January 1, 1892 in an attempt force railroad companies to lower their freight rates. All mines in the Coeur d'Alenes area were closed and about 2,000 miners were thrown out of work in the middle of winter. But even when freight charges were reduced, the MOA claimed that low silver and lead prices prevented any wage increases. Miners refused to work for \$3.00 per day. The miners' union went on strike to force mine owners to pay the Butte, Montana wage of \$3.50 per day for all underground miners. This was the same pay scale that existed before 1887.

During the struggle, the union sought help from the strongest labor union in the West, the Butte Miners' Union in Montana, which sent \$30,000 per month along with organizers and provisions to help the striking miners. The mine owners responded by bringing in

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<sup>7</sup> Katherine G. Aiken, "*It May Be Too Soon to Crow*": *Bunker Hill and Sullivan Company Efforts to Defeat the Miners' Union, 1890-1900*, 24 WESTERN HISTORICAL QUARTERLY 309, 310 (1993).

non-union immigrants from Michigan (Scandinavians, Polish and Austrians) as well as some workers from California and Colorado. The owners also hired over 50 armed Pinkerton guards to protect the non-union workers as they traveled to the Coeur d'Alenes area. Eventually, 800 non-union workers were operating seven mines. Because organized labor followed events around the country, tension mounted when union workers at Carnegie steelworks clashed with Pinkerton guards in Homestead, Pennsylvania in July 1892 and seven people were killed.

The 1892 Coeur d'Alenes strike resulted in a federal lawsuit in which a federal district court issued an injunction to restrain the labor unions and their members from entering the property of the Coeur d'Alene Consolidated & Mining Company or interfering with its operation or its employees by force, threats, or intimidation.<sup>8</sup> The court found that the threatened acts of the union were expected to occur frequently. Moreover, the defendant union was insolvent.

### **Charles Siringo**

The MOA and non-union miners were outnumbered by hostile union miners. In addition, unions controlled the local government in various areas. For example, George A. Pettibone - who Clarence Darrow would later defend in a murder trial - was a justice of the peace in Gem, part of the Coeur d'Alenes area, and was also an important union leader. To counter this disadvantage, the mineowners employed undercover detectives or spies to gain intelligence. Union miners were outraged when it was discovered that one of the most trusted union men in the Gem union was an undercover Pinkerton named Charles Angelo Siringo. Siringo had focused his espionage on the union's financial secretary, George Pettibone. Each day Siringo mailed his handwritten report to the Pinkerton office in St. Paul, Minnesota and the information allowed the mine owners to stay ahead of the miners.<sup>9</sup> Siringo's identity as a spy was made known to the union miners on July 9, 1892. The realization that the MOA had planted a spy in the union camp has been identified as one of the primary causes of the violence that followed.

### **Frisco Mill and Gem Mine**

On July 11, 1892 an event occurred that would be commemorated for years in the Coeur d'Alenes region. Accounts differ in some of the details, but most describe the following activities. A shooting battle occurred in the early morning between miners and non-union miners and guards at the Frisco Mill above the town of Gem, Idaho. There were no casualties and it was never clearly established who fired first. The miners attempted to dynamite the mill with an ore car loaded with dynamite but the dynamite blew up before reaching the mill. George Pettibone then devised and implemented a plan to send dynamite down a penstock, a water flume that brought water into the mill, which successfully destroyed the mill. Although the mill was not in use, one worker was killed. Fighting also broke out at the nearby Gem Mine. By the time the clash was over, three union miners and a private guard were dead.

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<sup>8</sup> Coeur d'Alene Consolidated & Mining Co. v. Miners' Union of Wardner, 51 F. 260 (C.C. Idaho 1892).

<sup>9</sup> BIG TROUBLE, *supra* note 2, at 102.

After his identity was revealed, the union tried to capture or kill Siringo. Aware that his life was in danger, Siringo decided to make his escape during the fight at Gem Mine. He dropped down a hole under the floorboards of a house and crawled under the boardwalk of the main street in Gem while union men walked above. He later escaped to safety, which only intensified the miners' anger.

With momentum on their side, hundreds of union men traveled to Wardner, Idaho and seized the concentrators at the Bunker Hill and Sullivan Mining Mill and several other mines. The miners had threatened the owners of Bunker Hill by claiming they had planted dynamite at the concentrator and would destroy it if their demands were not met. Their primary demand was that the mines get rid of the "scabs" they had hired. It is not clear if dynamite was actually planted, but the owners capitulated anyway. The "scabs" were driven out of town and the miners were victorious.

### **Martial Law**

The union started to gain the upper hand in these conflicts, but two days after the Frisco mine was destroyed, Idaho Governor Norman Willey declared martial law in Shoshone County. He brought in the National Guard and asked President Harrison for federal troops. President Harrison granted the request and eventually 1,500 state and federal troops helped the mines reopen with nonunion workers. It was a total reversal of the union's gains.

### **Bullpens**

Shoshone County was under martial law for four months. In July troops arrested 600 men, including union workers and sympathetic merchants and saloon keepers. Not all 600 were held at one time; the most held at one time was about 350 from July 16 to July 20. One of those taken prisoner was George Pettibone and he and a few others considered more dangerous were held by a sheriff in Wallace. Because the local jails were far too small to hold so many prisoners, the men were herded into wooden stockades known as "bullpens."

The "bullpens" would eventually take on a notorious reputation among union members. They served as a primary example of the violation of Constitutional rights of union members. Many men were imprisoned for two months without any hearings or formal charges, after which time they were released on their own recognizance. Dozens of men identified as union leaders faced state and federal charges and Siringo was the chief witness against them. About thirteen union men, including Edward Boyce, were convicted of contempt of court. The miners convicted of contempt were sentenced to various terms from four to eight months in the Ada County jail in Boise, Idaho. Some of those under arrest, including George Pettibone, were convicted of criminal conspiracy. Pettibone was sentenced to two years in prison. The United States Supreme Court

overturned the conspiracy charges, ruling that the crimes were against the state of Idaho and not against the United States.<sup>10</sup>

### **James H. Hawley and the Birth of the Western Federation of Miners**

Significantly, while the union defendants were imprisoned in the Ada County jail in Boise, one of their defense lawyers, James H. Hawley, persuaded them to join forces with the more powerful Butte union and other union organizations in order to strengthen their position against the mine owners. After their release from jail, they followed Hawley's advice and a convention of 40 delegates from the mining camps of Colorado, Montana, Idaho, and South Dakota met in Butte, Montana. It was there on May 15, 1893 that the Western Federation of Miners (WFM) was formed.<sup>11</sup> The creation of the Western Federation of Miners was a direct result of the 1892 labor troubles in Idaho's Coeur d'Alenes region.

At its inception, the WFM modestly announced its goals: to help metal miners earn pay commensurate with the dangers they faced, receive payment with lawful money and not company scrip, pass safety laws, prohibit child labor, and eliminate private guards around the mines.<sup>12</sup> However, over time, the WFM union became "the most militant in the history of the United States, and [was] destined to engage in some of the bitterest labor wars" in the history of the country.<sup>13</sup>

Ironically, James H. Hawley, the lawyer who persuaded the miners to join the Butte union which led to the formation of the Western Federation of Miners, would later face Clarence Darrow in court over the alleged actions of the WFM. And during 1906 and 1907 Bill Haywood, secretary-treasurer of the WFM, would sit in the same Ada County jail facing death by hanging for the assassination of Idaho's former governor Frank Steunenberg; the lead prosecutor against him would be James Hawley. Hawley would later write how this turnaround came about: "The vast majority of the miners, who had joined the union prior to 1892 in the Coeur D'Alenes were men of good reputation and worthy citizens . . . Men who would maintain their rights at any risk, but who desired to respect the rights of others."<sup>14</sup> However, power would devolve to radicalized members of the WFM:

The majority of the unions were composed of men with families, who were reputable citizens, and who being engaged in a prosperous employment were building the foundation for a future competence. Unfortunately it was not men of this class, who had control of some of these organizations, but hot headed, irresponsible agitators had been selected for positions of authority and in many of the local unions they carried their authority with a high hand and worked innumerable hardships upon all mining companies against whom they had a

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<sup>10</sup> *Pettibone v. United States*, 148 U.S. 197, 13 S.Ct. 542 (1893).

<sup>11</sup> HISTORY OF LABOR IN UNITED STATES, *supra* note 1, at 172.

<sup>12</sup> *Id.* at 172-73.

<sup>13</sup> *Id.*

<sup>14</sup> JAMES H. HAWLEY, HISTORY OF IDAHO I, at 250 (1920).

grievance, and upon the members of their own organization, who would not assent to their ideas. This condition of affairs continued to grow worse until the Western Association itself passed under the control, in the main, of this class and not only did the worst elements in the miners' unions control those organizations, but having actively engaged in politics during the election of the year before, a large number of the county officers of Shoshone County were elected from among their sympathizers.<sup>15</sup>

### **Western Federation of Miners in Colorado**

There were severe labor troubles in Idaho but it was actually Colorado that saw the most bitter and violent labor wars between the WFM and mine owners, especially in the Cripple Creek and Telluride districts.<sup>16</sup> In a work about the Coeur d'Alenes Mining War of 1892, the author writes of the WFM:

One can hardly overemphasize the importance of the Western Federation of Miners in the labor history of the West. From the humble beginnings of 1893 with 14 unions and perhaps 10,000 miners (almost half of them in Butte alone), the federation grew within 10 years to 200 unions and somewhere near 50,000 members. Under the leadership of shrewd and aggressive officers, such as Edward Boyce (of Wardner), president from 1896 to 1902, and William D. Haywood, secretary-treasurer from 1901 to 1907, the federation fought a series of bitter industrial battles in the mining states of the West. Some of these strikes exceeded the Coeur d'Alene conflict in duration, in violence, and in magnitude. Some of them were landmarks in the history of American labor, such as Leadville, Colorado, in 1896-97; the Coeur D'Alene again in 1899; Telluride, Colorado, 1900; Cripple Creek, Colorado, 1903-04.<sup>17</sup>

### **1893 – 1899 in Coeur D'Alenes**

Federal troops were withdrawn from Idaho in November 1892 but the area remained tense with each side wary of the other. Violence did not end and there were several incidents of WFM members intimidating non-union workers. They held mock trials and “deported” the scabs by forcing them at gunpoint to leave on foot over the mountains to Montana, without provisions. John Kneebone was a non-union miner and a key witness for the prosecution in 1892. Initially deported, he returned to Coeur d'Alenes. In July 1894, forty masked men kidnapped Kneebone and four other miners from a mine shop. The others escaped but Kneebone was shot and killed. No one was ever convicted for the murder. Four weeks after the murder the mine agreed to hire only union miners.

The region suffered during 1893-94 when the price of silver dropped significantly. But the Western Federation of Miners had increased in strength. By 1894, several mines agreed to pay the old Butte rate of \$3.50 per day and by 1899 this was the standard rate in

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<sup>15</sup> *Id.* at 250-51.

<sup>16</sup> HISTORY OF LABOR IN UNITED STATES, *supra* note 1 at 173.

<sup>17</sup> MINING WAR OF 1892, *supra* note 4, at 113-114.

the Coeur d'Alenes region, except for the non-union Bunker Hill and Sullivan Mining Company. Bunker Hill continued to pay \$2.50 to \$3.00 per day and refused to pay more. They justified the lower pay because their mine was dry; miners did not have to purchase rubber clothing that was required to work in wet mines and which cost miners about \$12.00 to \$15.00 per month. Also, room and board at Bunker Hill cost one dollar less per week. Other mine owners later testified before the U.S. Industrial Commission that miners at Bunker Hill were better off than miners receiving higher wages at other mines. The WFM of course disagreed.

Bunker Hill had been on guard against unionizing efforts and miners were dismissed if they were believed to be engaged in such activity. On April 23, 1899 some union men from Wardner met with Bunker Hill management and demanded the miners' pay be raised to \$3.50 per day, with the threat of a strike to back up their demand. Bunker Hill management gave in to the demand with conditions: worker pay would be raised to \$3.50 but they could not join the union. About fifty men quit over this demand.

### **Frank Steunenberg**

Frank Steunenberg was born on August 8, 1861 in Iowa. He became a printer's apprentice and publisher and worked on a newspaper in Iowa. Steunenberg also became a member of the Typographical Union. He moved to Caldwell, Idaho in 1886, about thirty miles west of Boise. His brother A.K. had purchased the *Caldwell Tribune* newspaper and Frank moved to Idaho to help run it. Frank Steunenberg served as a delegate to the Idaho constitutional convention in 1889 and was a member of the Idaho House of Representatives in the first state legislature from 1890 to 1893. He was elected the fourth Governor of the State of Idaho in 1896 and served until 1897. Steunenberg was re-elected in 1898 and served until 1901. As a Democrat, he was elected Governor with support from Free Silver Republicans, Populists, and organized labor. After Steunenberg left the government, he worked as a banker and later raised and sold sheep. Steunenberg was famous for never wearing a necktie; he refused to do so without explanation.

### **1899 Coeur d'Alenes Troubles**

As Governor, Steunenberg faced rising labor violence throughout the Coeur d'Alenes area in 1899. One of the most dramatic acts of violence occurred on April 29, 1899 when WFM miners attacked and sabotaged the Bunker Hill and Sullivan Mining Company in Wardner, Idaho. Hundreds of armed miners hijacked a Northern Pacific train and forced its crew to go to Wardner, stopping on the way to pick up more miners and loading an estimated 50 to 80 boxes, each containing 50 pounds of dynamite. Eventually, a force of about 150 armed miners advanced on the Bunker Hill and Sullivan Mining concentrator which was built at a cost of \$250,000 and was one of the largest in the world. The nonunion workers fled and the armed miners found the concentrator unguarded. The dynamite was placed under the concentrator and detonated, destroying it and several other buildings. Two men were killed in clashes before the concentrator was destroyed.

### **Martial Law**

Steunenberg was quite ill during this time and had been hospitalized in Boise for a short while. Because of his illness, he sent Bartlett Sinclair, the state auditor, to represent him in the area and provide reports. Despite Steunenberg's labor sympathies he reacted strongly to the labor strife, strikes, and violence in the Coeur d'Alenes mining area. The violence drove him to take measures that alienated the miners to such an extent that by May 1899, Steunenberg was viewed as a traitor and enemy of labor. After the brazen attack on Bunker Hill Mining, a stunned Steunenberg and his advisors decided military force was needed; however, the Idaho National Guard was on duty in the Philippines due to the Spanish-American War. At 11:00 p.m. on the day of the Bunker Hill explosion, Governor Steunenberg cabled President McKinley:

In pursuance of the statute in such cases made and provided, I, Frank Steunenberg, governor of Idaho, the legislature not being in session and it not being possible to convene it, do hereby apply to the President of the United States to call forth the military forces of the United States to suppress insurrection in Shoshone County, State of Idaho. This action is sustained in the fact that all of the available Idaho National Guard volunteered for service in the Philippines, and said county is in a state of insurrection. I am of the opinion that at least 500 troops in the aggregate will be necessary, but smaller detachments should be ordered in as rapidly as possible. - Frank Steunenberg, Governor

President McKinley granted this request. On May 3, 1899, Steunenberg declared martial law in Shoshone County, which encompassed the troubled Coeur d'Alenes area.

### **Bullpens**

After arriving in the Coeur d'Alenes area, the military began arresting those suspected of taking part in the attack on Bunker Hill. Eventually, military raids brought nearly 1,000 men under detention and some had to be kept on train boxcars because there was no other place to keep them. A large "bull-pen" was built, but the living conditions were so bad that three prisoners died. When an escape tunnel was discovered, the whole prison population was given only bread and water for eight days, during which time they were forced to drill in the summer heat for seven hours a day.

A detachment of soldiers was sent into Montana to arrest several men suspected of being ringleaders in the Bunker Hill mining attack. The search and arrest mission into Montana was very likely illegal. Idaho's Attorney General, Sam Hays, tried to get mine owners to publicly declare that they would not hire any miners belonging to the Western Federation of Miners or their affiliates; however, several owners including those of Bunker Hill Mining were so fearful of retribution from the WFM that they declined to take such a stance. Hays could not even get the owners to fire men suspected of taking part in the riots. Therefore, Hays declared the state would supervise employment decisions in the mines while martial law existed.

### **Permit System**

The mine owners asked for a written document explaining the new employment policy, so they could demonstrate they were only following government policy. A proclamation was drafted directing the owners not to hire men implicated in criminal actions in the area, with the threat of mine closure to back it up. A permit system was instituted by Bartlett Sinclair which required miners to get a permit from the sheriff showing each was law abiding and not a member of any organization that had engaged in violence in the area. The federal military commander, Brigadier-General Merriam, signed off on the proclamation, thus giving federal backing to the permit system. The proclamation did not actually name the WFM or the Miners Union of the Coeur d'Alenes, but it was clearly drafted to break the WFM and the Miners Union.

In addition to other constitutional violations, the First Amendment was violated during this time. Bartlett Sinclair, acting as Governor Steunenberg's personnel representative, took several soldiers with fixed bayonets to a local newspaper that was critical of the "bullpen" prison.<sup>18</sup> The paper's editor was accused of sedition, inciting riot, and insurrection and arrested and sent to the bullpen. The editor's wife continued to publish the paper, so Sinclair sent the military to impound the paper's type. The paper was eventually sold to an owner who would uphold the status quo. General Merriam also installed a military censor to review all reports sent to the local telegraph office.<sup>19</sup>

None of the bullpen prisoners had been formally charged. Eventually some were released under irregular proceedings in which they were escorted by soldiers before officials for questioning regarding affiliations and political leanings. Decisions to actually release prisoners were arbitrary and subjective.

### **Black Troops**

One of the main reasons the miners and their sympathizers deeply resented the imposition of military rule with the resulting arrests and detentions was the presence of the Twenty-fourth Infantry Regiment, a highly regarded unit of black troops under the command of white officers. The Twenty-fourth, one of four "colored" regiments in the U.S. Army, was sent because most other military units were participating in the Spanish-American War. It is possible that the decision to send this regiment was "precisely because the unruly miners were white—mostly Irish, Cornish, Italian, and Scandinavian . . ." and decision-makers believed these troops would not form a bond with the miners as had happened during a rail strike in 1877.<sup>20</sup> In addition, Brigadier General Henry Clay Merriam who led the military intervention may also have requested the Twenty-fourth because he had led black troops before and thought highly of them. Merriam had been a leading proponent of training freed blacks to be soldiers in colored units.

Reports about the events in the Coeur d'Alenes began to reach other parts of the country and outraged pro-union elements. Some reports described the treatment of the miners by

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<sup>18</sup> BIG TROUBLE, *supra* note 2 at 146-47.

<sup>19</sup> *Id.* at 147.

<sup>20</sup> *Id.* at 118.

the black troops of the Twenty-fourth. The fact that “the face behind the bayonet was often black left the miners enraged.”<sup>21</sup> Anger over the treatment of the white miners by black soldiers was “driven to an extreme by certain segments of the labor press.”<sup>22</sup> The descriptions of the events included charges that the black soldiers were going after the wives of the miners who were imprisoned. Descriptions of the military intervention, civil rights violations, and racial animosity were reported to the White House, which felt increasing pressure to end the occupation.

Because of pressure to end martial law, by July the bullpen population had dwindled to about 150 of the original 1,000 or so. Eventually thirteen prisoners were tried for the relatively minor charge of interfering with the U.S. mail and sentenced to twenty to twenty-two months in prison. However, Governor Steunenberg and others in his administration insisted that some of the rioters be tried for murder. During the summer, a state grand jury indicted nine miners, most of whom were rank and file union members, for murder, arson and conspiracy. The county prosecutor was forced to resign and in his place a special prosecutor who formerly represented Bunker Hill Mining was installed; the prosecution was funded by a grant of \$32,000 from the Coeur d’Alene mine owners.<sup>23</sup>

### **Paul Corcoran**

The prosecutors wanted to go after someone higher up in the unions. They chose Paul Corcoran, financial secretary of the Burke Miners Union. Although there was no evidence tying him to the death of James Cheyne, a non-union worker at Bunker Hill Mining, Corcoran was identified as one of those who rode the hijacked train during the attack. Corcoran was prosecuted by William Borah and James H. Hawley, who were hired as special prosecutors. This same prosecution team would face off against Clarence Darrow in 1907. One of the most dramatic events of the trial occurred when Borah reenacted witness accounts of Corcoran riding atop a boxcar on the dynamite train on April 29, 1899. The defense argued that no one could ride on a boxcar going that fast. The jury was taken to the canyon, and Borah risked his life by riding atop a boxcar at the same speed to prove it could be done. Corcoran was convicted and sentenced to seventeen years at hard labor.

William Borah and another attorney argued for the state in a denial of Corcoran’s petition for a writ of habeas corpus to the Idaho Supreme Court.<sup>24</sup> Borah would join James H. Hawley and other attorneys to successfully defend Corcoran’s conviction before the Idaho Supreme Court.<sup>25</sup> The Supreme Court of Idaho described Shoshone County’s labor troubles in the 1899 case *In re Corcoran*:

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<sup>21</sup> *Id.* at 150.

<sup>22</sup> *Id.* at 151.

<sup>23</sup> *Id.* at 149.

<sup>24</sup> *In re Corcoran*, 6 Idaho 657, 59 P. 18 (Idaho 1899).

<sup>25</sup> *State v. Corcoran*, 7 Idaho 220, 61 P. 1034 (1900).

For a period of some eight years the organization known as the “Miners' Union” had almost absolute control of the affairs of Shoshone county; the election of all officers of the county had been controlled by that organization; all business was subject to their domination and dictation; crimes of the most heinous character had been committed with impunity; and so intimidated had been the law-abiding portion of the county, who were vastly in the minority, that any investigation of such crimes was practically impossible. That this condition of things had existed from 1892 is [a] matter of history.

It is also [a] matter of history that on April 29, 1899, a mob of something about 1,000 in numbers, composed of members of the organization known as the “Miners' Union,” and many of whom were masked, coming from the various mining camps in said county, overpowering the railroad employe[e]s, came by train to Wardner Junction, in said county, destroyed several hundred thousand dollars of property, and committed two murders. The county commissioners, the sheriff, and the prosecuting attorney of said county were notoriously known to be, if not members of said organization, openly in sympathy with them.

On May 4, 1899, such was the condition of things in said Shoshone county, by reason of the unlawful, treasonable, and murderous acts of said organization known as the “Miners' Union,” and the members thereof, that the governor of Idaho issued his proclamation, declaring said Shoshone county, in a state of insurrection, and calling upon the federal government for aid in the maintenance of the law therein. At the convening of the district court in said Shoshone county, on the 8th day of June, 1899, the district judge found the officers of said county heretofore named under arrest by the military authorities.<sup>26</sup>

Paul Corcoran only served about two years before being pardoned by the State Board of Pardons.

### **Steunenberg Takes Responsibility – Labeled a Traitor by Labor**

The 1900 presidential race pushed the Coeur d’Alenes events into the political arena. Congressman John Lentz, an Ohio Democrat, called for a federal investigation and the House of Representatives gave the responsibility to the Committee on Military Affairs. Frank Steunenberg, General Merriam, Bartlett Sinclair, and some of the miners imprisoned in the bullpen went to Washington to testify. While the military intervention was the acknowledged focus, the most contentious and lengthy questioning was aimed at Governor Steunenberg. The questioning was tough and direct but Steunenberg did not back down and accepted full responsibility for the events that took place. The Committee divided cleanly on party lines. Republicans concluded that the military action was implemented in a lawful manner, while Democrats believed the manner in which martial law was conducted was a gross violation of civil rights and constitutional law.

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<sup>26</sup> *In re* Corcoran, 6 Idaho 657, 59 P. 18 (1899).

Steunenberg was severely criticized by the labor press and for many years some labor sympathizers criticized his actions. However, they offered no alternative course of action that he could have taken as governor when faced with such violent conflicts.

The miners were enraged at Governor Steunenberg, who took responsibility for the military intervention. Because he came to office with pro-labor credentials, he was now viewed as a traitor. It appears that labor was much angrier at him than they would have been at a politician who was known to be pro-business. In a letter written on June 5, 1899 to the editor of the *Denver Times*, Samuel Gompers, President of the American Federation of Labor, declared: "Our revolutionary war for independence had its Benedict Arnold. That organized labor, the greatest conservator of the public peace, should have a Steunenberg, may be cause for chagrin, but not for dismay."

In his 1932 autobiography Clarence Darrow summed up why labor was so angry at Steunenberg:

Idaho had rich mines in the Coeur d'Alene district, and, in the beginning of the strike, Frank Steunenberg was governor of the State. He was elected as a trade-unionist. He was a printer, carried a union card, and got the union vote. When the strike came on he declared martial law; and thus the strikers viewed him as one who had received the votes of the union members and then deserted them and joined the enemy when they were fighting for their existence. Governor Steunenberg's term expired while the strike was on; he then left Boise City, the capital, and went back to his home in Caldwell, a small village about thirty miles from Boise.<sup>27</sup>

### **The Assassination of Frank Steunenberg**

Governor Steunenberg was well aware of the animosity towards him and he received many death threats during the height of the 1899 crisis. He confided in a friend that he was a marked man and it was only a matter of time before the WFM killed him.<sup>28</sup> But after several years had passed he began to worry less about possible retaliation until he and his family had nearly forgotten the crisis of 1899. After he left office and returned to Caldwell, Steunenberg became "[j]ust a prosperous private citizen . . . [who] earned a comfortable living as a bank president, newspaper publisher, and speculator in sheep and timber."<sup>29</sup>

### **Idaho's Day of Infamy - December 30, 1905**

On the afternoon of December 30, 1905 Steunenberg was conducting business in Caldwell, Idaho. He returned home at about 6:50 p.m. Steunenberg opened the front gate to his yard to enter and after turning to shut the gate, a tremendous explosion threw him

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<sup>27</sup> CLARENCE DARROW, *THE STORY OF MY LIFE* 129-30 (1932) [hereinafter *STORY OF MY LIFE*].

<sup>28</sup> *BIG TROUBLE*, *supra* note 2, at 153-54.

<sup>29</sup> PETER CARLSON, *ROUGHNECK: THE LIFE AND TIMES OF BIG BILL HAYWOOD* 86 (1983) [hereinafter *ROUGHNECK*].

10 feet into the yard. The blast, caused by a bomb hidden by the gate, was strong enough to be heard in Parma sixteen miles away.<sup>30</sup> Steunenberg was still alive but mortally wounded with the right side of his body torn to shreds. He was eventually carried into his house where he lingered and died just after 7:10 p.m.

The murder was quickly seen by Steunenberg's family, Governor Frank Gooding, many citizens of Idaho, and the newspapers as revenge for the Coeur d'Alenes mining troubles. Suspicions fell quickly on the Western Federation of Miners. Governor Gooding and other officials immediately traveled to Caldwell.

It is difficult to over-emphasize how traumatic the assassination of Frank Steunenberg was for the young state of Idaho. Idaho did not become a state until July 3, 1890. The labor troubles leading to Steunenberg's death began before Idaho's statehood and challenged the political and social fabric of the new state after it gained statehood in 1890.

### **Thomas Hogan**

The investigation into the murder of Frank Steunenberg was aided by Caldwell's small size. Within a very short time, Caldwell was essentially cordoned off. Strangers were taken in for questioning in front of a committee. One stranger who fell under suspicion had registered at the Saratoga hotel under the name "Thomas Hogan." Hogan had been around periodically since September, posing as a sheep buyer. Hogan had made a few inquiries about Steunenberg but at the time there was nothing suspicious about it because Steunenberg did buy and sell sheep. Under questioning Hogan was vague and contradictory about why he came to Caldwell.

At the scene of the explosion parts of the bomb device, including fish string and plaster of Paris, was found. When suspicion grew about Hogan, his hotel room at the Saratoga Hotel was searched and some of the same bomb-making material was found. Hogan was arrested on New Year's Day in 1906, but he denied any involvement with the assassination. After a few days, a sheriff from Colorado who was in town saw Hogan in jail and immediately identified him as one Harry Orchard who had worked in the Cripple Creek, Colorado area as a miner. Investigators then opened a trunk that Orchard had left in the baggage room at the train depot. Inside they found a revolver, a pair of brass knuckles, and crimpers for setting blasting caps. Harry Orchard was charged with the murder of Frank Steunenberg.

On January 3, a sheriff from Teller County, Colorado confirmed that Hogan was Harry Orchard and that he was wanted for the bombing of the Independence train depot on June 6, 1904 in Cripple Creek, Colorado. One of the bloodiest acts of violence in the Colorado labor wars, that explosion killed thirteen non-union miners and seriously wounded six more.

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<sup>30</sup> BIG TROUBLE, *supra* note 2 at 56.

Although the evidence pointed to Orchard, there was strong suspicion that Orchard was actually a paid assassin of the Western Federation of Miners. Orchard had strong ties to the WFM: at one time he served as a bodyguard for WFM president Charles Moyer, and he also participated in strikes and visited union offices.

### **Raising Money**

Idaho did not have sufficient resources for the kind of investigation and prosecution needed to solve Steunenberg's assassination. To raise money, politicians and prosecutors pointed out that the defense was able to raise "unlimited" amounts of money through the labor unions. Although this was an exaggeration, it appeared that the Western Federation of Miners could raise a significant amount of money given its size of almost "forty thousand members in two hundred chapters scattered across twelve states and parts of Canada" in combination with the commitment and passion of its members.<sup>31</sup> During the period from February 1906 to March 1908, the WFM's "Moyer-Haywood Defense Fund" based in Denver raised about \$262,727.<sup>32</sup> This is equivalent to well over \$6,000,000 in 2009.

### **James McParland**

By mid-January the state of Idaho had hired the Pinkerton Detective Agency to investigate the murder. James McParland, one of the most accomplished and notorious detectives in the country and manager of the agency's Western division, was in charge. Born in Ireland in 1843, he immigrated to New York in 1867. McParland gained fame for his role as an undercover operative when he infiltrated a shadowy group of rebellious Irish coal miners in Pennsylvania called the "Molly Maguires." McParland's undercover work led to a series of sensational trials from 1876 to 1878 in which twenty members of the Molly Maguires were executed. There is still controversy about whether the Molly Maguires actually existed, but there is no doubt that many men were hanged. The Molly Maguires investigation launched McParland's career as a detective and his notoriety with labor sympathizers.

Within a few days of the assassination, James H. Hawley was hired as a special prosecutor to help investigate and prosecute those believed responsible. Hawley and McParland worked together and met frequently with Governor Gooding to plan the investigation.

### **Harry Orchard Confesses**

Harry Orchard was moved to the Idaho state penitentiary in Boise where he was kept in solitary confinement for ten days. Then Orchard met with James McParland. McParland was eventually able to get Orchard to confess to killing Frank Steunenberg, as well as committing other crimes. Over the course of three days of questioning, Orchard confessed to the murder of seventeen other men. These included thirteen non-union men

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<sup>31</sup> BIG TROUBLE, *supra* note 2, at 379.

<sup>32</sup> *Id.* at 383.

killed during the bombing of a railroad depot in Colorado, two supervisors killed in mine explosion, a detective killed with a shotgun in Denver, and a victim who picked up a booby trap intended for a Colorado judge. Orchard also confessed to the attempted assassinations of the Governor of Colorado, two Supreme Court justices of Colorado, the adjutant general of Colorado, and the president of the Bunker Hill and Sullivan Mining company. Significantly, Orchard said these crimes were committed at the direction of Haywood, Moyer and Pettibone of the WFM.

Among the many crimes he confessed to, Orchard claimed that he personally lit a fuse to one of the powder charges that destroyed the Bunker Hill concentrator on April 29, 1899. McParland had brought his personal stenographer to the questioning of Orchard and at the end the detective had “sixty-four pages of foolscap, comprising the most extraordinary confession in the history of American criminal justice.”<sup>33</sup> In his confession Orchard stated, “I awoke as it were from a dream. And realized that I'd been made a tool of, aided and assisted by members of the executive board of the Western Federation of Miners. And once they had led me to commit the first crime, I had to continue to do their bidding or otherwise be assassinated myself.”

Orchard later wrote that while in prison, a missionary society in Chicago sent him a bible. He initially refused to read it but eventually did start to read it and this led him to a religious conversion.

### **Jack Simpkins**

Orchard implicated WFM executive board member Jack Simpkins in the murder of Steunenberg, and accused WFM member Steve Adams of participating in some of the WFM's “bloodiest felonies.”<sup>34</sup> Simpkins soon disappeared and he remained a mysterious figure. Despite the efforts of both the Thiel and Pinkerton detective agencies and a \$2,000 reward from the State of Idaho, he was never found. Simpkins' disappearance was the subject of numerous rumors, including that he was killed by the WFM to silence him, he had fled to another country and even that he was actually a spy planted by the Pinkertons.

### **Steve Adams**

Steve Adams grew up in Missouri but left in his early twenties and worked at various jobs in the Great Plains and Rocky Mountain areas. He eventually ended up in the mining areas of Colorado during the great labor struggles, where he joined the WFM. With Simpkins gone, McParland needed to get Steve Adams to Idaho. Under Idaho law, as in many other states, corroboration was required of a conspirator's confession. Adams was described by a contemporary commentator as “a shambling, careless figure, with a marked face, a wide mouth, a cunning eye with curious drooping eyelids, and a complexion blotched by liquor and exposure.”<sup>35</sup>

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<sup>33</sup> *Id.* at 199.

<sup>34</sup> *Id.* at 294.

<sup>35</sup> George Kibbe Turner, *The Actors and Victims in the Tragedies*, 29 *MCCLURE'S MAGAZINE* 524 (1907).

McParland and his investigators succeeded in locating and arresting Adams in Oregon. The authorities had secured an extradition request from Governor Gooding to Oregon's governor, George Chamberlain. Chamberlain had complied by issuing a fugitive arrest warrant for Adams. Adams was assured that he was only needed to corroborate Orchard's confession and was taken to the penitentiary in Boise, Idaho.

Adams was placed in a cell with Harry Orchard. McParland was very upset upon learning this, because he first wanted to isolate Adams for a time to intimidate him. But Orchard ended up doing much of McParland's work by assuring Adams that if he confessed and helped convict Haywood and the other defendants he would be much better off. When McParland visited Adams he urged him to confess and corroborate Orchard's confession, because if he did not he would be tried and convicted of murder and hanged. McParland eventually got Adams to confess to some criminal activity, which helped to corroborate at least some of Orchard's confession.

Adams claimed he was never with Orchard in Caldwell, Idaho, but he did say he had discussed Steunenberg with leaders of the WFM. According to Adams, this occurred after the Independence depot murders when he went with Haywood and Pettibone to Denver. During this meeting, Adams claimed that Haywood and Pettibone wanted to "get" Steunenberg and they asked Adams to go to Idaho to meet with Jack Simpkins about it. Adams said that he went to Coeur d'Alenes, met with Simpkins, and agreed to participate in killing Steunenberg. He said the WFM needed to provide more money, and when the money was not forthcoming, Orchard took over the assassination plan.

Adams also confessed to working with Orchard on unsuccessful plans to assassinate former Colorado governor James Peabody, along with Colorado Supreme Court Justices Goddard and Gabbert. Adams claimed to have killed the manager of the Smuggler-Union mine in Telluride, Colorado with a shotgun, and to have worked with Orchard to kill a former Denver detective with a shotgun.

The most important part of Adams' confession was his claim that he and Orchard had planted the explosives under the Independence depot in Colorado, killing thirteen non-union workers. This explosion early in morning of June 6, 1904 also badly injured another six non-union workers, and was estimated to have been caused by 150-200 pounds of dynamite. This was the worst of the crimes that Haywood and WFM were accused of perpetrating.

### **Haywood, Moyer, and Pettibone Arrested**

On February 17, 1906 Haywood, Moyer, and Pettibone were arrested at different locations in Denver, Colorado. Haywood was arrested in a boarding house while in bed with his wife's sister, although these details were suppressed.

Even though they were living in Colorado at this time, McParland worked with Governor Frank Gooding of Idaho and chief prosecutor James Hawley to get them to Idaho to stand trial for Steunenberg's murder. They could not legally extradite the three, because the

U.S. Supreme Court held in *Hyatt v. New York* that the extradition clause required a person to flee from the state where a crime allegedly took place before extradition was permissible.<sup>36</sup> The three WFM members were not “fugitives from justice” because they had not fled to Colorado from Idaho.

Therefore, they came up with an extradition strategy by which McParland secured the cooperation of Governor Gooding and Colorado Governor McDonald along with other Colorado officials. They also planned how to secretly bring Moyer, Haywood and Pettibone into Idaho so defense attorneys could not file legal objections to their extradition. McParland planned to act during the weekend when courts were closed and lawyers were away from their offices. He hoped to get the three accused men to Boise before legal action could be commenced on Monday.

Moyer, Haywood, and Pettibone were taken by train to Idaho and then by carriage to the Boise penitentiary. Not surprisingly, labor viewed the men’s arrest and removal as a blatant kidnapping. The WFM contacted the Denver law firm of Edmund F. Richardson and Horace W. Hawkins, which handled much of the union’s legal work. Richardson left for Idaho and as soon as he arrived in Boise on February 20, he filed a habeas corpus petition with the Idaho Supreme Court on behalf of the three men. Richardson argued Moyer’s petition in early March, telling the court that the arrest warrants were defective and the extradition illegal.<sup>37</sup> Moyer denied the claims in the warrant that he was in Caldwell, Idaho during the times stated and argued that Idaho officials knew he was not in Idaho during the murder of Frank Steunenberg, a claim that was the basis for extradition. Since Moyer was not in Idaho during the crime he was not a fugitive and thus not extraditable under the U.S. Constitution. The Idaho Supreme Court denied the petition, ruling that the manner of removal from Colorado was not reviewable after the men were in the custody of Idaho officials.

Richardson and co-counsel then prepared a bill of exception which was signed by the Idaho Supreme Court, allowing the defense to appeal to the U.S. Circuit Court in Boise. There they made the same arguments, and the court ruled against them as had the Idaho Supreme Court. So the defense took the only option left and appealed the matter to the United States Supreme Court.

### **Clarence Darrow Joins Defense**

Around February 21, 1906 Clarence Darrow met in Chicago with William Trautmann, a founder and secretary-treasurer of the Industrial Workers of the World (IWW). Trautmann informed Darrow that the IWW and organized labor wanted the accused to get the best legal defense they could and he asked Darrow if he would defend them. Darrow did not accept right away. On February 26 Darrow met with James A. Kirwan, a member of the WFM's executive committee, J.C. Williams, vice president of the Western Federation of Miners, and Edmund Richardson in Denver. It was reported after this meeting that Darrow agreed to help defend Haywood, Moyer and Pettibone as an

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<sup>36</sup> *Hyatt v. New York*, 188 U.S. 691 (1903).

<sup>37</sup> *Ex parte Moyer*, 12 Idaho 250, 85 P. 897 (Idaho 1906).

associate counsel. Darrow would join the defense to argue for habeas corpus before the highest court in the country.

### **Pettibone v. Nichols**

The appeal was entitled *Pettibone v. Nichols* because Jasper Nichols was the sheriff of Canyon County, Idaho. Darrow would join Edmund F. Richardson and John H. Murphy, general counsel for the Western Federation of Miners, before the U.S. Supreme Court. Arguing on behalf of Nichols was James H. Hawley and William. E. Borah, who was also running for the U.S. Senate. The case was argued October 10 and 11, 1906, and in an opinion issued on December 3, the U.S. Supreme Court denied the defendants' habeas corpus petition.<sup>38</sup> Justice Harlan wrote the majority opinion in which the Court ruled that a person held in actual custody by a state for trial in one of its courts under an indictment for a crime against its laws will not be released on habeas corpus by a federal Circuit Court even though the methods by which his personal presence in the state was secured may have violated the provisions of United States Constitution, art. 4, § 2. The Court held:

Even were it conceded, for the purposes of this case, that the governor of Idaho wrongfully issued his requisition, and that the governor of Colorado erred in honoring it and in issuing his warrant of arrest, the vital fact remains that Pettibone is held by Idaho in actual custody for trial under an indictment charging him with crime against its laws, and he seeks the aid of the circuit court to relieve him from custody, so that he may leave that state and thereby defeat the prosecution against him without a trial. In the present case it is not necessary to go behind the indictment and inquire as to how it happened that he came within reach of the process of the Idaho court in which the indictment is pending. And any investigation as to the motives which induced the action taken by the governors of Idaho and Colorado would, as already suggested, be improper as well as irrelevant to the real question to be now determined. It must be conclusively presumed that those officers proceeded throughout this affair with no evil purpose and with no other motive than to enforce the law.<sup>39</sup>

### **Kidnapping is a Crime, Pure and Simple**

The lone dissent came from Justice McKenna:

I am constrained to dissent from the opinion and judgment of the court. The principle announced, as I understand it, is that 'a circuit court of the United States, when asked upon habeas corpus, to discharge a person held in actual custody by a state for trial in one of its courts under an indictment charging a crime against its laws, cannot properly take into account the methods whereby the state obtained such custody.' . . .

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<sup>38</sup> *Pettibone v. Nichols*, 203 U.S. 192 (1906).

<sup>39</sup> *Id.* at 216-17

[T]hat the officers of one state may falsely represent that a person was personally present in the state and committed a crime there, and had fled from its justice, may arrest such person and take him from another state, the officers of the latter knowing of the false accusation, and conniving in and aiding its purpose, thereby depriving him of an opportunity to appeal to the courts, and that such person cannot invoke the rights guaranteed to him by the Constitution and statutes of the United States in the state to which he is taken. . . .

Kidnapping is a crime, pure and simple. It is difficult to accomplish; hazardous at every step. All of the officers of the law are supposed to be on guard against it. All of the officers of the law may be invoked against it. But how is it when the law becomes the kidnapper? When the officers of the law, using its forms, and exerting its power, become abductors? This is not a distinction without a difference, -another form of the crime of kidnapping, distinguished only from that committed by an individual by circumstances. If a state may say to one within her borders and upon whom her process is served, 'I will not inquire how you came here; I must execute my laws and remit you to proceedings against those who have wronged you,' may she so plead against her own offenses? May she claim that by mere physical presence within her borders, an accused person is, within her jurisdiction, denuded of his constitutional rights, though he has been brought there by her violence? And constitutional rights the accused in this case certainly did have, and valuable ones. The foundation of extradition between the states is that the accused should be a fugitive from justice from the demanding state, and he may challenge the fact by habeas corpus immediately upon his arrest. If he refute the fact he cannot be removed.<sup>40</sup>

Darrow did not actually go to Idaho until after the Pettibone decision, which he summed up this way: "The question of kidnapping was carried to the Supreme Court of the United States, which said that, while the taking was illegal, the defendants were in Idaho, and the court would not inquire into how they arrived in that jurisdiction."<sup>41</sup> *Pettibone v. Nichols* is still good law.

### **Clarence Darrow and Labor**

It is not surprising that the WFM called on Clarence Darrow to defend the accused. By this time, he had acquired a reputation as a staunch defender of labor. This reputation developed from Darrow's work on several different cases, especially his defense of Eugene Debs after the 1894 Pullman strike, his defense of Thomas Kidd after the 1898 woodworker strike in Oshkosh, Wisconsin, and his work on behalf of the United Mine Workers after the Anthracite Coal strike in 1902. But although he was fifty years old, Darrow had not yet achieved a reputation as one of the most famous lawyers in the United States. As he was gearing up for the trial Darrow "was not yet a household name; many Idahoans had heard of him, vaguely associating his name with Chicago, Debs, and

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<sup>40</sup> *Id.* at 217-18.

<sup>41</sup> STORY OF MY LIFE, *supra* note 27, at 133.

the Pullman strike, but weren't quite sure who he was."<sup>42</sup> But the trials following the murder of Frank Steunenberg would make Darrow "truly famous, a national celebrity."<sup>43</sup>

There is some discrepancy as to how much Darrow earned from the Haywood trial. He later put the figure at \$35,000, but his law partner Edgar Lee Masters said it was \$50,000 with only \$35,000 deposited in their law firm account. Darrow's co-counsel included Edmund Richardson of Denver, Edgar Wilson and John Nugent of Boise, and Fred Miller of Spokane.

Darrow knew there was a bitter struggle between miners and mine owners in the West. According to Darrow, "It is doubtful if there ever was a strike in America, unless in the anthracite region, where the feeling was so bitter as in this case. In Colorado, especially, the contest verged on civil war."<sup>44</sup> Darrow also knew the WFM was not afraid to fight as he recalled in 1932:

The Western Federation of Miners was one of the militant labor unions of the country. It included most of the metalliferous workers in the mines of the West. Their general offices were in Denver, Colo., which State was then one of the largest producers of gold and silver in the United States. The president of the organization was Charles H. Moyer, and the general secretary was William D. Haywood. Moyer was a man of great force of character, brave and determined. His life had been devoted to mining and the interests of the union. Mr. Haywood was a pronounced radical, an important member of the Socialist party at that time. He was a wide reader of books, especially on trades-unions and other economic subjects, and an excellent organizer. A strike had been called early in 1906, reaching into all the mines and smelters of the West. A great number of men were involved in the strike. In some sections the mine owners at once began filling the vacated places with non-union workers. It was the usual story which has been told so often in labor controversies the world over.<sup>45</sup>

### **Defense Gets Steve Adams to Recant Confession**

Steve Adams was being held at the Boise penitentiary, and his wife Annie and their baby were also kept there under protective custody. Significantly, Darrow was able to convince John T. Morrison to represent Adams. Morrison was a former governor and one of Idaho's most prominent attorneys. Morrison's representation of Adams was shocking to many in Idaho because Morrison had been a good friend of Steunenberg.<sup>46</sup>

One of Darrow's most significant early victories was getting James Lillard, an uncle of Annie Adams, to persuade Steve Adams to recant his confession. According to J. Anthony Lukas, who wrote the definitive account of the trial, it is believed that Darrow

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<sup>42</sup> BIG TROUBLE, *supra* note 2, at 518.

<sup>43</sup> GEOFFREY COWAN, *THE PEOPLE V. CLARENCE DARROW* 54 (1993).

<sup>44</sup> *STORY OF MY LIFE*, *supra* note 27, at 127.

<sup>45</sup> *Id.*

<sup>46</sup> BIG TROUBLE, *supra* note 2, at 333.

bribed Lillard, and acting through Lillard bribed Adams to repudiate his confession.<sup>47</sup> Adams also wanted a new lawyer to represent him and help get him out of prison. Darrow recalls that he did seek out and speak with Mr. Lillard:

So we went to see this uncle, Mr. Lillard. He at once assured us that Steve had been frightened; that he had no money for defense, was afraid that he could get no counsel, and would be hanged; so he made the statement on the offer that his life should be saved. As soon as he made the confession he was taken to the penitentiary, where he and his wife were given a little house within the walls. The uncle told us that Steve had wanted to see us and that if we would defend him the uncle was sure that he would plead “not guilty,” as, in fact, he knew nothing about the affair, anyhow. We told the uncle that if Steve should send for us, and tell us that he wanted us to defend him, we would do it as faithfully for him as for the rest.<sup>48</sup>

Adams wrote the following statement, which his wife smuggled out of the penitentiary:

Boise, Idaho, September 8<sup>th</sup>, 1906

This is to certify that the statement that I signed was made up by James McParland, detective, and Harry Orchard, alias Tom Hogan. I signed it because I was threatened by Governor Gooding, saying I would be hanged if I did not corroborate Orchard's story against the officers of the federation union of miners.

Stephen Adams.

Witness: Annie Adams

Annie Adams managed to get the statement to John Morrison who filed a habeas corpus petition for Adams' release from prison. Upon learning that Adams might be released from the Wallace jail, McParland, who was in Denver at the time, got the Denver district attorney to confer with Denver's sheriff, who produced an affidavit linking Adams to the murder of a Denver detective in 1904.<sup>49</sup> They got a justice of the peace to issue an arrest warrant for Adams and the governor of Colorado to sign an extradition request for Adams to answer the murder charge.<sup>50</sup>

At the hearing for Adams' release, Darrow argued that no charges had been made against Adams, and the attorney for the state of Idaho did not contest his release. The court ordered his release, but as Adams began shaking hands in celebration, the county's chief deputy sheriff informed him of the Colorado arrest warrant. Adams was given an arraignment date and placed in the county jail.

## Secret Route

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<sup>47</sup> *Id.* at 331-32.

<sup>48</sup> STORY OF MY LIFE, *supra* note 27, at 134.

<sup>49</sup> BIG TROUBLE, *supra* note 2, at 334.

<sup>50</sup> *Id.* at 334.

McParland had set the wheels in motion to create the impression he was going to bring Adams to Colorado. Instead, he actually planned to take Adams to northern Idaho to face murder charges in the 1904 deaths of two timber claim jumpers.<sup>51</sup> Hawley would travel to Wallace, Idaho to try Adams for the murder charge. When the defense learned of this, it was clear to them the state was pressuring Adams to stand by his confession by threatening to hang him for the murder of the claim jumpers.

Darrow knew the only feasible way to get from Boise to northern Idaho by rail required a large detour through Washington and Oregon, and McParland was worried that Darrow and the defense would try to serve a habeas corpus petition at some point when Adams was on the train outside Idaho.<sup>52</sup> The defense could argue Adams had been illegally arrested in Oregon and was not a fugitive from Idaho; presumably “[a]ny judge who had not been bought would free him, at which point, Darrow and his colleagues hoped to get him as far away from Idaho as possible.”<sup>53</sup>

McParland tried to guard against this possibility by having a detective trail Darrow wherever he went. In addition, McParland instructed the sheriff escorting Adams not to cross the border into Oregon or Washington for any reason. This required Adams to be taken north by “buggy, horseback, riverboat, and branch railroads” the whole length of the state of Idaho.<sup>54</sup> Adams was brought before a justice of the peace for what seemed to be an arraignment on the Colorado murder charge, but there were no Colorado authorities present and the charges were dismissed. Adams was then immediately arrested for the murder charges in northern Idaho and returned to the Boise penitentiary.

McParland met with Adams at the penitentiary for three hours, trying to bring him back into the prosecution’s camp. This was unsuccessful and preparations were made to bring him back to northern Idaho. Darrow had been followed to Pendleton, Oregon, where it was believed he was working with Oregon attorneys to obtain a habeas corpus petition for use when Adams crossed the state border. Later Darrow claimed the defense had proposed to agree in writing not to interfere if they were allowed to travel with Adams. But the sheriff responsible for transporting Adams demanded that Adams sign a waiver foregoing any habeas corpus rights. The prosecution feared that while Darrow and other defense lawyers might abide by an agreement, Oregon lawyers hired by the defense could still intervene. The defense adamantly refused to sign the waiver, which bolstered the prosecution’s belief that Darrow had plans to block Adams’ transfer.<sup>55</sup>

McParland had Sheriff Sutherland and a few other lawmen sneak Adams out of the Boise penitentiary early in the morning through a side door, on the same day that his lawyers went to court to seek his release through habeas corpus proceedings. It wasn’t until about 2:00 in the afternoon that one of the deputy sheriffs could not locate Sheriff Sutherland or Adams, and the defense realized they had been fooled. It was a major setback for the

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<sup>51</sup> *Id.* at 335.

<sup>52</sup> *Id.* at 336.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 338.

defense and Darrow feared that Adams would succumb to pressure from the Pinkertons and once more cooperate with the prosecution. Thinking that Adams was still being taken through Oregon, Darrow gathered some friendly sheriffs and went in search of him. But Darrow was unsuccessful in intercepting Adams' escort.

### **Operative 21**

There were numerous other intrigues during the time between the murder of Frank Steunenberg and the trial of Haywood, Moyer, and Pettibone. One of the most important was McParland's success in getting one of his most secret undercover agents, known as Operative 21, to strike up relations with the radical element in Caldwell in an attempt to gather intelligence on friends of Orchard and possible defense witnesses.<sup>56</sup> Operative 21 was given the name C.A. Johnson to use during this undercover work. The undercover agent became acquainted with Leon Whitsell, an attorney who performed several functions for the defense team. Whitsell eventually asked the agent to canvas the farmers in the area to learn their political views and thoughts on the case to give the defense intelligence to use during jury selection.

Governor Frank Gooding was so pleased with the work of Operative 21 that he sent five of the agent's reports to President Theodore Roosevelt and told the president that the agent had gained the trust of the defense.

### **Theodore Roosevelt – “Undesirable” Citizens Controversy**

Labor and socialist supporters were greatly agitated by the arrest and extradition of Haywood, Moyer, and Pettibone which they viewed as a kidnapping. They were very vocal in their criticism and predicted the upcoming trials would be unfair. They became even angrier when President Theodore Roosevelt became involved in the controversy. For a period of time, Roosevelt had been having a dispute with E.H. Harriman, one of most powerful railroad magnates in the country. At the time of his death, Harriman controlled the following railroads: Union Pacific, Southern Pacific, Saint Joseph and Grand Island, Illinois Central, Central of Georgia, Pacific Mail Steamship Company, and the Wells Fargo Express.

Angry at Harriman, President Roosevelt released to the press a letter he had previously written in which he said Harriman was “at least as undesirable a citizen as Debs, or Moyer, or Haywood.” Labor seized on this incident, condemning Roosevelt for publicly criticizing two men on trial who would be executed if convicted.

Interestingly, members of the United States Supreme Court were the first to hear parts of Roosevelt's letter. Following tradition, the justices went to the White House to meet with the president just prior to the start of the fall term of the Court. Roosevelt read part of his letter to the justices, who just happened to have on their schedule three days later the oral arguments in the case of *Pettibone v. Nichols*—the appeal from the Idaho Supreme Court

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<sup>56</sup> *Id.* at 439.

and federal district courts which had denied Haywood, Pettibone, and Moyer habeas corpus relief from their removal to Idaho.<sup>57</sup>

Roosevelt's "undesirable a citizen" statement was a public relations gift for the defense. Labor supporters in major cities like New York and Chicago proudly announced that they also were "undesirable citizens."

### **Steve Adams Trial I**

On February 11 1907, Steve Adams went on trial in Wallace, Idaho for the murder of Fred Tyler. Tyler, who was either thirty-three or thirty-four years old, was allegedly murdered sometime between August 6 and 10, 1904. It was this murder charge that justified Adams' confinement after he repudiated his confession. Adams was prosecuted by James H. Hawley and Shoshone County special prosecutor Henry P. Knight. He was defended by Clarence Darrow and Edmund Richardson. Darrow explained that although he was hired to defend Haywood he also had to help defend Steve Adams:

Governor James H. Hawley, one of the attorneys prosecuting Moyer, Haywood, and Pettibone, came to Wallace, had his name entered for the prosecution, and had the case in Boise continued. It seemed evident to us that the State representatives were anxious to get a conviction of Steve Adams so that, in order to save his life, he would turn state's evidence and testify against Moyer, Haywood, and Pettibone. Thereupon, my associates and I entered our names as attorneys for the defense of Steve Adams in the case at Wallace, and at once began preparations for the trial.<sup>58</sup>

A significant piece of the evidence against Adams was an alleged confession he made to a Pinkerton detective while at the Idaho state penitentiary in 1906. According to the detective, Adams and Jack Simpkins had gone to the Marble Creek district in northern Idaho, but later Simpkins left while Adams stayed. Many locals were angry about newcomers who came to the area. Adams eventually became acquainted with two locals, Newt Glover and Alva Mason, who believed the newcomers were either agents for big timber companies or claim jumpers. Tyler had moved to the area in 1904 and built a cabin on land he wanted to homestead. Glover and Mason believed Tyler was a claim jumper. In his confession to the detective, Adams stated that he, Glover, and Mason decided to kill Tyler. They had little fear of the law because claim jumpers were reviled in the area and they did not believe anyone had ever been prosecuted for murdering one. Adams and his companions hid by a trail and surprised Tyler as he returned from a fishing trip. Adams questioned Tyler, then shot him with a rifle. Adams also admitted killing Ed Boule, another alleged claim jumper, but he was not on trial for that murder. Nearly a year later, in July 1905, a badly composed body was found that the prosecution alleged was Fred Tyler.

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<sup>57</sup> *Id.* at 397.

<sup>58</sup> STORY OF MY LIFE, *supra* note 27, at 135.

The prosecution and McParland desperately wanted Adams convicted because of the pressure it would put on Adams to switch sides and corroborate Orchard's confession. Adams was facing execution if convicted. They were sure that if Adams was convicted and brought back to Boise he would recant his confession to avoid being hanged and perhaps even be granted a commutation or pardon. The state's purpose was clear to the Darrow and defense:

The trial was to take place in Wallace, the county seat of Shoshone County; we got together a number of investigators and hastily prepared as best we could for the approaching case. The purpose of the State was plain. They wanted Steve Adams to help them in the prosecution of Moyer, Haywood, and Pettibone, and they wanted to be able to offer him the highest inducement that could move a man--his life--in return for his services. And we, of course, were anxious to keep them from being able to make the offer.<sup>59</sup>

Darrow and his co-counsel tried to investigate the alleged murder of Tyler:

We felt it necessary to take a long trip through the forest to investigate the scene of the alleged killing, and to find any witnesses who might know anything about the affair. It soon became clear that quite a number of homesteaders knew about the disappearance of the claim-jumper, but had never made it a topic of conversation in Idaho, and no officers or private citizens had made any investigation to learn what had become of the missing man. It was assumed by all the Woodmen that the dead man was a claim-jumper, and therefore an undesirable and unwelcome resident in a new section, and under those circumstances it was useless and unnecessary to search.<sup>60</sup>

Adams took the stand in his own defense. He conceded talking to the Pinkerton detective but strenuously denied admitting to killing Tyler and Boule. McParland also took the stand and was vigorously cross-examined by Edmund Richardson.

### **Darrow's Closing Argument**

Darrow spared no effort in denouncing the prosecution as a sham that intended only to scare Adams into standing by his confession so he could be used to corroborate Harry Orchard's testimony in the Haywood trial:

I want to measure every word I say in this case, and although it may seem harsh, it is true. This prosecution, from beginning to end, is a humbug and a fraud. This prosecution, from beginning to end, is a crime, an outrage, there is not one jot of honesty, not one particle of sincerity, not the least bit of integrity in it, not one single moment from the day this man was taken from his home in Oregon until now.

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<sup>59</sup> *Id.* at 136.

<sup>60</sup> *Id.* at 135.

Darrow angrily denounced the whole machinery of the state that was used to bring Adams to Idaho:

[H]e was living with his wife and children on his Oregon farm, and some men came here in the night with a fugitive warrant, charging him with being the murderer of Steunenberg. The man who had the warrant, the men who had charged of the case, the governor who was pushing it and every man connected with it, knew the charge was a lie. They knew Steve Adams's hands were clean of the blood of Steunenberg. They never intended to convict him, to try him or hold him for the killing of Steunenberg, and they deliberately made a false and perjured charge so as to get him, with the hope of getting hold of something against the Western Federation of Miners.

Darrow scornfully denounced McParland and the tactics the detective used: "This McParland, what is his trade? Is there any worse trade than the one that man follows? . . . [C]an you believe a detective at all? What is he? A detective is not a liar, he is a living lie. His whole profession is that, openly and notoriously."

Darrow ended with his frequent theme, explaining that labor violence was generated by harsh conditions and that prosecuting labor supporters would not change things:

Sometime the employers will learn, sometime we will learn, that hatred begets hatred, that you cannot cure conditions with policemen and penitentiaries, with jails and scaffolds. Some day they will learn, sometime we will learn, that every man you butcher, whether with a gun or a dagger, or a club, or upon the scaffold, only adds to the hatred and the prejudice of the other side. Sometime these bitter passions will pass away, and if they pass away in the lifetime of the generation which is prosecuting Adams today, and prosecuting Moyer, Haywood and Pettibone today, sane men will look back upon this jury and will thank their God, and thank this jury, that in the bitterness of this strife, you were not swept away, but were willing to listen to the evidence and consider the man, and the circumstances and the time, and the place, and unmoved by passion and prejudice, pronounce a verdict of Not Guilty in this case.

In a terrible defeat for the prosecution and McParland, a jury made up of several sympathetic jurors became deadlocked and a mistrial was declared after two days. However, Adams would be retried in October 1907 after the Haywood trial.

Darrow wrote of the Adams trial:

There is neither time nor space for going into the details of the trial, but it was about as interesting and remarkable as any case in which I have figured. The great trackless wilderness where the scene was laid along the St. John River, the primitive, unlettered dwellers from the untrodden green woodlands, the claim-jumper trying to take the property of the pioneer, the courtroom filled every day with Woodmen and miners, with here and there a woman in her finery, made up a

colorful scene. And amidst it all, the old mother brought out of the distant solitude dressed in her “weeds” eying the bones and tattered clothing of her resurrected son. Through it all were shadow pictures of Robin Hood and the greenwood tree, and Daniel Boone with his long rifle and buckskin jacket blazing the trail for a new civilization.<sup>61</sup>

Darrow made several comments about the beauty of the region: “The whole region of northern Idaho had a natural beauty and charm that one rarely finds wherever he may go.”<sup>62</sup> Although Wallace, Idaho was more primitive than he cared for, Boise met his needs:

Getting back to the metropolis of Idaho was a great relief after the long stay in Wallace. Boise was much larger and the living conditions were better. And it was warmer, in the winter and early spring. I never did like cold weather, and therefore have spent most of my life where it has been hard to keep warm. Then, too, I was anxious to get to work on the main case.<sup>63</sup>

### **William Borah Indicted**

The prosecution’s troubles got much worse less than a month before the Haywood trial was to start when William Borah, a newly elected Senator and special prosecutor for the Haywood trial, was indicted with several others over alleged land fraud involving timber. Borah was implicated because he worked as a lawyer for the Barber Lumber Company. There appears to be considerable support for the view that these indictments were politically motivated. Borah, a progressive Republican compared to the conservative wing of the party, was gaining influence in the Republican Party and the party machine wanted to stop Borah. It is believed that the U.S. Attorney for Idaho, Norman M. Ruick, pushed the indictment of Borah at the urging of some politicians. Ruick had to pack the grand jury to almost double its normal size to get a majority of jurors to indict Borah.<sup>64</sup> In addition, James Beatty, the retiring U.S. District Judge, lobbied very hard for Borah’s indictment. Beatty was a frustrated Republican candidate for the Senate seat that Borah had just won.

Similar fraud charges were common in the West during this period:

Land frauds were occurring in a number of western states at this time because of imperfections in the various acts of Congress affecting the public domain. Thus, there was a certain degree of routines in the Boise grand jury’s investigation. The consensus in Idaho, however, seemed to be that Ruick had deliberately timed the

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<sup>61</sup> *Id.* at 138.

<sup>62</sup> *Id.* at 136.

<sup>63</sup> *Id.* at 141.

<sup>64</sup> DAVID H. GROVER, *DEBATERS AND DYNAMITERS: THE STORY OF THE HAYWOOD TRIAL* 88 (1964) [hereinafter *DEBATERS AND DYNAMITERS*].

investigation to embarrass Borah at the moment when the Senator was preparing to prosecute wrongdoing.<sup>65</sup>

Borah was very worried about the indictment and the trial he would face in the future. He implored his friend Calvin Cobb, publisher of the *Idaho Statesman*, to contact President Theodore Roosevelt on his behalf. During the Haywood trial, Hawley came to feel that he had to pull most of the load because Borah was preoccupied by his own looming legal troubles.

### ***The State of Idaho v. William D. Haywood***

The trial drew enormous interest and it was estimated that fifty magazines and newspapers sent reporters to cover it. The Western Union office in Boise claimed it was prepared to deliver 200,000 words per day. Besides excitement, there was also fear. A *New York Times* page two headline gives a sense of the atmosphere:

THREATS TO MURDER GOVERNOR OF IDAHO; Menacing Letters Pouring into Boise from All Over the Country. HARRY ORCHARD IN PERIL Many Men Believe He Will Be Slain In the Witness Chair – Haywood Trial Likely to Begin Tuesday.<sup>66</sup>

The news article explains that while the residents of Boise went about their business and things appeared normal, “under the surface there [wa]s a strong undercurrent of apprehension and nervousness. Violence [wa]s the ever-present fear.”<sup>67</sup> However, other sources believed that the fear of danger was greatly exaggerated. There was a strong incentive for miners and others who supported the defendants to refrain from violence because such acts could hurt the defendants at trial. No doubt fearing that they could be convicted and hanged, it appears Haywood and Moyer instructed their WFM supporters not to engage in violence. The defense also dissuaded Eugene Debs from traveling to Boise because his presence would hurt the defendants.

### **Defense Worried about Orchard Testimony**

Prior to the trial, the prosecution and McParland had only released bits and pieces of Orchard’s confession to the public, so the defense was left in the dark as to much of the prosecution’s strategy. Darrow recalls how worried the defense was about what Orchard might say on the stand:

The great mystery in the whole case was the coming testimony of Harry Orchard. When there is no way to get a line on the evidence of a hostile witness, one must assume that it will be even more damaging than can reasonably be imagined. We tried to get some inkling of what his story was to be, but could find no law that could give us any opening or relief. It was dangerous to meet the testimony of

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<sup>65</sup> *Id.*

<sup>66</sup> NEW YORK TIMES, May 3, 1907, at 2.

<sup>67</sup> *Id.*

such a witness with no information about what his evidence would be, with the arena of the combat where the fight was to take place about fifteen hundred miles away from the main setting of the drama in Colorado. But, while we could not see him, an opportunity was soon furnished us to get his story.

A few days before the case came up for trial we picked up the paper, and there was Harry Orchard and his story all over the front page. It seemed that the various newspaper representatives from everywhere in the country had been called in to hear Harry Orchard tell his tale. The 'news' was lurid enough to satisfy the cravings of any reader. This was sent broadcast and published in all the leading papers of the United States, at least. Immediately we detailed men to run down the events and incidents that he related, and by the time we had impanelled the jury we had fairly and carefully examined every statement made by him. Luckily for us, many of these claims were contradicted by the facts that we afterward adduced.<sup>68</sup>

### **Defense Claims Orchard had Personal Motive to Murder Steunenberg**

There was no denying that Orchard murdered Frank Steunenberg. The defense contended that Orchard had a personal motive to kill the former governor and thus was not acting on the orders of Haywood or the other WFM leaders. Darrow recounted the defense's reaction after it got to see Orchard's confession:

The document was a revelation of Harry Orchard's mind, and put him down as easily the greatest retail killer that the world had ever known. Then we looked for the motive that might have caused him to kill Steunenberg. We learned that Orchard had worked in the Coeur d'Alene mines in northern Idaho in the year 1899, and then, together with Ed Boyce, former president of the United Mine Workers, and Henry Day and his brother, and Al Hutton, a locomotive engineer, and one or two others, had located the Hercules mine, which at that time was merely a prospect. Orchard and some of the others had worked the mine while Hutton stuck to his locomotive engine and put his earnings into the prospect. The Day brothers and Ed Boyce worked in other capacities to earn money for developing the vein, and one or two of the Day sisters had taught school for a number of years and put their savings in the common pot.

As luck would have it, the Hercules turned out to be one of the richest deposits ever discovered, ultimately becoming worth many millions of dollars. Harry Orchard, as I remember it, had about a tenth interest in the property. He was actively interested in the strike of 1899 in the Coeur d'Alene--as those mountains and valleys were spoken of. Steunenberg was the governor, and called out the militia at the behest of the mine and smelter company. Orchard was obliged to dispose of his interest in the Hercules prospect and flee from the State. Of course, it was of little value at that time.

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<sup>68</sup> STORY OF MY LIFE, *supra* note 27, at 141-42.

Incidentally, this case, as well as others, represents an illustration of fate and chance, and the futility of human plans. Had Orchard not been forced to flee from Idaho he would not have sacrificed his stock in the Hercules mine. Within a few years he would have been a multi-millionaire. He would, doubtless, have developed into a wealthy and respectable citizen, and a member of the Mine Owners Association. Orchard is a man of considerable natural ability, and, with opportunity, could have, and no doubt would have become, like all his associates of the Hercules mine, an outstanding figure in the affairs of the Northwest.

The trial of Big Bill Haywood began on May 9, 1907, 16 months after Frank Steunenberg was murdered.

### **Edgar Wilson**

Darrow had a surprise for the prosecution and the gallery watching the trial. Sitting at the defense table was Edgar Wilson, a leading citizen of Boise. Wilson was an attorney, banker, former congressman, and - most significantly - a former law partner of the trial judge Fremont Wood. He and Wood had been law partners for eleven years, from 1884 until November 1895. Wilson had gone to Judge Wood just two days before the trial was scheduled to begin to inform him that he was asked to join the defense. Wilson asked if this would be an embarrassment to the judge. Judge Wood recounted that he was “somewhat stunned” at the news but immediately decided that their friendship would not affect the case.<sup>69</sup>

Darrow thought highly of Edgar Wilson and his wife:

[W]e had already become rather well acquainted with Mr. and Mrs. Edgar Wilson. Mr. Wilson was the first Congressman from Idaho, one of the earliest settlers of the State, and one of the most respected. Then, and afterward, the Wilsons were our loyal friends, and did a great deal to make life more tolerable in Idaho; and later on, in Los Angeles, they proved as staunch and devoted as any friends that ever came into our lives.<sup>70</sup>

Although he was facing a capital murder trial, Haywood recounted in his autobiography, “A part of the time I spent in the Ada County jail was the most quiet, peaceful period of my life. I have never enjoyed myself better than the first few months I was there. It was my first real opportunity to read.”<sup>71</sup> Haywood also studied law through a correspondence course arranged by John H. Murphy, general counsel for the WFM, who had encouraged Haywood to become his law partner. But Haywood did not think much of the legal profession because of his experience during the trial; what he had seen in Colorado and Idaho made him “unwilling to become involved in a profession that was so crooked and

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<sup>69</sup> FREMONT WOOD, THE INTRODUCTORY CHAPTER TO THE HISTORY OF THE TRIALS OF MOYER, HAYWOOD, AND PETTIBONE, AND HARRY ORCHARD 22 (1931) [hereinafter THE INTRODUCTORY CHAPTER].

<sup>70</sup> STORY OF MY LIFE, *supra* note 27, at 141.

<sup>71</sup> THE AUTOBIOGRAPHY OF BIG BILL HAYWOOD 198 (1966).

so meaningless for the working class.”<sup>72</sup> Murphy, who was dying of tuberculosis attended the trial against his doctor’s wishes. He died on March 3, 1908.

### **Picking a Jury**

Picking a jury was a huge concern for both the prosecution and defense. Their plans for canvassing potential jurors were upset in March when Judge Wood granted the defense’s request for a change of venue. However, Judge Wood did not change the venue to Washington County as Darrow and his team wanted, but instead moved the trial to his own court in Boise, located in Ada County. For the defense, this was definitely preferable to Canyon County where Steunenberg’s hometown was located. But all the leg work by each side canvassing potential jurors in Canyon County was wasted, and they now had only six weeks to find out what they could about Ada County’s citizens.

By the time jury selection began, both sides were armed with considerable information about potential jurors such as their political beliefs and who they associated with. Unfortunately for Darrow and his team, the prosecution had copies of the defense’s jury intelligence - thanks to Operative 21.

The questioning of potential jurors, called talesmen, was complicated by the fact that many did not want to serve. Some claimed to be biased, but it was believed these claims were made to avoid jury service. Although no one explicitly mentioned it, some thought potential jurors feared the ramifications that might result from a guilty verdict. It was believed that many did not want to serve on the jury because they feared reprisal by the Western Federation of Miners.

Sometimes a report on a potential juror was so unequivocal and contrary to what the juror claimed on the stand that an undercover investigator was put on the stand to discredit him. Surprisingly, although the intelligence gathering was done undercover, the actual information was openly acknowledged. At one point, when Darrow could not find the information the defense had about a certain rancher, he turned to Borah and asked him for the prosecution’s information on the rancher.

### **Killing Snakes**

Bill Haywood worked closely with the defense attorneys who were trying to decide whether to challenge a potential juror, and he liked the way Darrow challenged potential jurors for bias. Haywood recounted in his autobiography that when Darrow challenged jurors for cause “[i]t was like killing snakes.”<sup>73</sup>

### **Idaho Legislature Changes Number of Peremptory Challenges**

Under Idaho law prior to the trial the defense would have ten peremptory challenges and the prosecution five. But so important was the jury selection process and trial outcome to

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<sup>72</sup> *Id.* at 198-99.

<sup>73</sup> *Id.* at 209.

the prosecution that Hawley and McParland worked before the trial to get legislation passed, giving the prosecution ten peremptory challenges.<sup>74</sup> They worked behind the scenes so as not to alert the defense and got the new law passed on May 7, 1907, just two days before the trial was to begin. However, it was not clear whether the new law could be applied retroactively. The defense argued strongly that it was an ex post facto law and therefore could not be used in the trial, but Judge Wood ruled in favor of the prosecution.

## **Defense Discovers Operative 21**

Despite Operative 21's careful undercover work, the defense gradually came to suspect that it had been infiltrated by a spy. The turning point came when the defense got a hold of a Pinkerton expense sheet that had been submitted to the state for reimbursement.<sup>75</sup> This happened after a state senator got a bill passed that required detailed accounting of certain claims against the state treasury. The bill threatened to open up to scrutiny the details of the Pinkerton expenses, which were kept locked in the governor's office.<sup>76</sup> After political maneuvering it was agreed that only members of an ad hoc committee would get to see the documents, but at some point they were leaked to the defense - although by who is not clear.<sup>77</sup>

The defense learned about Operative 21 from the leak, and shortly thereafter learned of another operative who was believed to have pilfered important papers. The prosecution also rooted out two suspected defense agents during this time.

The discovery of Operative 21 weighed heavily on Darrow and his team. How could they now trust any of the jury intelligence he had gathered? It seemed unlikely that the operative could have reported exactly the reverse about each potential juror, because this would have exposed him if other defense agents uncovered the systematic distortions.<sup>78</sup> The defense decided that it was likely most of the information turned over to them was accurate.<sup>79</sup>

The contrasting styles of Darrow and Richardson during jury selection were described by a reporter:

[Darrow's] method is very different from that of Richardson. The Denver man keeps his seat and goes at his man in a vigorous, emphatic way, using voice enough to be heard at the furthest extremity of the courtroom. Darrow stands up, walks over directly in front of the talesman, and talks in a quick confidential manner, as if just he and the talesman were discussing the matter in which no one else had any interest.<sup>80</sup>

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<sup>74</sup> BIG TROUBLE, *supra* note 2, at 530.

<sup>75</sup> *Id.* at 535.

<sup>76</sup> *Id.* at 536.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 537.

<sup>79</sup> *Id.*

<sup>80</sup> *Orchard's Talk Stirs the Court*, NEW YORK TIMES, May 18, 1907, at 3.

Eventually, a jury of twelve men was picked. The jury consisted of nine farmers, a real estate agent, an ex-carpenter, and a foreman of a fence-building operation. There were eight Republicans, three Democrats, and one Prohibitionist; nine were born in the United States, two in Scotland, and one in Canada.

It appeared that the prosecution did better than the defense. The defense was very worried because out of a “county of 12,000 inhabitants, with 5,000 subject to jury duty and 249 summoned in four venires, there had been only three trade unionists.”<sup>81</sup> The prosecution, on the other hand, seemed very pleased with the results of the selection process. Judge Wood would later write that he probably gave too much latitude to both sides and approved challenges because of the extraordinary nature of the case:

At the time of the selection of the jury it became apparent that the case was being tried before a greater jury than that selected in the Court room and this fact undoubtedly had its influence upon the Court and also upon the attorneys representing both sides, who realized that every moment was being scrutinized by more interested people than had ever before followed the trial of an individual case in the history of the country.<sup>82</sup>

A house across the street from the courthouse was rented for the jury to stay in and a cook was hired to feed them. Four bailiffs were assigned to guard the jurors.

## **The Trial**

The trial began at 9:30 a.m. on Tuesday, June 4, 1907. The prosecution had kept the confessions of Harry Orchard and Steve Adams mostly secret in order to prevent the defense from knowing what they had to defend against. The defense made a motion for a bill of particulars to force the prosecution to be more specific in its charges. But Judge Wood denied the motion because Idaho law did not require it and the indictment was already specific enough.

## **Hawley Opens for the Prosecution**

Jim Hawley, the special prosecutor, opened for the state but was intentionally vague in his remarks so as to keep the defense in the dark about the state’s case. Hawley made sure to mention that Orchard was also indicted for the murder of Frank Steunenberg, to preempt defense claims that Orchard had been promised immunity for testifying against Haywood. Hawley explained that along William D. Haywood, Charles H. Moyer, George A. Pettibone, and John L. Simpkins were charged with the murder of Frank Steunenberg and “at the same time another indictment of the same import, charging precisely the same crime, in the same manner, was found against one Harry Orchard.”

Hawley described the executive leadership of the WFM:

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<sup>81</sup> BIG TROUBLE, *supra* note 2, at 539.

<sup>82</sup> THE INTRODUCTORY CHAPTER, *supra* note 69, at 33-34.

The organization itself as effected, gentlemen, gives the absolute control of the entire body, of the entire organization then into the hands of a very few men, and . . . at least for the past eight or ten years but few men have been in control of the destinies of the Western Federation of Miners. From the very inception of this organization, . . . although . . . the rank and file of it were innocent of any sinister motives, we will show to you by their acts and by the policies that they have pursued that there has been an understanding amongst the leaders which has existed to the present time and has been the reason and the cause not only of the death of Governor Steunenberg but of scores of others besides.

### **Hawley versus Darrow**

Hawley did not describe his own involvement in the formation of the WFM. Darrow objected to parts of Hawley's opening statement and asked that it be stricken from the record. Darrow and Hawley argued back and forth about the propriety of Hawley's opening statement. This would set the tone for trial, as it was soon apparent that there was no love lost between the two.

The judge told Hawley that the opening statement must be about what the state expected to prove. Hawley responded that he was trying to do just that, and said he understood his rights and duties. This prompted the following exchange:

Darrow: "It don't look as though you did."

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

Darrow: "You will be interrupted every time I think you are trespassing."

Hawley and Darrow got into an extended exchange about what was proper in an opening statement. Darrow sought to disrupt the prosecutor with challenges and barbed comments. This was a part of Darrow's defense in numerous trials. He would pick one of the prosecution attorneys to persecute with inflammatory comments to goad the prosecution and disrupt their presentation to the jury. Hawley was the target in this trial.

Later in his autobiography, Darrow was kinder to Hawley, describing him as "an old typical pioneer lawyer of the West, a man of ability, long a resident of the State, [who] had for many years been connected with most of the important litigation of Idaho. He had held various political offices, and soon after the trial was elected governor."<sup>83</sup>

When Hawley had finished, Darrow stated that the defense would delay its opening statement until after the prosecution's case in chief. This was most likely done to reveal as little as possible about the defense strategy.

The prosecution then presented witnesses to prove the state's case. Not surprisingly, it was simple to prove that Steunenberg had been murdered; the defense did not try to

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<sup>83</sup> STORY OF MY LIFE, *supra* note 27, at 143-44.

refute witnesses that testified to those facts. Cross-examining these witnesses, the defense revealed that Orchard did not appear to hide his actions. The defense wanted to establish this because one of their theories was that Orchard was actually an agent provocateur who was working for the Pinkerton Detective Agency.

Witnesses also testified to seeing Orchard with the mysterious Jack Simpkins while both were using aliases—Hogan for Orchard and Simmons for Simpkins. Tying Orchard to Simpkins was important because Simpkins was a member of the Executive Committee of the WFM. The state even brought in a person named Wentz from Wardner, Idaho who claimed to have taught Simpkins to write. Wentz testified that the signature for Simmons on hotel registers was that of Simpkins.

### **Harry Orchard Testifies**

There was a great deal of excitement when it came time for Harry Orchard to appear in the courtroom. There was also considerable concern that Orchard would be killed before he testified. The state took numerous precautions to prevent this. McParland warned the warden at the penitentiary about rumors that Orchard's food would be poisoned. To guard against the risk that a sharpshooter could kill Orchard as he was taken out of the penitentiary, guards were stationed on the heights above it.<sup>84</sup> After Hawley had endured Darrow's verbal attacks, he warned the defense, "The second man to be shot will be Clarence Darrow." Orchard had already begun writing his autobiography, including details of his confession, for *McClure's Magazine*. Along with preparation by the prosecution, this helped ensure that Orchard had a good command of the details of his confession.

### **Harry Orchard Not Defendant's Real Name**

Orchard told the court that he was born in Northumberland County in Ontario, Canada on March 18, 1866. He was raised on a farm and his formal schooling ended in the third grade. On direct examination, one of the first questions posed to Orchard was whether Orchard was his real name. This got the attention of the entire courtroom especially the defense who had hired agents to try and discover Orchard's true identity.

Then the man everyone knew as Harry Orchard revealed that his real name was Albert E. Horsley. He had used the name Harry Orchard for about eleven years. Although his true name was revealed to be Albert E. Horsley during the trial, he is nearly universally referred to as Harry Orchard in contemporary and later accounts of the trial.

### **Harry Orchard's Crimes**

Orchard discussed his life history, which included joining the Western Federation of Miners just before taking part in the assault on Bunker Hill Mining in April of 1899. Orchard claimed to have lit one of the fuses attached to the boxes of dynamite that blew up the concentrator. At a certain point he made the transformation to a union terrorist.

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<sup>84</sup> BIG TROUBLE, *supra* note 2, at 552.

Orchard took credit for setting a bomb in the Vindicator Mine in Cripple Creek, Colorado in November of 1903, his first crime committed for the WFM. The bombing, for which Orchard collected a \$500 fee, killed two miners. Orchard had meant to kill some scabs in the mine but he placed the bomb on the wrong level. It was his work in the Cripple Creek area that brought Orchard to the attention of Haywood and other WFM leaders. Orchard claimed that he and Steve Adams murdered Lyte Gregory, a detective working for mine owners in Denver, during the spring of 1904. They were each paid \$100 for shooting Gregory to death.

Orchard confessed to working with Steve Adams to plant dynamite under the Independence depot in Cripple Creek, Colorado. The June 6, 1904 explosion killed 13 non-union workers and seriously injured several more. It was the worst crime Orchard confessed to.

### **Colorado Officials Targeted**

Orchard provided details regarding his attempts to assassinate Colorado officials, including Governor Peabody and Colorado Supreme Court Judges Goddard and Gabbert. Orchard and Steve Adams had followed Governor Peabody around but were unable to get close to him, although they did get close to his wife and daughters. Orchard planted a bomb to kill Gabbert but it killed an innocent bystander instead.

### **Frank Steunenberg Marked for Death**

Orchard claimed that in the summer of 1905, Haywood, Moyer and Pettibone employed him to assassinate Frank Steunenberg. Haywood told Orchard that if Steunenberg was killed seven or eight years after the labor troubles of 1899, and that if letters were then sent to Governor Peabody, Sherman Bell, Judges Goddard and Gabbert, and certain mine owners warning them that they were next, the fear it would cause would be a fate worse than death. Sherman Bell was a mine manager who was appointed adjutant-general of the Colorado National Guard and commanded troops sent by Governor Peabody to the Cripple Creek district during the labor war in 1903-04.

Orchard and Simpkins planted a bomb at the gate of Steunenberg's yard on November 6, 1905, but the bomb failed to explode. They retrieved the bomb and hid it at another location. Orchard then tried to kill Steunenberg with a shotgun, but that attempt also failed.

### **Orchard Passes Steunenberg Moments before Explosion**

Orchard then made another attempt with a bomb. The bomb that killed Steunenberg was a crude but brutally effective device. Orchard explained that when he saw Steunenberg in the Saratoga Hotel on the evening of December 30, 1905, he hastened to his hotel room, got the assembled bomb, wrapped it in newspaper, and raced to Steunenberg's home. He placed the bomb close to the gatepost of the yard, and tied a cord into an eye-screw in a

cork stopper and around a picket of the gate. When the gate was opened, it would pull the cork stopper out of a bottle of acid, and the acid would pour out, detonating the bomb. Orchard set the cord so that even if the gate was not opened very wide, anyone passing through would hit the cord with their foot or leg and accomplish the same thing. He placed some paper over the bomb and covered it with snow. Eerily, as Orchard was rushing back to the hotel, he passed Frank Steunenberg heading in the other direction about two and a half blocks from his house.

### **Defense Fights Over Who Will Cross-Examine Orchard**

The decision as to which defense attorney - Darrow or Richardson - would cross-examine Orchard caused a great deal of tension. Orchard had put on a tremendous performance for the prosecution and it was vital that the defense be able to undercut this with effective cross-examination. Whichever attorney was able to do that would gain the most fame if Haywood was found not guilty. Darrow and Richardson were not modest men and neither wanted to take a secondary role in such an important aspect of the trial. Before the trial even began their differences caused Darrow to inform the defendants he could not continue on the defense team, but this impasse was solved and Darrow stayed with the case.

### **Richardson Cross-Examines Harry Orchard**

Eventually Richardson won out and Darrow conceded the cross-examination. Richardson, a very experienced trial lawyer, questioned Orchard for about 26 hours over five days. Richardson put a great deal of effort into his cross-examination of Orchard, trying to find weaknesses in his testimony and emphasizing the murders to which Orchard had admitted.

Richardson pressured Orchard to admit that McParland and the prosecution had promised him some type of leniency in exchange for his confession and testimony at trial. Orchard continued to deny any offer of immunity and insisted that his confession and testimony was his way of trying to make amends for the murders he had committed.

Orchard held up very well and when the cross-examination ended most observers believed Richardson failed to undermine Orchard's testimony. How much of Orchard's success in fending off Richardson was due to Orchard's personality and courtroom strength, or how much was due to Richardson's ineffectiveness in this particular performance, is difficult to evaluate. It appears that Orchard would have done well against any cross-examiner. Later Judge Fremont Wood recalled that Richardson conducted a merciless cross-examination but he believed Orchard did well because he was telling the truth. Other commentators also believed Orchard did so well because he was truthful. Some reporters thought another reason for Orchard's effectiveness was his conversion to Christianity.

### **Orchard Confession Must be Corroborated**

Although Orchard put on an impressive performance for the prosecution, his testimony could not be decisive because it had to be corroborated by other evidence. Adams was still resolute in his refusal to corroborate Orchard's confession. Thus, the prosecution had to look elsewhere to pin the murders on Haywood.

Among his many crimes, Orchard confessed to trying to poison Fred Bradley, former manager of the Bunker Hill and Sullivan mine, by placing strychnine in the family's milk bottles that were left on the porch by a delivery man at their home in San Francisco. Bradley tasted the bitter milk and refused to drink it. Thereafter, Orchard planted a bomb that very nearly killed Bradley as he left his home. The explosion was erroneously believed to be caused by a gas leak and the gas company ended up paying Bradley almost \$11,000 in damages. The prosecution brought in witnesses from San Francisco to corroborate the attempted murder of Bradley. Other witnesses testified to events linking Orchard to Steve Adams, George Pettibone, and William Haywood. The prosecution introduced a letter written by Bill Haywood to Orchard's second wife in Cripple Creek, Colorado stating that Orchard was last seen in Alaska. Orchard claimed this was meant to deceive his second wife who was inquiring about him. Orchard said that at the time, Haywood knew Orchard was in Caldwell, Idaho.

In order to show that the WFM hated Steunenberg, the prosecution tried to introduce articles written in the *Miner's Magazine*, the official journal of the Western Federation of Miners. The prosecution wanted to show how the WFM leaders had railed against Steunenberg and others for the troubles the miners experienced in the Coeur d'Alenes in 1899. The defense strenuously objected to the admission of these articles. The prosecution wanted to use articles published both before and after Steunenberg's assassination. Judge Wood allowed the articles into evidence because they showed motive, but only articles written before the murder were allowed. In his autobiography Haywood commented, "Perhaps the prosecution had expected us to mourn the governor's death."<sup>85</sup>

### **Fred Miller**

Orchard had testified that the WFM executive leaders instructed him not to contact them if he got arrested, but did assure him they would send legal help if necessary. One of the stronger pieces of evidence corroborating Orchard's testimony was a telegram sent after Orchard's arrest from Fred Miller's law firm stating that Miller would start for Caldwell in the morning. The Canyon County sheriff, Jasper Nichols, testified that Orchard had not sent any messages asking Miller to come to Caldwell. The strong implication was that Miller knew about Orchard's need for legal assistance because Miller had been sent for by Haywood. Miller was part of the Haywood defense team. During the trial he was in San Francisco investigating the alleged poisoning and bombing attempts against Fred Bradley.

Judge Goddard of the Colorado Supreme Court testified about the unexploded bomb planted at his gate in a failed assassination plot. The bomb was only discovered after

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<sup>85</sup> THE AUTOBIOGRAPHY OF BIG BILL HAYWOOD, *supra* note 71, at 210.

Orchard confessed to planting it and was found right where Orchard claimed it would be. Goddard had nearly met the exact same fate as Frank Steunenberg.

### **Defense Moves for Directed Verdict**

After the prosecution presented its case, Richardson moved for a directed verdict. Richardson argued for two and half hours that the state had failed to corroborate Orchard's confession. Richardson placed great weight on §7871 of the Revised Statutes of Idaho that required the testimony of an accomplice be independently corroborated.

Borah argued the prosecution had shown a conspiracy that included Haywood and that members of the conspiracy had killed Steunenberg. Darrow rebutted Borah's points. Richardson then concluded his arguments for a directed verdict:

The statute of the State of Idaho ought to mean something, and it does. It means that the legislature of this state has crystallized into a statute that which every lawyer and every judge and every well informed student of history knows is what ought to be. No man's life can be taken from him, no man's liberty can be taken from him upon evidence which comes from such a polluted source as this— an informer, a traitor, an assassin, an accomplice—and can take away the life or liberty of any man. There must be some other evidence, something which stands alone, and standing alone directly connects the defendant with the commission of the crime. From the beginning to the end I insist there is not a syllable of evidence in this case which does not connect this defendant with this crime excepting the statement of Orchard, and that for this reason this case should not be submitted to the jury. This case should not be submitted to the judgment which naturally and inevitably must be largely influenced by the passions and feelings and prejudices of the day, but if ever in any case the court should insist upon the clear letter of the law being obeyed, in order to preserve the principle and its intent and purpose, it should be done in a case as clear as this case is, and your Honor should take this case from the jury at this time.

Judge Wood thought Orchard was telling the truth, indicating Haywood's guilt, but he also thought the state had failed to provide enough corroboration of Orchard's confession. Even so, Judge Wood ruled for the state and allowed the case to go to the jury. He did not explain his reasoning because the trials of Moyer, Pettibone and Orchard under the same indictment were to follow.

### **Hiring Edgar Wilson Backfires**

Darrow's recruitment of Edgar Wilson appeared to be a tactical victory but it actually turned out to backfire on the defense, although this would not be revealed for another 24 years. Judge Wood was concerned he would appear biased if he ruled in favor of the defense's motion for a directed verdict because of his friendship with Edgar Wilson. Writing in 1931 about the case, Judge Wood stated that he might have ruled in favor of

the defense's motion for a directed verdict if his former law partner Edgar Wilson was not part of the defense team.<sup>86</sup> Judge Wood recalled his decision:

As I then viewed and have ever since viewed the actual situation as presented by that motion there was very little legal corroboration upon which a verdict of guilty could be justified, and when the Court came to the consideration of the matter, the appearance of Mr. Wilson in the case was thrust upon the Court as an almost controlling factor. . . . In considering this case from a retrospect of more than twenty years, I admit I feel that had Edgar Wilson been absent from the case as attorney for the defendants the decision of the Court on the motion for advisory verdict might have been different and the trials there terminated.<sup>87</sup>

Judge Wood also explained that while there was little corroboration at the time the state presented its case, later there was sufficient corroboration to submit the case to the jury because the state elicited corroboration from defense witnesses during the defense's presentation of the case. Judge Wood also recalled that when many of his associates and members of the Ada County bar heard that Edgar Wilson had joined the defense team, they assumed that either Wilson or Wood would step down.

### **Ethel Barrymore**

The trial was briefly upstaged when the actress Ethel Barrymore came to Boise for a day. She arrived at the court on the day that Darrow opened for the defense. Charles Siringo saw to it that Barrymore charmed McParland enough that she was brought to the jail to meet Harry Orchard. In her autobiography, Barrymore recounted her impression of Darrow:

“That was the first I had heard of the flowery Mr. Darrow. He had all the props: an old mother in a wheelchair and a little girl with curls draped around Haywood. I don't know whether she was his daughter or just one of Mr. Darrow's props.”<sup>88</sup>

She said of the jury:

the most wonderful looking men I've ever seen. They were all ranchers with the bluest eyes, like sailor's eyes, used to looking at great distances. They made me think of Uncle Sam as Uncle Sam ought to look without the goatee. They were magnificent, all of them . . . .<sup>89</sup>

### **Psychologist Controversy**

The same day that Barrymore left town, a new visitor arrived. Hugo Münsterberg, a professor of psychology at Harvard University, was invited by *McClure's Magazine* to

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<sup>86</sup> THE INTRODUCTORY CHAPTER, *supra* note 69, at 24.

<sup>87</sup> *Id.*

<sup>88</sup> ETHEL BARRYMORE, MEMORIES: AN AUTOBIOGRAPHY 158 (1956).

<sup>89</sup> *Id.*

conduct a psychological study of Harry Orchard. Münsterberg, a protégé of William James, was one of the most well-known psychologists in the United States. Münsterberg observed a day of the trial, including testimony by Orchard. The next day the Governor of Idaho arranged for Münsterberg to interview Orchard. In the course of a four hour meeting, Münsterberg used word association tests to assess Orchard and came away convinced that Orchard's confession was true. Münsterberg left to return to Boston. On the last leg of his trip, Münsterberg met a reporter from the *Boston Herald* and agreed to an interview about his study of Orchard. Münsterberg unwittingly disclosed his opinion that Orchard was being truthful and this was promptly reported in the paper. He followed this up with an interview for the *Boston Transcript*, another newspaper.

Münsterberg was criticized by east coast newspapers for divulging this information before the trial was over. When the news reached Idaho, the defense was infuriated because Münsterberg had promised to wait until the trial was over to speak and they were afraid the sequestered jury would learn of the news. Darrow and Richardson released a statement criticizing Münsterberg and denied he had even seen Orchard on the witness stand. *McClure's* claimed that it was Darrow himself who had suggested hiring a professional to study Orchard.

### **Defense Case**

Darrow opened the case for the defense with a three and a half hour statement. Darrow made sure to point out to the jury that it was James Hawley who had suggested the formation of the Western Federation of Miners after the troubles in 1892. Hawley had even worked for the WFM. Darrow claimed that mineowners tried to blame everything on the WFM: “[S]ince they were organized every illegitimate child that was born west of the Mississippi has been bundled up in its swaddling clothes and hurried up to Denver and laid on the front door step of the Western Federation of Miners—for a purpose.”

### **Pinkerton Labor Spy**

The defense had a few surprises for the prosecution. They were able to secure testimony from a witness named Morris Friedman who claimed to have worked as a clerk for the Pinkerton office in Denver and also as a private stenographer for none other than James McParland. Friedman was an especially interesting witness for the defense because he had published a book earlier that year about his work titled *The Pinkerton Labor Spy*, in which he explained how the Pinkerton agency infiltrated and spied on the Western Federation of Miners and other unions.

Darrow drew from Friedman descriptions of Pinkerton infiltration into the WFM. The infiltration was extensive enough to place Pinkerton agents into leadership positions, including union president in some cases. Friedman's testimony was backed up with extensive documentation, much of which was signed by McParland himself. The defense thought Judge Wood would exclude the evidence as not relevant, but to their surprise Wood allowed the evidence because it tended to show the Pinkertons as “agents

provocateurs” who acted to place the WFM into a bad light.<sup>90</sup> However, Friedman’s testimony lost some of its punch when he admitted that the Mine Owners’ Association was not a Pinkerton client.

### **McParland’s Brother Testifies for Defense**

The defense even brought in the detective’s own brother Edward McParland to testify as a witness. Edward McParland was a shoemaker in Victor, Colorado, part of the Cripple Creek district. He was one of many men rounded up and imprisoned in a bull-pen three days after the Independence depot explosion. Edward McParland’s testimony only lasted about six minutes and was not substantively important, but it was meant to embarrass his brother and was effective in doing so.

### **Defense Case Hurts Haywood**

The defense took a calculated risk and called both Moyer and Haywood to testify. Both Moyer and Haywood proved to be good witnesses, although the defense may have been better off not presenting their testimony. By the time the defense rested, numerous observers believed the defense had actually hurt its own case. According to the reporter C.P. Connolly:

There is no escape from the conclusion that at the close of the case for the defense, a much stronger chain of evidence had been forged against Haywood, than the prosecution had succeeded in welding. And the credit for laying the State’s well-concealed traps for the defense to stumble into must be given to the detective McParland, an old-fashioned man in appearance and habit, who works silently and seriously, and with a passion for winning.<sup>91</sup>

### **Darrow Versus Borah**

Hawley gave the first closing argument for the prosecution. He was followed by Richardson for the defense. Both lawyers gave effective closing arguments. Anticipation was building during this time as many observers waited to see how Clarence Darrow and William Borah would each close for their side. Both men had a reputation for strong public speaking and excitement mounted as the time came closer for them to make their final arguments to the jury.

### **Clarence Darrow’s Closing Argument**

As he did in many of his closing arguments, Darrow worked a great deal of scorn and sarcasm into his presentation. According to an account of the trial:

Darrow digressed at every opportunity to insert sarcastic comments. These comments interrupted his reasoning on many points (hence, many of the passages

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<sup>90</sup> BIG TROUBLE, *supra* note 2, at 688.

<sup>91</sup> C.P. Connolly, “*The Moyer-Haywood Case*”, COLLIER’S, July 27, 1907, at 14.

to be cited are unduly long), but they had the cumulative effect of building a negative image of Orchard, Hawley, and to a lesser degree, Borah, in the minds of the jurors.<sup>92</sup>

Haywood described Darrow's appearance: "When Darrow rose to address the jury he stood big and broad-shouldered, dressed in a slouchy gray suit, a wisp of hair down across his forehead, his glasses in his hand, clasped by the nose-piece."<sup>93</sup>

### **Darrow Does Not Eulogize Steunenberg**

During his summation, Darrow directly addressed Steunenberg's murder. He asked the jury members to put themselves in the place of the defendant and the defense counsel, who were fifteen to two thousand miles away from their homes, and were in "the home of the man who was killed in the most ruthless, cowardly, brutal way that any man could meet his death." But Darrow did not eulogize Steunenberg to try to win points with the jury:

My associate said that Governor Steunenberg was a great and a good man. I don't know anything about that, whether he was either one, and I don't care. It is just as much murder to kill a bad man as it is to kill a good man. It is just as much murder to kill the humblest man who tills the fields as it is the king upon his throne. There is no difference. I have taken no pains to study who Governor Steunenberg was, excepting he was the governor of this state. I assume he had his virtues and he had his failings. If he did not, he would have no friends. It is a great mistake to think that because a man had been a governor the law should be any swifter to wreak vengeance upon someone by taking his life away than if he had been a plain ordinary man, and yet, gentlemen, it is true. If this man had not at one time been governor of the state, I do not believe there is money enough in the state treasury of Idaho to hire a lawyer with a reputation to ask for another man's blood upon the evidence that has been offered in this case.

Governor Steunenberg was a man. He had a right to live. Whether he was a great man or a small man, a good man or a bad man, wise or foolish, cuts no figure in this case. If any word of mine or any act of this defendant could bring back this life of which we have heard, how quickly we would say that word and do that act! But the past is settled. No result from this jury can call that man back to life. No verdict that you can give can bring back the father, or bring back the husband, or in any degree lessen the pang that must have come to those near and dear for the murder of that man. All you can do, gentlemen, with your power, all you can do toward fixing up the schemes of the Almighty, is to make more widows and more orphans on account of the death of Steunenberg, and if this jury wants to take that responsibility in this case upon this evidence, well and good. May peace be with you.

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<sup>92</sup> DEBATERS AND DYNAMITERS, *supra* note 64, at 214.

<sup>93</sup> THE AUTOBIOGRAPHY OF BIG BILL HAYWOOD, *supra* note 71, at 214.

Early on Darrow expressed astonishment that Haywood could be executed based on Harry Orchard's testimony:

Gentlemen, I sometimes think I am dreaming in this case. I sometimes wonder whether this is a case, whether here in Idaho or anywhere in the country, broad and free, a man can be placed on trial and lawyers seriously ask to take away the life of a human being upon the testimony of Harry Orchard. Lawyers come here and ask you, upon the word of that sort of a man, to send this man to the gallows; to make his wife a widow, and his children orphans--on his word. For God's sake what sort of a community exists up here in the State of Idaho that sane men should ask it? Need I come here from Chicago to defend the honor of your state? A juror who would take away the life of a human being upon testimony like that would place a stain upon the state of his nativity, a stain that all the waters of the great seas could never wash away, and yet they ask it. You had better let a thousand men go unwhipped of justice, you had better let all the criminals that come to Idaho escape scot free, than to have it said that twelve men of Idaho would take away the life of a human being upon testimony like that.

### **Orchard is a Monumental Liar**

Darrow repeatedly emphasized the defense's theme that Harry Orchard was a monumental liar:

I have sometimes thought I had a fair command of language, but it fails when I get to describing Harry Orchard, so I will just call him Orchard, and let it go at that. Who is this fellow upon whose testimony you gentlemen are asked to shift this crime to Haywood. Let us see: He is unique in history. If he is not the biggest murderer who ever lived, he is the biggest liar, at least, who ever lived, and I undertake to say that the record of the English and American courts can not show a single man who has been impeached by as many witnesses as Harry Orchard. Why, gentlemen, if Harry Orchard were George Washington, who had come into a court of justice with his great name behind him, and if he was impeached and contradicted by as many as Harry Orchard has been, George Washington would go out of it disgraced and counted the Ananias of the age.

No man living could stand up against it excepting a phenomenal murderer like Orchard. If you had a lawsuit about a horse or a cow and you would go on the stand and thirty men would dispute you, what, would you expect? Would you expect any jury to believe you? Why, your own lawyer would not believe you, unless you hired Hawley. And yet when you take an infamous wretch like Orchard and contradict him by thirty or forty witnesses, a large number in every way disconnected with this case, lawyers tell you to believe him and take away a man's life on his testimony—all right gentlemen, if you can afford to do it go ahead and do it.

### **Do Not Compromise**

Taking a chance, Darrow challenged the jury not to compromise, not to find Haywood guilty of manslaughter or second degree murder:

Gentlemen of the jury, one thing more: William D. Haywood is charged with murder. He is charged with having killed ex-Governor Steunenberg. He was not here. He was fifteen hundred or a thousand miles away, and he had not been here for years. There might be some member of this jury who would hesitate to take away the life of a human being upon the rotten testimony that has been given to this jury to convict a fellow citizen. There might be some who still hold in their minds a lurking suspicion that this defendant had to do to with this horrible murder. You might say, we will compromise; we could not take his life upon Orchard's word, but we will send him to the penitentiary; we will find him guilty of manslaughter; we will find him guilty of murder in the second degree instead of the first. Gentlemen, you have the right to do it if you want to.

But, I want to say to you twelve men that whatever else you are, I trust you are not cowards, and I want to say to you, too, that William Haywood is not a coward. I would not thank this jury if they found this defendant guilty, of assault and battery and assessed a five-dollar fine against him. This murder was cold, deliberate, cowardly in the extreme, and if this man, sitting in his office in Denver, fifteen hundred miles away, employed this miserable assassin to come here and do this cowardly work, then, for God's sake, gentlemen, hang him by the neck until dead. Don't compromise in this case, whatever else you do. If he is guilty—if, under your conscience and before your God, you can say that you believe that man's story, and believe it beyond a reasonable doubt, then take him—take him and hang him. He has fought many a fight—many a fight with the persecutors who are hounding him in this court. He has met them in many a battle in the open field, and he is not a coward. If he is to die, he will die as he has lived, with his face to the foe. This man is either innocent or guilty. If he is guilty, I have nothing to say for him.

### **Vilifies Orchard**

Throughout his eleven hour talk, Darrow continually brought the focus back to Harry Orchard and vilified him throughout his summation. At various times he referred to Orchard as “a monster”, “a phenomenal murder”, “a perjured monster”, “a monstrous liar”, “[a] man who was bred to cheat and lie”, “a liar, an unstinted liar”, “a sneaking, craven coward”, “a characterless man”, “shifty Harry”, “despicable”, “crooked brain and his crooked, dwarfed soul”, “totally depraved”, “this miserable wretch”, and “at least the biggest liar that this generation has ever known.” Haywood said Darrow's attacks “tore the degenerate Orchard to fragments . . . .”<sup>94</sup>

Darrow loathed Orchard:

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<sup>94</sup> THE AUTOBIOGRAPHY OF BIG BILL HAYWOOD, *supra* note 71, at 212.

Gentlemen, am I wrong? Is there any man that can ever think of Harry Orchard—any man but Hawley—is there any sane man, I will say, who can ever think of Harry Orchard except in loathing and disgust? You have seen him here. You have heard his story. You have seen him sleek and fat and well-fed, facing this jury day by day asking for this man’s blood. Do you ever want to see him again? Do you ever want to hear his name again? In the future when you are trying to find the most infamous word that the English language has given us, can you think of anything but Orchard?

### **Darrow Questions Orchard’s Religious Conversion**

Darrow made clear his suspicions about Orchard’s religious conversion. At one point he told the jury, “Now maybe he got religion for keeps this time. If I was the governor and I thought he had, I would kill him quick, before he got a chance to get over it, and thus make sure of his soul.” In a jab, Darrow referred to McParland as “Father McParland” several times - “Father McParland has not come here and told about the laying on of hands.”

### **Darrow Targets Hawley**

During his closing, Darrow again went after Hawley. This was part of his trial strategy to upset the prosecution. Hawley was not present to witness this attack because he was ill but later he referred to Darrow’s closing as his ‘blackguard address’” but Hawley also thought it hurt the defense instead of helping.<sup>95</sup>

### **Is Hawley Crazy?**

Darrow kept emphasizing the unreliability of Orchard’s testimony and what it meant if Hawley believed Orchard:

He said to these twelve men—men of fair intelligence and fair learning—that you would be warranted in convicting Bill Haywood if you took Harry Orchard's evidence out of this case, and still he says he is honest. Maybe he is, but if he is honest he is crazy, and he can have his choice. There is not an intelligent man who has listened to this case who does not know that it is Orchard from beginning to end, and there is not a word of incriminating evidence in it, let alone enough to take the life of a human being, without Harry Orchard, and Mr. Hawley told you that there was enough evidence in this case to hang Bill Haywood if you left it out. Is he crazy or does he think you twelve men are daffy? One or the other. And the man who made that statement stood up here and argued that an old soldier was bughouse. Maybe he is, but on an inquest of lunacy I would trust him to creep through ahead of Hawley, if he should be judged by the statement that there is sufficient evidence in this case to warrant the taking of the life of a human being without Harry Orchard's. What is that evidence? Where is it? Why should a statement like that be made by a man who says he is honest, and that he is getting

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<sup>95</sup> DEBATERS AND DYNAMITERS, *supra* note 64, at 271.

so old he does not want any more scalps of innocent people hanging at his belt? Well, maybe he has enough. He has all he will get, if I understand what evidence means.

### **Hawley Claims to Be a Friend of the Unions**

Darrow emphasized to the jury that it was Hawley who urged the union men to join together and form the Western Federation of Miners. In response to Hawley's assertion that he was a friend of labor, Darrow said:

But Mr. Hawley took their money; he organized them; he fought their battles; he was their first attorney; and he says to this jury, "I have always been a friend of labor unions." Yes, gentlemen, Mr. Hawley has always been a friend of labor unions when they got their cash to his office first. But when they did not they had better hunt some other friends. Mr. Hawley is advising the state in this case—he had better stick to the state and let the labor unions be taken care of by some one of their own choice.

### **Hawley Has "Orcharditis"**

During the trial, the defense continually came back to the theme that the prosecution's whole case rested on Harry Orchard testimony which lacked corroboration. Darrow repeated this theme while criticizing Hawley:

Mr. Hawley talked to you for a day and a half about how guilty this defendant is. What was the burden of his talk? Was there anything in it but Orchard-Orchard-Orchard, from beginning to end? Did he play upon any other string, or can he play upon any other string excepting Orchard-Orchard-Orchard? These men are guilty because Orchard says so. This man who comes here and testifies against him is an infamous scoundrel; a woman, however respectable appearing she might be, however she might resemble your own wife or your own sister, is a perjurer if she testifies against Orchard. Everybody lies that this scoundrel may be believed. We call the roll of thirty-five or forty witnesses—half of them, at least, with no connection whatever with this organization, half at least who give the lie straight and square to this monster—and Hawley says they are perjurers—perjurers. They have committed perjury because they have sworn against Orchard. He has got Orcharditis—or Orchard itch would be a better term for it. Too bad the old gentleman could not have closed his career before he reached this case and made this awful statement to twelve men who must live in a community where he lives for the rest of his life. Tell me that everybody is a perjurer who has sworn against Orchard?

### **Is Hawley Insane?**

Darrow continued to batter Hawley:

When I opened this case I said to this jury that before the first witness left the stand I would convince Mr. Hawley that his precious client had lied upon one important fact. Now, I want to apologize to the jury—I did not. That is because I did not understand Mr. Hawley. I thought he had some sense. Let me tell you who was the first witness in this case—you may have forgotten it, it was so long ago; it was Mrs. King. Do you remember Mrs. King? Let us hold an inquest on Hawley's sanity for a minute, and let us see whether he is sane or insane. Now, gentlemen, Mrs. King was a matronly woman of perhaps 55 or 60 years of age; she was not a member of the Western Federation of Miners; she did not work in the mines at all. She has two sons working in the mines and they are both scabs so she would not favor us on that account; both of them are working there now, neither one belonging to the union or having ever belonged to the union. I submit there has not been a witness placed upon this stand in this trial who had more of the appearance of truth and candor and integrity than Mrs. King. Is there any doubt about it? Is there any man in this jury box that would not as soon doubt his own wife, except for the fact that she is his own wife, as Mrs. King? I do not believe it. Will you tell me what license this lawyer has, for a few paltry deficiency warrants, to say to this jury that Mrs. King is a perjurer to get the blood of Mr. Haywood; and yet you twelve men are expected to take that sort of talk so you can get his blood and accommodate Mr. Hawley with another scalp at his belt in his declining years!

Haywood said of Darrow's attacks on Hawley: "Darrow was not always the smiling, suave, persuasive individual that he is sometimes described. His grandest moments were when he was in the attitude of attack."<sup>96</sup>

### **Haywood not an Angel**

Darrow did not deny that Haywood was a rough character:

I don't claim that this man is an angel. The Western Federation of Miners could not afford to put an angel at their head. Do you want to hire an angel to fight the Mine Owners' Association and the Pinkerton detectives, and the power of wealth? Oh, no, gentlemen; you better get a first-class fighting man who has physical courage, who has mental courage, who has strong devotion, who loves the poor, who loves the weak, who hates iniquity and hates it more when it is with the powerful and the great; and you cannot win without it, and I believe that down in your hearts there is not one of you would wish him to be an angel. You know an angel would not be fitted for that place, and I make no claim of that; but he is not a demon. If he were a demon or a bad man he would never be working in this cause, for the prizes of the world are somewhere else. The man who enters the labor movement, either as an organizer, a member, or a lawyer, and who enters it in the hope of reward, is a foolish man indeed.

Darrow again went after Orchard:

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<sup>96</sup> THE AUTOBIOGRAPHY OF BIG BILL HAYWOOD, *supra* note 71, at 212.

[T]here is nothing in this case but Harry Orchard—Harry Orchard, an unspeakable scoundrel; Harry Orchard, a perjured villain; Harry Orchard, bigamist and murderer and coward; Harry Orchard, shifting the burdens of his sins upon these men to save his life. If you men can kill my client on his testimony, then, peace be with you.

Near the end of his closing argument Darrow stated: “Gentlemen, it is not for him alone that I speak. I speak for the poor, for the weak, for the weary, for that long line of men, who, in darkness and despair, have borne the labors of the human race.”

### **William Borah’s Closing Argument**

Borah’s closing argument took five and a half hours but due to the heat in the courtroom it was broken up over three sessions. Referring to the murder of his friend Frank Steunenberg Borah called it “the awful story.” Very early in his argument, Borah remarked that the defense had emphasized his role as a special prosecutor. He commented, “I am not aware, however, the fact that I am a special prosecutor should add anything in the way of disparagement or discredit to my appearance before you to say the last word that is to be said upon behalf of the State.”

### **Jack Simpkins**

Referring to the mysterious Jack Simpkins Borah told the jury:

[S]ince Mr. Darrow made his opening statement in which he threw Jack Simpkins overboard, this man who was at Caldwell under an assumed name with this man who had been painted in all kinds of colors, Harry Orchard—a veritable devil, and I agree with him—Jack Simpkins who was hibernating with Mr. Orchard is made a high official of the Western Federation of Miners. When the news went forth he fled from justice, is a fugitive in hiding today, and this man who is a self-confessed criminal before the community has been re-elected and a crown of favor put upon his head in open defiance of every decent sentiment which ought to control a labor organization.

### **Harry Orchard**

Borah claimed that if Orchard had not confessed, Darrow and the defense would be here defending Orchard instead of vilifying him. Borah commented on Darrow’s closing argument: “Now, my friend who has just closed and whom I listened to with so much interest, perfectly spellbound, said to you yesterday in one of his flights of humor or fancy that Mr. Orchard had purchased his freedom and had received his pay in advance.” Darrow stepped in to correct Borah: “His life, I said.” Borah then continued:

His life. I am glad you concede we are going to keep him in the penitentiary. And that if he hadn’t made his confession and purchased his life that the grass would

be growing over him and the daisies blooming over his grave. You know that is not true. If he had not confessed and did what he did Fred Miller would be earning his fifteen hundred dollars. The Western Federation of Miners would be here clearing Harry Orchard, and you would never have seen Bill Easterly nor Bill Davis nor anybody else appearing here against him. They would have been here and the eloquent gentleman from Chicago would have demonstrated to you with absolute certainty that he could not have killed Governor Steunenberg because he was down at the Saratoga hotel when the bomb went off . . . .

Borah also criticized Darrow's assertion that Orchard's greatest crime was revealing his real name to be Albert Horsely, because this would bring shame on his family. Borah said it was the defense that had first mentioned the name of Orchard's daughter.

### *Miners' Magazine*

Borah read several passages from *Miners' Magazine* to show the anger and hatred directed at Frank Steunenberg. He commented on each passage. One passage stated:

How this villain has risen in four years from editor of a weekly paper on the Snake River desert to a wealthy sheep owner, mine owner and stock holder! Where did he get the money to make those investments except from the mine owners, whose lackey he was from the day he was elected Governor.

Borah said of this ill-will directed at Steunenberg: "It was a hatred arising out of what Mr. Darrow is pleased to call an industrial warfare." Borah read another passage aloud:

Farewell Steunenberg, once Governor of Idaho! Your political career is ended. You have done every thing within your power to send the men who made you Governor to the penitentiary, and worse than all, you stand before the world a convicted perjurer before a congressional investigating committee. But your cheek has long since lost the blush of shame and your damnable deeds will never appeal to your manhood, for such you never possessed.

Borah stated that any anger Orchard had over the Hercules mine forfeiture was insignificant compared to the "unforgiving, unforgetting, unrelenting hatred of the officials of this organization against Frank Steunenberg! And why? Simply because he could not conceive it to be his duty as Governor to sit still and see a thousand men go into a neighboring town armed and masked, destroy property and commit murder."

Another entry from the *Miners' Magazine* stated, "Your sole ambition was money, which in your estimation was superior to honor; but you are gone and upon your political tombstone shall be inscribed in indelible words, 'Here lies a hireling and a traitor.'"

### **Awful, Unappeasable Hatred**

Although some accounts of the trial state that Judge Wood only allowed the prosecution to read passages from the *Miners' Magazine* published prior to Steunenberg's death, Borah did read passages in his closing arguments published after the assassination. One passage stated, "Former Governor Frank Steunenberg of Idaho met his death last Saturday evening at his home at Caldwell, Idaho. The press dispatches report his dissolution via the bomb route." Borah commented:

That is the eulogy of the Western Federation of Miners passed upon Frank Steunenberg at an hour when the world was aghast at the awful crime. . . . My God! What can be said in answer to this awful, unappeasable hatred? . . . The man who wrote that article, who boasted of it, whose eyes gleamed with gratification when he was asked about it, turned out indeed to be a murderer. He expressed the sentiments and reflected the views of the officers of the Western Federation of Miners.

Borah read yet another passage:

A chap by the name of Steunenberg was blown up by a bomb at Caldwell, Idaho, on December 30<sup>th</sup>. He was Governor of the State some few years since and attained considerable of a reputation as the inventor of that revered American institution known as the 'bull-pen.' The bomb had been carelessly left, presumably by some Russian revolutionist, in the gateway leading to Steunenberg habitation. Such carelessness should be frowned down. The gate was completely wrecked.

Borah exclaimed, "This is the eulogy! No motive! No feeling of hatred! And yet counsel for the defense say that these things had been forgotten; that Coeur D'Alene was a thing of the past; Steunenberg was in private life."

Another passage from a post-assassination issue stated, "The organs of the capitalistic class recognize in the death of Steunenberg the loss of a man who was faithful and loyal to their interests. The history of the Idaho strike of 1899 is still fresh in the memory of the membership of organized labor throughout the country." Borah stopped to remark, "Still fresh!" He then continued reading:

The brutality and barbarities that characterized the official acts of those who were clothed with power and backed by authority of law will never be forgotten during the life of the present generation. The military stockade or "bull-pen," where hundreds of men were goaded and tortured to the limit of human endurance, could have no other effect than to kindle in the hearts of many the flame of hatred that would burn as long as there lived a victim that bore the scars of the conflict of the year 1899 . . . .

## **Independence Depot Massacre**

During one stirring passage Borah began by referring to the Independence Depot massacre in which Orchard and Steve Adams planted dynamite that killed thirteen non-union miners. Borah told the jury:

What a scene we have passed through in these sixty days of trial! Twenty odd murders proven and not a single man punished. Men blown to pieces, laboring men trying to earn their daily bread, trying to plant the dimple of joy upon the faces of prattling babes, trying to drive the shadows from the simple hearth stone—blown to an unrecognizable mass because they were not union men. Men high in the walks of life murdered upon the very door steps of their homes because they sought to uphold the law. And at last, when we try to administer punishment the State is attacked, the courts attacked, everything we love denounced, our dead slandered. Never was there a greater call for courage, for manhood, than the call which comes to you tonight. Some of you have stood the test when the flag was in danger. Some of you have stood in the trenches where death seemed king, but never was there a greater demand upon you for intelligence, for manly, fearless action, for courage and conscience than now.

### **Darrow Justifies Coldblooded, Deliberate Murder**

During his summation, Borah took issue with a part of Darrow's speech where he tried to justify the use of violence by union men:

Here I wish to call attention to some of the startling doctrines of Mr. Darrow. This is not for the purpose of attacking the man personally. Personally, I like him very much but I do not like his doctrines as given to this jury. I am going to say a word in answer to them. No better time could be selected for a reply than while we are discussing these wholesale attempts of Orchard to murder Peabody and Gabbert and Goddard and Bell. When you heard these doctrines thus given to you yesterday you must have said to yourselves at once, This man justifies murder, coldblooded, deliberate murder, openly in the courts of our country. If Haywood felt as his counsel feels, who speaks for him, if this is the creed of the W.F. of M., why should they not kill and murder? The surprise is that Peabody and Gabbert and Goddard and Bell are not all dead. . . . These are the potent reasons for crime, and if you lodge them securely within the brain of man you are rendering him capable of crime. Shame, oh shame, that one so gifted, one so blest with genius, has so far forgotten. The constitution was made for you. It is the shield of the weak. . . . These doctrines that have been given you are wrong, they make men wrong, they inspire doubt and distress, hatred and murder. These are the doctrines that have turned from its true course this great labor organization.

### **The Awful Night of December 30, 1905**

Near the end of his closing argument, Borah sought to cut through the claims of the defense and remind the jury of the crime that brought them into the courtroom:

I have no doubt that many times during this trial you have been much moved by the eloquence of counsel for the defense. They are men of wondrous powers. They have been brought here because so rarely gifted in power to sway the minds of men. It was their part in loyalty to their clients to toy with your sympathies, to call you if possible from the plain path of justice and duty, to lead you, if possible, from the brave and manly consideration of the real facts of this case. But as I listened to the music of their voices and felt for a moment the compelling touch of their hypnotic influence there came back to me all the more vividly, when released from the spell, another scene there came to me in more moving tones other voices. I remembered again the awful night of December 30, 1905, a night which added ten years to the life of some who are in this court room now. I felt again its cold and merciless chill, faced the drifting snow and peered at last into the darkness for the sacred spot where last lay my dead friend, and saw true, only too true, the stain of his life blood upon the whited earth. I saw men and women standing about in storm and darkness, silent in the presence of the dreadful mystery, and Idaho disgraced and dishonored I saw murder no, not murder a thousand times worse than murder, I saw anarchy displaying its first bloody triumph to Idaho. I saw government by assassination pointing to the mangled form of Frank Steunenberg, the broken family, the blood bespattered home, and saying to all look, look and take notice! Here is the fate of all who do their duty to their State and the government. As I thought over that night again I said to myself, Thou living God, can time or the arts of counsel unteach the lessons of that hour? No, no; for the sake of all that good men hold near and dear let us not be misled, let us not forget, let us not be falterers in this great test of courage and heroism.

### **Edited Versions of Borah's Closing Argument**

Many commentators have given Borah credit for his closing argument. However, it appears that much of this praise was in response to an edited version of Borah's closing remarks. In one of the more definitive accounts of the trial, the author states:

But is not the question of preparation that makes Borah's closing argument unique. It is, instead, the question of textual authenticity. For, almost all of the authors who have dealt with Borah's summation, and all the anthologies that have abridged the text of the speech, have used as their source a pamphlet entitled *Haywood Trial—Closing Arguments of W.E. Borah*, a text which differs markedly in places from the trial transcript. This pamphlet was published, undated, by the Statesman Shop in Boise, and contains a highly refined and edited speech that is stylistically superior to the one actually given in the courtroom.<sup>97</sup>

This edited version was abridged even further and reproduced in *Classics of the Bar* by Alvin V. Sellers.

### **Judge Wood's Jury Instructions**

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<sup>97</sup> DEBATERS AND DYNAMITERS, *supra* note 64, at 237-38.

On July 28, 1907, Judge Wood required almost an hour to instruct the jury. The judge told the jury that the State failed to connect Orchard's testimony - about Steve Adams meeting with Pettibone and allegedly engaging in crimes that were part of a general conspiracy - to Haywood or the murder of Steunenberg. He told them to entirely disregard this part of Orchard's testimony. He also told the jury the defense failed to properly connect testimony about deportation of miners, destruction of property of the Western Federation of Miners and allegations Pinkerton agents had infiltrated local WFM unions. The jury was told to disregard all of this defense evidence.

Importantly, the judge instructed the jury as to the burden of proof. This was extremely helpful to the defense:

The burden is on the prosecution to prove beyond a reasonable doubt that a combination and conspiracy was formed, and that in the execution and carrying out of such conspiracy and design some one of the parties to said conspiracy and agreement killed Frank Steunenberg. The burden of establishing these facts is upon the prosecution throughout and never shifts to the defendant; and, therefore, if the prosecution has failed to prove beyond a reasonable doubt each and every one of these facts, you should acquit him. And you are further instructed that such a combination and conspiracy cannot be established by the uncorroborated testimony of an accomplice.<sup>98</sup>

## **The Verdict**

The jury deliberated from shortly after 11:00 a.m. on Saturday throughout the night and into the next morning. During the deliberations, crowds of spectators and reporters milled about and rumors circulated as to how the vote was going, with most of the rumors going against the defense. One rumor had it that the jury was eleven to one for conviction.

About seven o'clock in Sunday morning word came that the jury had made a decision. The defense was very worried and Darrow put his arm about Haywood and told him, "Bill, old man, you'd better prepare for the worst. I'm afraid it is against us, so keep up your nerve."<sup>99</sup> After the defense and prosecution were assembled and with a packed court looking on the verdict was read: "Not guilty." After hearing the verdict, Haywood and the defense team exploded with joyous handshaking and congratulating. Haywood, the atheist, thanked Darrow and Richardson with "God bless you!" and then he went over and thanked the jury.<sup>100</sup>

The verdict was a complete shock for the prosecution and for many of the news reporters present. Borah was not present to hear the verdict because he could not be located.

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<sup>98</sup> THE HAYWOOD CASE: MATERIALS FOR ANALYSIS 191 (Abe C. Ravitz & James N. Primm eds., 1960) (citing Judge Wood's instructions to the jury).

<sup>99</sup> BIG TROUBLE, *supra* note 2, at 722.

<sup>100</sup> ROUGHNECK, *supra* note 29, at 135.

## How Did Haywood Escape the Gallows?

During the trial most observers believed Haywood would be found guilty. It appears that Judge Wood's jury instructions were the most important reason Haywood was acquitted because the state failed to sufficiently corroborate Orchard's confession. After the trial jurors noted the importance of the jury instructions in their decision.

### Key to Defense Victory – Getting Steve Adams to Recant Confession

J. Anthony Lukas believes that Darrow's defense and his masterful closing argument were important but:

“nothing he did in the courtroom can compare to his master stroke of persuading Steve Adams—whether by bribe, threat, or otherwise—to renege on his confession, thus depriving the state of that corroboration. Given the emphasis Judge Wood had put on such independent corroboration, this was an important—perhaps the *critical*—hole in the prosecution case.”<sup>101</sup>

It is possible that Steve Adams recanted his confession because of fear of the WFM. Even if the prosecution could guarantee some kind of immunity for Adams if he corroborated Orchard's testimony, Adams would be constantly worried that he or his family would face revenge by the WFM. Perhaps he chose to take his chances with Darrow defending him and not betray the Western Federation of Miners.

### Were Jurors Afraid to Convict?

Another possible reason for Haywood's salvation was fear by jurors and their families of retaliation, including murder, if they convicted Haywood. The wife of the jury foreman was concerned enough that she went to Judge Wood's home during the trial but was turned away by his security guards.<sup>102</sup> Some of the other wives of jury members reportedly also went to the authorities because they were afraid. Borah was told by a jury member after the trial that he was willing to risk his own life by voting for conviction, but not the lives of his family.<sup>103</sup> According to an unconfirmed report, two of the jurors requested permission to carry firearms. Lukas points out that ironically the prosecution's portrayal of the WFM as ruthless murderers gave the jury more reason not to risk their own safety with a guilty verdict.<sup>104</sup>

After the verdict, Darrow announced his intention to sue *McClure's Magazine* on behalf of Haywood for libel, because by publishing parts of Orchard's confession, they had blamed Haywood for Steunenberg's death.

### William Borah's Trial

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<sup>101</sup> BIG TROUBLE, *supra* note 2, at 724-25.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

William Borah's trial began on September 23, 1907. Borah was charged with conspiracy to fraudulently acquire timber lands in Idaho. The prosecution consisted of U.S. Attorney Norman M. Ruick, Francis Goodwin and two special assistants to the U.S. Attorney General, Marsden Burch and Sylvester Rush. Borah was defended by James H. Hawley who was assisted by Alfred A. Fraser and two Boise lawyers Samuel L. Tipton and Karl Paine. One of the jurors had been the jury foreman in Haywood's murder trial.

The government alleged that Barber Lumber had created dummy purchasers of federal timber who were given a small fee for filing the tracts in their names, while the land was logged by Barber. Borah allegedly advised the company officers that this was lawful. One of those indicted as "John Doe" turned out to be the late Frank Steunenberg who was a company shareholder and timber purchaser.

Hawley strategically chose to waive cross-examination of witnesses to give the impression that the prosecution's case did not amount to anything, and also waived his summation. The prosecution had opened with a factual statement of the case and wanted to close with Marsden Burch, who was a persuasive speaker. But the judge ruled that since the defense had waived its closing, the prosecution could not reply. The case was then given to the jury.

The jury deliberated for only fourteen minutes before returning a verdict of not guilty. Borah and his many supporters went to the Idanha Hotel for a triumphant celebration. In June 1908, President Roosevelt removed U.S. District Attorney Ruick and the marshal involved and their successors were nominated by Senator Borah.

Borah had been elected as a Republican to the United States Senate in 1906. His acquittal allowed him to pursue a career in politics. Borah was reelected in 1913, 1918, 1924, 1930, and again in 1936, and was an unsuccessful candidate for the Republican presidential nomination in 1936. Borah served in the Senate from March 4, 1907, until his death in Washington, D.C, on January 19, 1940.

### **Another Murder**

During the Borah trial, another murder took place that was connected to the Haywood trial. Sheriff Harvey K. Brown from Baker County, Oregon had assisted in the arrest of Steve Adams in Oregon. Brown testified in the first murder trial of Steve Adams. He was also one of the first to recognize that "Thomas Hogan" was really Harry Orchard.

On September 30, 1907, Brown, age 36, was killed by a bomb when he opened the gate to his yard in Baker County, Oregon. The assassination was very similar to the murder of Frank Steunenberg and it was widely believed that Brown was murdered by the WFM because of his actions in implicating Harry Orchard and Steve Adams. Brown was going to be an important witness for the prosecution in the second murder trial of Steve Adams.

Another theory was that he was killed because of his crackdown on gambling and illegal liquor. No one was ever charged with his murder.<sup>105</sup>

Later, in the spring of 1908, a bomb was placed at the Telluride, Colorado home of Adjutant General Bulkeley Wells of the Colorado Militia. Wells survived but his house was destroyed. The Wells assassination attempt was also believed to be the work of the WFM.

## **Steve Adams Trial II**

Steve Adams was still facing the same charges of murdering Fred Tyler. Darrow returned to Chicago after the Haywood trial but the defense counsel he worked with in Idaho wired him to return after a short break:

On my return to Boise I learned that the State had determined to make another effort to bring Steve Adams into their camp. They did not want to risk another trial in Wallace, so they took a change of venue to Rathdrum, Idaho, a small town near Spokane. They still hoped they might convict Adams before taking up the Moyer and Pettibone cases. Rathdrum is the county seat of a farming section. It had few miners or laboring men. We secured the services of the best-known lawyers there, Charles Heitman and Edwin McBee, old residents and men thoroughly acquainted with the country and every one in it; and of course we took along our good friend, John Wourms; of all the lawyers in that case, John Wourms and I are the only ones still alive.<sup>106</sup>

## **Darrow Becomes Ill**

Just before the start of the second Steve Adams murder trial, Darrow developed a very painful problem with his inner ear. Doctors believed it was a case of mastoiditis but Darrow lacked two key symptoms – swelling and fever. Darrow was urged by the doctors that he should be ready to leave for California or Chicago to seek treatment if the condition did not improve. Darrow tried without success to get the trial delayed. Darrow could not leave Adams because his life was on the line and Adams had relied on Darrow's promise to defend him if he refused to cooperate with the state. Darrow recalled his predicament:

“No one but a lawyer can understand what a sense of responsibility one may feel toward a client. In this case I was daily warned of my danger, but I did not even consider leaving him, although there were other capable lawyers who had been in the case at Wallace. If Adams lost it meant his death, or his surrender to the State, which would further imperil the lives of Moyer and Pettibone.”<sup>107</sup>

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<sup>105</sup> <http://www.odmp.org/officer/2342-sheriff-harvey-k.-brown>

<sup>106</sup> STORY OF MY LIFE, *supra* note 27, at 157.

<sup>107</sup> *Id.* at 157-58.

A doctor lanced Darrow's ear thinking an infection needed to be drained, but nothing appeared. The doctor decided to leave the incision open and Darrow and his wife were taught how to irrigate the open eardrum, and provided equipment and sterilizing instructions. The Darrows left for Rathdrum in Northern Idaho where Adams murder trial was to be held. At one point they went to Spokane to consult doctors. A doctor there also thought it was mastoiditis but they had to wait to see how it developed before considering an operation. Darrow tried again to postpone the trial due to his illness, but the judge refused because the defense had enough lawyers to proceed with the case. Darrow conceded that the judge was correct. Meanwhile, the ear problem continued to get worse. Darrow was in severe pain for two months and had to take narcotics to dull the pain. Ruby had to perform much of his medical care.

Steve Adams' second murder trial began on October 25, 1907. Adams was prosecuted by James H. Hawley, Walter H. Hanson, Henry P. Knight, C.H. Potts, R.E. McFarland, James E. Gyde and A.A. Crane. Adams was defended by Clarence S. Darrow, Charles L. Heitman, Edwin McBee, Fred Miller and John. H. Wourms.

Darrow had to take opiates to try and reduce some of the pain. Despite his illness he managed to try the case. The prosecution had trouble locating some witnesses and it was believed that some people feared retribution after hearing about the violence allegedly perpetrated by the WFM that was revealed at the Haywood trial.

The jury also deadlocked in this trial. This was another blow to the prosecution and McParland because even though the Haywood trial was over, they still wanted to pressure Adams to renew his confession and corroborate Harry Orchard's confession for the upcoming murder trials of Moyer and Pettibone. The State informed the defense that they would try Pettibone next. Darrow was able to get a short time extension and he went to Portland to seek treatment. The treatments he received were ultimately unsuccessful. The doctors were still baffled; while it appeared he had mastoiditis he did not have an infection. Darrow was advised to go see a specialist in San Francisco which he did. While in San Francisco he received a telegram that the Pettibone trial was scheduled to begin right away. Darrow was unable to get the trial delayed. The doctor advised Darrow he might die if we went back to Idaho but Darrow left to help defend Pettibone. Darrow arrived back in Boise very ill and went to the hospital but the doctors were still unable to confidently diagnose his illness. Darrow stayed for a time at the home of Judge K. I. Perky who also assisted the defense. Despite his very poor health Darrow participated in jury selection.

### **Darrow Reported Dying**

News of Darrow's illness reached across the country. Darrow wrote about one encounter with a reporter:

One morning a turn for the better seemed to have come so that I was propped up among the pillows a while for a change, when the door opened silently and a face looking surprised appeared, followed by a man advancing with a genial "Good-morning, I just received a telegram from a Chicago paper that I'd better show

you,' handing me the yellow slip, which read: 'Darrow reported dying. Interview him.' I replied that I wasn't really ready for such an interview; I had not yet picked out my 'famous last words' but now I would try to think up some because it would be too bad to disappoint his editor, who was all set for a scoop. I promised to let him know first, as soon as the grim reaper started his job in earnest.<sup>108</sup>

### **Pettibone Trial**

The trial of George Pettibone began on November 27, 1907. Haywood attended the trial and recalled that Darrow was so sick during the two weeks he oversaw the defense's participation in jury selection that he had to remain seated.<sup>109</sup> Darrow says he cross-examined most of the witnesses including Harry Orchard, but by this time his illness could not be ignored any longer and after the state rested its case he informed the judge he could not continue and was given a continuance until the next day. He was examined again and the doctor advised him to go to California immediately for treatment or he would die. Pettibone and the other defense attorneys also urged Darrow to withdraw and travel to California. Darrow agreed but insisted on giving the opening statement to the jury the next day which he did. He was so ill that the judge allowed him to give the opening statement while seated.

After Darrow was forced to withdraw because of his health, Edgar Wilson, John Nugent and Peter Breen took over the defense. A few sources state that Judge Hilton from Denver, who would defend Steve Adams in Colorado, took over Pettibone's defense. During the trial, Pettibone also became ill and did not take the stand in his own defense. The defense learned from the Haywood trial not to offer any evidence, and also waived arguments. Apparently, the jury did not believe Harry Orchard, and Pettibone was acquitted in January 1908. After losing both the Haywood and Pettibone trials, and enduring two mistrials in the Steve Adams trials, the prosecution decided to drop the charges against Moyer. Although Pettibone escaped the gallows, his illness would prove even more serious than Darrow's.

### **Darrow Goes to Los Angeles for Treatment**

Darrow made it to Los Angeles but the medical specialists there were unable to diagnose his illness. They suggested it might be nerves and not a physical illness. Darrow decided that he might as well go back to Chicago. Right after he purchased train tickets to return to Chicago Darrow felt swelling in his ear. This was the symptom the doctors were waiting for and he was scheduled for surgery the next morning. Darrow was operated on in a hospital in Los Angeles on January 22, 1908. He did in fact have mastoiditis but the delayed symptoms were unusual. The surgery was a success and Darrow made a full recovery.

### **Pettibone Dies**

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<sup>108</sup> *Id.* at 164.

<sup>109</sup> THE AUTOBIOGRAPHY OF BIG BILL HAYWOOD, *supra* note 71, at 224.

A news article in the *New York Times* on August 2, 1908 reported that Pettibone had surgery in Denver where it was discovered he had terminal cancer.<sup>110</sup> Pettibone died the next day.

### **Steve Adams Trial III**

Steve Adams was not released after his second murder trial in northern Idaho. He was turned over to Colorado authorities to face murder charges in Grand Junction, Colorado. The murder charges were based on Harry Orchard's confession and Adams' own recanted confession. Darrow did not defend Adams in Colorado. Adams's defense attorney, Orrin N. Hilton, a Denver judge and attorney, challenged the legality of Adams' confession. McParland and the Pinkerton stenographer who recorded Adams' confession both testified. The stenographer testified that McParland told him what to record, and that some things were added later. McParland admitted that he used the threat of hanging and the promise of reward to get Adams to confess. The judge later ruled the confession was illicitly obtained and not admissible. But witnesses were allowed to testify to what Adams told them. The jury unanimously voted for a not guilty verdict.

### **Charles Moyer and the Western Federation of Miners**

Moyer and Haywood had not gotten along for quite some time and eventually Moyer orchestrated Haywood's ouster from the WFM. In 1911 the WFM joined the American Federation of Labor (AFL). In 1913-1914 the WFM was involved in supporting striking copper miners in Calumet, Michigan. In 1913, Charles Moyer and Clarence Darrow urged Governor Ferris of Michigan to settle the strike by arbitration.

In this particularly violent strike, Moyer and other union leaders were assaulted. The most tragic event of the strike occurred at a Christmas party on December 24, 1913, in a hall filled with union family members. Someone falsely yelled "fire!" and in the panic, people rushed for exits - but the doors opened inward instead outward. Accounts vary, but over seventy people died, mostly small children. One family lost five children and their mother. It was never determined who yelled fire and there is still controversy over that issue.

The tragedy prompted an outpouring of grief and donations to the families from citizens who had previously been opposed to the strike. The unions refused the donations because they viewed acceptance as capitulating to the companies. The public viewed the refusal of the unions as capitalizing on the deaths, and a group threatened to lynch some union leaders who had to be saved by the sheriff's department. Shortly after the fire, the WFM announced it was giving up on the strike.

The WFM changed its name to International Mine, Mill, and Smelter Union (IMMSU) in 1916. In 1967, IMMSU merged into the Steelworkers Union.

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<sup>110</sup> *GEORGE A. PETTIBONE DYING; Contracted Cancer In Jail Awaiting Trial In Steunenberg Murder Case*, NEW YORK TIMES, Aug. 2, 1908, at 10.

## **Big Bill Haywood**

William Haywood had been one of the original organizers of the International Workers of the World (IWW) in 1905. After leaving the WFM, Haywood went on to leadership roles in the IWW. Haywood helped lead textile workers strikes in Lawrence, Massachusetts and Paterson, New Jersey.

Haywood was convicted in 1918 along with about a hundred other defendants, including IWW leaders, in a conspiracy to undermine the war efforts of the United States. He spent a year at Leavenworth prison and was released while his appeal was pending. Haywood defected to the Soviet Union in 1921 and lived in Moscow until he died in 1928. Haywood was cremated; half of his ashes were buried under the Kremlin Wall and half were buried near a monument for the Haymarket anarchists in Chicago.

## **Harry Orchard Faces Justice**

On March 10, 1908, Harry Orchard went before Judge Wood to answer murder charges and changed his plea from not guilty to guilty. Judge Wood made sure Orchard knew he was facing the death penalty. Orchard affirmed that he did understand this. Sentencing was set for March 18 and Judge Wood told Orchard that he would have another chance then to change his plea back to not guilty. At the sentencing hearing, Orchard insisted on pleading guilty and was sentenced to death. However, Judge Wood recommended clemency for Orchard to the state Board of Pardons. At the sentencing hearing Judge Wood stated:

It was the particular province of the Court to observe and follow the witness upon the former trials and I am of the opinion that no man living could conceive the stories of crime told by him and maintain himself under the merciless fire of cross-examination by leading attorneys of the country, unless upon the theory that he was testifying to facts and circumstances which had an actual existence in his own experience. A mere child may testify truthfully and maintain himself upon cross-examination. A man of mature years may be able to frame his story and testify falsely to a brief statement of facts involving a single transaction and maintain himself on cross-examination. But I cannot conceive of a case where even the greatest intellect can conceive a story of crime, covering years of duration with constantly shifting scenes and changing characters, and maintain that story with circumstantial detail as to times, places, persons and particular circumstances, and under as merciless a cross-examination as was ever given a witness in an American court, unless the witness thus testifying was speaking truthfully and without any attempt to misrepresent or conceal. Believing as I do that this defendant acted in good faith, and when called as a witness for the State he told all and withheld nothing, I can more readily fulfill the duty that I consider the law imposes upon me.<sup>111</sup>

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<sup>111</sup> THE INTRODUCTORY CHAPTER, *supra* note 69, at 35-36.

After announcing the sentence and recommendation, Judge Wood received letters from two of the Colorado judges that Orchard had tried to assassinate. Judge Gabbert told Judge Wood, “Permit me to say that in my judgment you have said and done the right thing at the right time.” Judge Goddard told Judge Wood, “I think your statement of the case and of the law applicable under the circumstances is admirable, and the course you recommend is eminently just.” Judge Wood also received a letter from Senator Borah who said, “I have not taken the same view with reference to Orchard’s punishment that some of the others have, including yourself, but I will not find fault with it.”

By a vote of two to one, the board of pardons commuted Orchard’s sentence to life in prison.

### **Pardon Hearing**

On November 13, 1922 a hearing was held before the Pardon Board of the State of Idaho to consider the application of Harry Orchard for commutation. Perhaps surprisingly, James H. Hawley argued passionately in favor of pardoning Orchard. Hawley went briefly through the evidence, explaining that the prosecutions of Haywood and Pettibone, although not ending in convictions, would not have been possible without Orchard’s confession and truthful testimony. Hawley stated that not only had Orchard withstood Edmund Richardson’s long cross-examination during the Haywood trial, he also withstood Clarence Darrow’s rigorous cross-examination during the Pettibone trial. Hawley stressed that Darrow’s cross-examination of Orchard was “three days of the most strenuous cross-examination ever listened to, conducted in an absolutely different way than his cross-examination by Mr. Richardson.”<sup>112</sup> Yet, Darrow could not shake Orchard’s testimony. Hawley claimed that Darrow told him, “[I]t was the most remarkable exhibition on the part of a witness that he had ever seen.”<sup>113</sup>

Hawley went so far as to say this about Orchard’s confession and testimony:

[H]e did a greater service to the State of Idaho than was ever rendered by any man within its borders. Because it was not only of benefit to the State of Idaho, but to the entire Northwest, to every mining jurisdiction in all of this broad country of ours. Because he made it impossible, . . . after exposing in that way, after satisfying the people of this country of the truth of his statements, although he could not satisfy the jurors, under the strict rule of the court—I say he was doing a service unparalleled in the history of this country. Why? Because he prevented this association, which was starting under the most favorable auspices, with every right-minded man wishing for its success, but which had degenerated until it came under the control of some of the leading criminals of the United States—he prevented that from ever again being made a criminal organization. He prevented

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<sup>112</sup> Arguments Presented in Favor of Commutation at the Hearing Before The Pardon Board of the State of Idaho in the Matter of the Application of Harry Orchard, at 11, November 13, 1922, *available at* [http://idahohistory.cdmhost.com/cdm4/item\\_viewer.php?CISOROOT=/p265501coll1&CISOPTR=1141&CISOBX=1&REC=3](http://idahohistory.cdmhost.com/cdm4/item_viewer.php?CISOROOT=/p265501coll1&CISOPTR=1141&CISOBX=1&REC=3)

<sup>113</sup> *Id.* at 11.

men like Haywood from ever having control again. He rid it of that radical element.<sup>114</sup>

Hawley told the Board:

[T]here is another thing in regard to this, that is higher than all of these, greater than all of these, from my standpoint. I want to say, as a lawyer, as a man who has spent his life in the practice of law, that the sentence or that the imprisonment continued during his natural life of Harry Orchard, is a disgrace to Idaho, if it is to continue as a law-abiding state.<sup>115</sup>

Hawley was adamant that Orchard was not promised anything by the prosecution for his testimony:

I want to say here and now, as chief counsel during all of these trials that there never was a promise of any kind made to Harry Orchard—never—never an intimation of any kind that he would be protected. He went upon the witness stand under no influence like that, but for the purpose of rectifying these great wrongs that he had in part committed, by telling his story . . . although it placed him as one of the greatest criminals of the age—in that attitude before the country—and never a promise was made.<sup>116</sup>

Hawley finished his plea for Orchard by telling the Board that if they just looked at the record they would see his point of view:

[Y]ou will come irrevocably to the same conclusion that I came to, not this year or last year, but way back in 1907 when we were trying this case, that this man should, before old age overtook him, be permitted again to breathe the free air of heaven, and to go forth into the world, repenting of the crime that he had committed, and trying to do something for humanity in the future that would, in part at least, atone for those crimes.<sup>117</sup>

Former Governor Frank R. Gooding also testified. Although Gooding was in favor of a pardon, he was much less sympathetic to Orchard and saw the situation in pragmatic terms:

I have never been able to find in my heart any sympathy for Harry Orchard. If he died a thousand deaths, he never could atone, it seems to me, for the greatest crime ever committed on American soil. But Harry Orchard plays but a small part in this great project, after all. If you are going to protect the homes, if you are going to protect the society of this country, you have got to recognize what every other great government of this country has recognized, that without men

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<sup>114</sup> *Id.* at 12.

<sup>115</sup> *Id.* at 13.

<sup>116</sup> *Id.* at 15.

<sup>117</sup> *Id.* at 17.

confessing, without men becoming State's witnesses against criminals, you can't have much prosecution, you can't have much conviction, at least.<sup>118</sup>

Gooding thought that with his confession and testimony, Orchard "performed a great service not only for Idaho and the Northwest but for America, for the whole country, for every home in the country."<sup>119</sup>

### **Harry Orchard's Confession Influences Confession in the McNamara Brothers Case**

Darrow's next big case was the defense of the McNamara brothers, who were charged with bombing the *Los Angeles Times* building in October 1910 and killing 20 employees. Governor Gooding recounted his discussion of this case with William J. Burns, the detective who helped solve the 1910 *Los Angeles Times* bombing. The case relied on the confession and testimony of Ortie McManigal, a saboteur hired by a union to use dynamite to damage businesses who hired non-union workers. Burns told Gooding:

[W]ithout the confession of Harry Orchard at these great trials the confession of McManig[al] would not have taken place; and these two confessions proved conclusively to the American people that there could be such things as criminal labor organizations—and that's what they were. The Western Federation was a criminal labor organization; and so was the Iron Workers' Union a criminal labor organization . . . McManig[al] evidently enforced a promise from the State of California that when they used him as a witness he should be given his freedom, and he was given his freedom. McManig[al] went forth into the world perfectly safe, and Orchard is perfectly safe, and would have been from that day, to my mind, if he had been given his liberty. These were the two great trials of this country.<sup>120</sup>

In the end, the Board refused to grant a pardon. Orchard lived as a trustee in the Idaho penitentiary, raising chickens and strawberries. Orchard's religious conversion appears to have been genuine. He became a devout Seventh Day Adventist and he was a trusted and well-liked prisoner for the rest of his life. In 1952 he published a book he co-wrote about his life titled *Harry Orchard, The Man God Made Again*. Orchard died in April 1954 at the age of 88. After serving 46 years in prison, Harry Orchard had outlived all of the other major participants in the Haywood trial.

### **Aftermath**

Interestingly, many Socialists were disappointed that Haywood was found not guilty. They had hoped to use Haywood as a martyr to rally workers to their cause. But with the not guilty verdict against overwhelming evidence and against the resources of the government and private detectives, "it was now apparent that the laboring man could get

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<sup>118</sup> *Id.* at 18.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 18-19.

a fair trial in an American court. The Socialist doctrine had been discredited and from this point on, interest in the radicals began to fade.”<sup>121</sup>

### **Judge Fremont Wood**

According to a 1964 book on the trial:

Judge Wood . . . was not a popular man in Boise or in Idaho after the trial. He faced not only vilification by Governor Gooding, but the slander of widespread rumors that he had been bribed. He remained a district judge to conduct the Pettibone and Orchard trials, but left the bench shortly thereafter with his career virtually ruined. Public opinion in Idaho did not forgive or forget Wood’s instructions to the Haywood jury, particularly after it became known that he believed that Orchard was telling the truth and that Haywood was guilty.<sup>122</sup>

### **Who Killed Frank Steunenberg?**

Anthony Lukas spent seven years researching the Haywood case and was nearly finished with his book without solving the question of whether Haywood, Moyer and Pettibone were responsible for Frank Steunenberg’s murder. But when he was nearly finished with his book he came across letters in the files of *Appeal to Reason*, the Socialist Party’s weekly paper that he believed provided answers to that question.<sup>123</sup> The letters involved Darrow’s next big case, the defense of the McNamara brothers for the bombing of the *Los Angeles Times* building in 1910 and they added a strange twist to the Haywood case.

During the Haywood trial, *Appeal to Reason* sent George Shoaf to cover the trial and also to work with Darrow to plan strategy. Shoaf was again sent on a similar mission during the McNamara trial. In both cases, Shoaf loudly proclaimed that the union men were innocent and had been framed. In the *Los Angeles Times* case he publicly announced that the evidence of the bombing and fire showed that it was perpetrated by Harrison Gray Otis, the owner and publisher of the *Los Angeles Times*. However, both Shoaf and Darrow knew that the McNamara brothers were in fact guilty.<sup>124</sup> As the evidence mounted and it became clear that his clients would almost surely be convicted, Darrow began to consider a plea deal in order to save Jim McNamara’s live. A guilty plea would require Shoaf to retract his derogatory remarks about Otis. To avoid this outcome he concocted a bizarre plan.

During a party at a friend’s house, Shoaf mentioned to a Socialist organizer that he “had the biggest story of his life in his pocket.”<sup>125</sup> Later he went to his cousin’s house and stayed up talking for hours. Around midnight, the cousin and others in the house heard a loud noise on the stairway; no one investigated at the time, but in the morning there was

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<sup>121</sup> Keith Patterson, *The Lion and The Fox, XIII*, 1 AMERICAN HISTORY ILLUSTRATED 12, 21 (1978).

<sup>122</sup> DEBATERS AND DYNAMITERS, *supra* note 64, at 291.

<sup>123</sup> J. Anthony Lukas, *The Making of Big Trouble*, 41 No. 2 IDAHO YESTERDAYS 9 (1997).

<sup>124</sup> BIG TROUBLE, *supra* note 2, at 751.

<sup>125</sup> *Id.*

found a battered derby with “G.H. Shoaf” inscribed in it and a weapon made from fourteen inches of garden hose filled with a lead-like substance.<sup>126</sup> Shoaf was no where to be found.

Shoaf had disappeared and the *Appeal to Reason* printed a headline claiming he had been kidnapped for uncovering the truth about the *Los Angeles Times* bombing. They offered a reward for his return, hired detectives to investigate and talked about the kidnapping for a month. But they backed off the story when it began to appear that Shoaf had faked the assault and kidnapping.<sup>127</sup>

It appears that Shoaf was having an affair with the seventeen year old daughter of Ernest Untermann, a reporter who covered the Haywood trial for *Wilshire Magazine*. Untermann was outraged and wrote to Eugene Debs and others at *Appeal to Reason* about the affair. When *Appeal to Reason* started to accuse Shoaf of the affair, the managing editor began to receive letters from an individual calling himself “Cornelius C. Corker” - who turned out to be Shoaf himself. At first defending Shoaf, Corker later threatened to expose secrets of the Socialist party if the magazine kept impugning Shoaf.<sup>128</sup> In a letter to Fred Warren, managing editor of *Appeal to Reason*, Shoaf stated, “Remember that the McNamara brothers are not one bit more guilty of the crime charged against them than were Moyer, Haywood and Pettibone of the crime of which there were acquitted. Trickery and audacity liberated the miners’ officials.”<sup>129</sup> The letter was written after Shoaf and others knew the McNamara brothers were going to plead guilty, and so Shoaf, posing as Corker, revealed that Haywood, Moyer and Pettibone were indeed guilty.<sup>130</sup> Letters to Warren from other prominent socialist express the same concern that Shoaf would reveal this secret about the assassination of Frank Steunenberg.<sup>131</sup>

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<sup>126</sup> *Id.* at 752.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 753.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 753-54.

